

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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Model Public-Health-Emergency Authority Act

Prefatory Note

[To the committee, advisors, and observers: We plan to add to the prefatory note a discussion of why we no longer include language about the Legislature terminating declarations or orders. This will pick up the language in #6 under the comments to Section 4.]

The *Model Public-Health-Emergency Authority Act* is designed to improve the preparedness of states for public health emergencies. Specifically, the Act clarifies the powers of a governor to declare a public health emergency and to issue orders in response to that emergency. Simultaneously, the Act establishes measures to promote a governor's accountability to the Legislature and to the public at large. The goal of the Act is to empower a governor to act quickly and decisively while also clarifying substantive and procedural limitations to a governor's authority.

This project emerged from the uncertainties in state law that the ongoing COVID-19 pandemic has made acutely apparent. These legal uncertainties contributed to the decision of many individuals, businesses and some legislatures to file lawsuits challenging the statutory and constitutional authority of governors and other executive officials to respond to the risks posed by the pandemic. Moreover, these same legal uncertainties have resulted in legislation in many states clawing back core public health powers from governors and executive branch officials. Consequently, governors and health officials in many states may no longer have the legal authority needed to protect public health adequately during the next emergency.

By way of background, legal preparedness for public health emergencies has evolved in fits and starts over the last twenty years largely in response to major public health crises. Most notably, the anthrax scare following the 9/11 attacks prompted the federal government to fund a project at Georgetown University Law Center in 2001 to develop a model state law for public health emergency powers. A majority of states have adopted substantial parts of this 2001 model law. Yet, the 2001 law addressed primarily executive branch authority to quarantine and isolate individuals during an emergency, and it did not address adequately or at all many of the actions that became necessary during the current COVID-19 pandemic. In particular, the 2001 law does not address the power of governors to issue orders designed to mitigate the effects of a novel contagious disease that has taken root in a population. Thus, governors and state officials often relied on old state statutes to respond to the COVID-19 pandemic. Those statutes authorized officials to take actions "necessary" to preserve public health. Such broad language, while valuable, provided little accountability or limitation, and it invited a wide variety of constitutional and administrative challenges to various orders issued during the pandemic. The *Model Public-Health-Emergency Authority Act* builds on the framework of the 2001 law, clarifying the kinds of orders that governors are authorized to issue during a public health emergency. At the same time, this *Model PHEA* imposes substantive and procedural guardrails as a check against arbitrary public health action. It does so by requiring governors to develop a record in support of any declaration of a public health emergency and in support of any public health order issued during the term of such a declaration. The *Model PHEA* also imposes a

1 sunset provision on every emergency declaration and emergency order, and it requires a
2 governor to make a new record as a condition of renewing a declaration or an order.
3 The drafting committee believes that the *Model PHEA* strikes an appropriate balance between
4 empowering governors to take swift emergency action and holding governors accountable for
5 each such action. Yet, the Committee has faced some challenges. In particular, the Committee
6 found that differences in state constitutions prevented the Committee's including provisions
7 authorizing state legislatures to terminate unilaterally a public health emergency declaration or
8 any emergency order issued by a governor. For example, some state constitutions do not
9 authorize the legislature to act with the force of law except by passing legislation in both
10 chambers, presenting that legislation to the governor for signature or veto, and overriding any
11 gubernatorial veto. In those states, a statutory provision authorizing a legislature to terminate an
12 emergency declaration or order by joint resolution would amount to an unconstitutional
13 legislative veto.

14
15 Consequently, the Model Law requires that a governor make a record that is submitted to
16 the legislature and otherwise made publicly available. This creates a basis to challenge both a
17 declaration and each individual order on administrative grounds.
18 The Committee has identified other issues that it wishes to put before the entire Commission.
19 These include the following:

- 20
21 • Whether the definition of "public-health emergency" is sufficient generally, and, in
22 particular, whether "natural disaster" in the definition of "public health emergency" in
23 Section 2(3) is too restrictive because it does not account for human-made disasters;
24
- 25 • Whether Section 3, which addresses the relationship of the Act with other state laws,
26 should be written in the negative to state that the Act does not supersede other state laws
27 except in the case of a direct conflict, in which case the Act supersedes other state law
28 only to the extent necessary to resolve the conflict;
29
- 30 • Whether Section 4(b)(5), which requires the governor to identify the public health
31 officials and experts with whom the governor consults, should be left as is, should be
32 expanded to require disclosure of every person the governor consults with, should be
33 replaced with a requirement that the governor consult with the head of the State's primary
34 public health agency, or should be eliminated without any replacement;
35
- 36 • Whether the categories of public health emergency orders listed in Subsection (6)(b)
37 sufficiently describe the scope of authority a governor has to issue orders during a public-
38 health emergency, keeping in mind that these categories are designed to provide
39 examples of orders and are not designed to be an exclusive or exhaustive list of purposes
40 that emergency orders are designed to serve;
41
- 42 • Whether Section 6, which requires the governor to account for both the public health
43 benefits and the economic harms of an emergency order, should specify what is meant by
44 "public-health benefits" and "economic harms."
45

- 1 • Whether Subsection 10(a), concerning the preemptive effect on local government of
2 public health orders issued by the governor, should include each of the alternatives (A, B
3 and C) listed there as options from which a state legislature would choose one.

Model Public-Health-Emergency Authority Act

Section 1. Title

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

Comments

The Act's title includes the word "model" and not the word "uniform" so as to signal that the Act accommodates key differences among jurisdictions with respect to their constitutions and legislative structure.

Section 2. Definitions

In this [act]:

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

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

(3) "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.

[Note to committee, advisors, and observers: Is the phrase "other emergency resources" too broad?]

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

(5) “Record” means information:

(A) inscribed on a tangible medium; or

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

(6) “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.

Comments

1. The definition of “person” is based on language currently used in uniform and model laws drafted and approved by the Uniform Law Commission.

2. The definition of “political subdivision” is based on language currently used in uniform and model laws drafted and approved by the Uniform Law Commission.

3. The definition of “public-health emergency” is central to the operation of this Act. It identifies the circumstances under which the 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, and toxins that threaten or harm public health. These include, without limitation, infectious agents that are communicable among humans (e.g., COVID-19, measles, Ebola) infectious agents transmitted through insects or other vectors (e.g., malaria). These also include, without limitation, toxins released into the environment (e.g., chemical spill or nuclear accident). Additionally, these include, without limitation, threats to public health associated with natural disasters or other emergencies, including, without limitation, mold, vermin, or bacteria. The definition also requires that the agent or toxin 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.

4. The definition of “public-health emergency” in this Act shares some of the elements of the definition of “public health emergency” in the 2001 Model State Emergency Health Powers Act (2001 MSEHPA), 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 or toxin poses a high probability of significantly straining medical, public health, or other emergency

resources.

5. In addition to sharing elements of the definition as it appears in the 2001 MSEHPA, the definition of “public-health emergency” in this Act also includes certain phrases that appear in the definition as used in the 2001 MSEHPA, such as “affected population” and “high probability.” In this Act, “affected population” refers to the set of individuals who are likely or actually at risk of harm from the threatened or actual infectious, biologic, radiologic, or chemical agent or toxin or the natural disaster, which may justify the declaration of a public-health emergency. In this way, the size of the “affected population” is determined by the nature and scope of a particular threat. While the nature and scope of a threat may result in the determination that the “affected population” is the population of the state or of one or more political subdivisions of a state, the “affected population” need not correspond to the boundaries of one or more political subdivisions of a state. In this Act, the phrase “high probability” is intended to mean higher than would be reasonably expected in the absence of the agent, toxin or natural disaster, the threat or presence of which may justify declaring a public-health emergency.

6. Despite sharing some elements with the definition in the 2001 MSEHPA, the definition of “public-health emergency” as used in this Act differs from the definition in the 2001 MSEHPA. Circumstances meet the definition of a “public-health emergency” regardless of the cause of the emergency. This can include, without limitation, circumstances in which a threat to public health results from a flood or other natural or human-made disaster.

7. The definition of “public-health-emergency order” is an order issued by the Governor under Section 6 of this Act and that complies with the requirements of Section 7 of this Act. The Governor has the authority to issue a public-health-emergency order during the term of a declaration of public-health emergency.

8. The definition of “record” is based on language currently used in uniform and model laws drafted and approved by the Uniform Law Commission.

9. The definition of “State” is based on language currently used in uniform and model laws drafted and approved by the Uniform Law Commission.

Section 3. Relationship to Other State Law

If a public-health emergency exists, this [act] creates the exclusive authority for the [Governor] to respond to the public-health emergency. If an emergency exists other than a public-health emergency, the [Governor] may respond as authorized by other law of this state.

Comments

This Section declares that executive authority to respond to a public-health emergency derives from this Act and that, when circumstances meet the definition of a public-health emergency, this Act controls over other state laws, including other statutes that authorize the

Governor to declare and respond to other kinds of emergencies. The Section also specifies that the Act supersedes other state law, including other statutes authorizing the Governor to declare and respond to other kinds of emergencies, only when circumstances meet the definition of a public-health emergency. Circumstances may arise in which a public-health emergency arises in connection with a different kind of emergency. For example, a flood might result in bacteria, mold or vermin that pose a threat to public health that meets the definition of a “public-health emergency.” In such circumstances, the Governor’s authority to respond to the related public-health emergency would derive exclusively from this Act while the Governor’s authority to respond to all aspects of the broader emergency other than the portion that is a public-health emergency would derive from other state statutes.

Section 4. Declaration of Public-Health Emergency; Renewal

(a) The [Governor] may, by [executive order], issue a declaration of a public-health emergency on the [Governor’s] determination that a public-health emergency exists in the state. An initial declaration of a public-health emergency may not have a term longer than [90] days.

(b) Before 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 the initial declaration of public-health emergency on the [Governor’s] determination that a public-health emergency continues to exist in the state. A renewed declaration of a public-health emergency may not have a new term of longer than (90) days.

Alternative A

(c) The [Governor] shall consult with the [Legislature] before renewing an initial or a previously renewed declaration of a public-health emergency.

Alternative B

(c) The [Governor]’s authority to renew an initial or a previously renewed declaration of a public-health emergency is subject to the following conditions:

(1) The [Governor] shall consult with the [Legislature] before renewing an initial or a previously renewed declaration of a public-health emergency;

(2) The [Governor] shall call a special legislative session of at least [5] days and

1 more than [15] days to address the public-health emergency. The special legislative session must
2 commence not later than the first day of the term of the renewed declaration of public-health
3 emergency [unless the Legislature is or will be in general session for at least the first [5] days of
4 the term of a renewed declaration of public-health emergency].

5 **End of Alternatives**

6 **[To the committee, advisors, and observers: Professor Gatter will explain why we have**
7 **alternatives. It is also covered in the comments.]**
8

9 (d) There may not be any limitation on the number of times the [Governor] may renew an
10 initial or a previously renewed declaration of public-health emergency that has not expired if the
11 [Governor] determines that a public-health emergency continues to exist, and if the [Governor]
12 complies with subsection (c).

13 (e) An initial declaration of public-health emergency expires at the end of its term unless
14 renewed under subsection (b) unless the [Governor], under Section 5, terminates the declaration
15 of a public-health emergency before the stated term expires. A renewed declaration of a public-
16 health emergency expires at the end of its term unless further renewed under subsection (b)
17 unless the [Governor], under Section 5, terminates the renewed declaration of a public-health
18 emergency before the stated term expires.

19 (f) The [Governor] may issue a declaration of a public-health emergency identical or
20 substantially similar to an expired declaration of public-health emergency under subsection (a) if
21 at least [15] days have elapsed since the expiration of the declaration of a public-health
22 emergency.

23 (g) An [executive order] under this section must specify:

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

25 (2) the political subdivision or geographic area, which may include the entire

1 state, subject to the public-health emergency;

2 (3) the duration of the declaration of the public-health emergency, which is [90]
3 days if a shorter term is not specified; and

4 (4) any state or local governmental entity or [head officer] responsible for
5 responding to the public-health emergency.

6 **[To the committee, advisors, and observers: we need to discuss the term “head officer”.]**

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

11 (i) Not later than [seven] days after issuing or renewing a declaration of a public-health
12 emergency under this section, the [Governor] shall create a report in a record describing the
13 evidence on which the [Governor] based the initial declaration or renewal and each specification
14 required by subsection (g). The report must include any additional evidence the [Governor]
15 considered after making or renewing the declaration. The report must describe how the initial
16 declaration or renewal and each specification is rationally based on the evidence. The [Governor]
17 shall make the report publicly available and shall submit the report to the [Legislature].

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

20 ***Legislative Note:*** Change “Governor” to the appropriate title if the individual heading the state
21 is not the Governor. Change “executive order” to the appropriate term describing the
22 mechanism the Governor uses to issue directives.

23
24 ***[To the committee, advisors, and observers: If we retain alternatives, we will add a legislative***
25 ***note explaining the decisions to be made related to the alternatives.]***

26
27 *The word “Legislature” is bracketed in subsection (c) because a state may need to specify how*

1 *the Governor will submit the report required in that subsection. Whether a state specifies a*
2 *procedure for the Governor to submit this report when its Legislature is out of session and, if so,*
3 *which procedure it specifies will be affected by state law for calling a special session for the*
4 *Legislature. Because subsection (c) requires the Governor to make the report publicly available,*
5 *a state might choose to eliminate the requirement that the Governor submit the report to the*
6 *Legislature.*

8 **Comments**

10 1. This section addresses the declaration of a public-health emergency by the Governor.
11 Such a declaration is central to the operation of this Act because the declaration triggers the
12 Governor's power to issue orders under Section 6 of this Act.

14 2. This section sets the process for the Governor's declaring a public-health emergency,
15 which process is intended to promote accountability to the facts related to the agent or toxin and
16 the risks they pose to all or part of the state's population as those facts exist at the time the
17 Governor declares a public-health emergency. Additionally, the process is intended to promote
18 transparency for and accountability to both the public and the Legislature through the reporting
19 requirement established in subsection (i).

21 3. Subsection (a) authorizes the Governor to issue an initial declaration of public-health
22 emergency and sets a maximum duration of its term.

24 4. Subsection (b) authorizes the Governor to renew an unexpired declaration of public-
25 health emergency and sets a maximum duration of its term. The Governor's authority to renew a
26 declaration of public-health emergency applies not only to an initial declaration of public-health
27 emergency, but also to a previously renewed declaration of public-health emergency. This
28 subsection establishes that, unlike the Governor's authority to issue an initial declaration of
29 public-health emergency, the Governor's authority to renew a declaration of public-health
30 emergency is subject to one or more additional conditions set forth in subsection (c).

32 5. Subsection (c) provides two alternative conditions on the authority of the Governor to
33 renew a declaration of public-health emergency. Alternative A requires only that the Governor
34 consult with the Legislature prior to renewing a declaration of public-health emergency. This is
35 intended to assure that the Governor has notified the Legislature that the Governor intends to
36 renew a declaration of public-health emergency and provides an informal opportunity for the
37 Legislature, presumably through its leadership, to respond to such information from the
38 Governor. Alternative B also requires that the Governor consult with the Legislature prior to
39 renewing a declaration of public-health emergency. Additionally, Alternative B also conditions
40 the authority of the Governor to renew a declaration of public-health emergency on the
41 Governor's calling a special legislative session for the purpose of addressing the ongoing public-
42 health emergency. This condition in Alternative B is intended to assure that the legislative
43 branch has an opportunity to consider and pass legislation related to the public-health emergency
44 just prior to or at the start of the term of the renewed declaration of public-health emergency.
45 This condition is particularly important for states with part-time legislatures that lack the legal
46 authority to call themselves into session. This condition does not create any power in the

1 Legislature that does not otherwise exist under state law. This condition does not obligate the
2 Governor to sign any bills passed during such a special legislative session and presented to the
3 Governor. Alternative B also contains a bracketed exception, which provides that the condition
4 of calling a special legislative session does not apply if the Legislature is or will be in general
5 session for at least the first 5 days of the term of the renewed declaration of public-health
6 emergency. A state might include this bracketed language on the belief that a sufficient
7 legislative opportunity exists if the Legislature will be in general session for at least 5 days at the
8 start of the term of the renewed declaration of public-health emergency.

9
10 6. This Act does not authorize the Legislature to terminate the Governor's declaration of
11 a public-health emergency unilaterally because of the likelihood that a state legislature lacks
12 constitutional authority to terminate the Governor's declaration by any means other than
13 bicameral passage of a bill, which is presented to the Governor and is either signed into law or
14 approved by the Legislature over a veto. Under some states' constitutions, a concurrent
15 resolution is binding only when it relates to the internal functions of the Legislature. In those
16 states, a statutory provision authorizing the Legislature, by concurrent resolution, to terminate
17 the Governor's declaration of a public-health emergency would be an unconstitutional legislative
18 veto. Some states' constitutions may permit such a legislative veto. Because this is a
19 constitutional matter with variation among the states, this Act does not create new authority.

20
21 **[To the committee, advisors, and observers: we will move the substance of #6 to the**
22 **Prefatory Note.]**
23

24 7. Subsection (d) establishes that there is not a limitation on the total number of times the
25 Governor is authorized to renew a declaration of public-health emergency so long as the
26 underlying circumstances continue to meet the definition of a "public-health emergency" under
27 the Act and the Governor meets the requirements of and satisfies the conditions for each renewal.
28 The purpose of this provision is to assure that the Governor has the authority necessary to
29 address an ongoing public-health emergency and to assure that the Governor reassesses whether
30 a public-health emergency continues to exist.

31
32 8. Subsection (e) recognizes that a declaration of public-health emergency expires if not
33 renewed prior to the end of its term.
34

35 9. Subsection (f) establishes that the Governor's authority to issue an initial declaration of
36 public-health emergency that is identical or substantially similar to an expired declaration of
37 public-health emergency is triggered a certain number of days after the expired declaration of
38 public-health emergency reached the end of its term. This provision stands in contrast to
39 subsections (b) and (c) that, together, create the authority of the Governor to renew a declaration
40 of public-health emergency without any lapse in time if the Governor satisfies the conditions in
41 subsection (c) that are designed to provide greater involvement of the Legislature in the ongoing
42 public-health emergency. Subsection (d) applies when the Governor does not meet the conditions
43 for renewing a declaration of public-health emergency and therefore cannot renew such a
44 declaration before it expires. Subsection (d) imposes a waiting period on the Governor before the
45 Governor can issue another declaration of public-health emergency identical or substantially
46 similar to the expired declaration. This waiting period is intended to incentivize the Governor to

1 choose the renewal option under subsections (b) and (c), to specify the consequence of a
2 Governor's failure to meet the conditions of renewal, and to specify when the Governor's
3 authority is reset so that the Governor can protect the public health in the face of an ongoing
4 public-health emergency.
5

6 10. Subsection (g) requires that a declaration of public-health emergency contain certain
7 information. This includes a statement specifying the nature of the public-health emergency
8 under subsection (g)(1). As specified in Subsection (c), the Governor satisfies this standard by
9 stating the nature of the public-health emergency to the extent the nature of the emergency can
10 be ascertained based upon the information available to the Governor at the time the Governor
11 makes the initial declaration or at the time the Governor renews a previous declaration.
12 Subsection (g)(2) requires that the declaration of public-health emergency specify the geographic
13 scope of the public-health emergency, which may encompass all or part of the state. Subsection
14 (g)(3) requires that the declaration of public-health emergency specify the duration of an initial
15 declaration or of a renewed declaration, but this requirement applies only if the Governor sets a
16 duration shorter than the maximum duration permitted under subsections (a) or (b). If no
17 duration is specified in an initial or renewed declaration, then the declaration is deemed to have a
18 duration of the maximum length permitted under subsections (a) and (b). Subsection (g)(4)
19 requires that an initial declaration of public-health emergency or a renewed declaration specify
20 each of the state or local governmental agencies or officials responsible for responding to the
21 public-health emergency.
22

23 11. Subsection (h) requires that a declaration of public-health emergency be "rationally
24 based" on information about the nature of and risks posed by the agent or toxin the threat or
25 presence of which justifies the declaration. This requirement is not intended to change any
26 applicable constitutional standard of review. It is intended to promote accountability and
27 transparency by creating a public record of the evidentiary basis for the Governor's declaration,
28 which will protect against an arbitrary or capricious declaration. The obligation imposed on the
29 Governor to base an initial or a renewed declaration of public-health emergency on evidence of
30 the nature and risks of the relevant agent or toxin is limited to evidence "then available" to the
31 Governor. Information about the nature and risks of a public-health threat may be scant at the
32 time the Governor initially determines that a declaration of public-health emergency is
33 warranted. For example, there may be little information about the nature and risks of a novel
34 virus that is spreading and harming all or part of a state's population. In such a case, this section
35 requires only that the Governor account for the little information that is then available when
36 assessing whether a public-health emergency exists and whether a declaration of a public-health
37 emergency is warranted. Subsection (f) does not require that the Governor wait for more
38 complete or definitive evidence about the nature and risks posted by an agent or toxin before
39 make those determinations.
40

41 12. Subsection (i) requires that the Governor create a report within seven days of an
42 initial or renewed declaration of public-health emergency, which report describes the information
43 on which the Governor relied to make the initial or renewed declaration as well as a description
44 of how this information rationally led to the Governor's decision to make the initial or renewed
45 declaration of public-health emergency. This section is intended to promote accountability and
46 transparency by creating a public record of the evidentiary basis for the Governor's declaration,

1 which will protect against an arbitrary or capricious declaration. The seven-day period permitted
2 by this subsection between an initial or renewed declaration and the time by which the Governor
3 must complete the report balances the need for the Governor to declare or renew a public-health
4 emergency quickly and the need to promote accountability by creating a record describing the
5 information and reasons that justify the initial or renewed declaration. Subsection (i) also
6 requires that the Governor make the report publicly available and that the Governor submit the
7 report to the Legislature. Subsection (i) does not establish a particular method for how the report
8 is submitted to the Legislature. This is meant to accommodate different methods for filing the
9 required report. For example, a state may require one method for filing the report when the
10 Legislature is in session and a different method for when the Legislature is out of session. The
11 Act, under subsection (d), does not limit the number of times the Governor may renew a
12 declaration of a public-health emergency, but, under subsections (h) and (i), each renewal
13 imposes on the Governor the same procedural obligations as the initial declaration. This is
14 intended to require that the Governor reassess whether a public-health emergency continues to
15 exist given any new developments since the initial declaration and to require that the Governor
16 account for any new developments through the reporting obligation that is triggered upon each
17 renewal. By setting a maximum duration for initial or renewed declarations while also permitting
18 the Governor to renew a declaration without limitation so long as the procedural requirements
19 are met with each renewal, this section balances the need to empower the Governor to respond
20 effectively in the case of a public-health emergency of indeterminant duration with the need to
21 assure accountability and transparency each time the Governor extends the duration of a
22 declaration of a public-health emergency.

23
24 13. Subsection (j) exempts an initial or renewed declaration of public-health emergency
25 under this Act from any rule-making procedures that might otherwise apply under state law to
26 administrative statements of general applicability. Because a public-health emergency may
27 require quick action with respect to substantial parts or all of the population of a state, subsection
28 (j) exempts initial or renewed declarations under the Act from rule-making procedures that might
29 delay necessary action and thereby permit unnecessary harm to public health. Subsection (j)
30 exempts initial or renewed declarations under this Act from any and all rule-making procedures,
31 including emergency rule-making procedures because, in most jurisdictions, even these
32 procedures can cause some delay in the effective implementation of administrative actions. This
33 Act imposes other procedural requirements that promote transparency and accountability while
34 still empowering the Governor to act quickly and broadly if necessary to respond to a public-
35 health emergency.

36 37 **Section 5. Termination of Declaration of Public-Health Emergency**

38 The [Governor] may terminate a declaration of a public-health emergency before its term
39 expires. The [Governor] shall do so by [executive order] in a record if the [Governor] determines
40 that the situation is no longer a public-health emergency and the determination is rationally based
41 on evidence then available to the [Governor] about the nature of the agent or toxin giving rise to

1 the public-health emergency and the risk posed by the agent or toxin. The [Governor] shall
2 submit the record to the [Legislature] along with a description of the evidence relied upon and
3 the [Governor's] rationale that the situation is no longer a public-health emergency.

4 **Comments**

5
6 The Governor may terminate a declaration of a public-health emergency prior to the
7 expiration of the duration set by this Act or by the Governor in the terms of such a declaration if
8 and when the Governor determines that circumstances have changed such that they no longer
9 meet the definition of a “public-health emergency” as defined in this Act. When the Governor
10 terminates a declaration of a public-health emergency for this reason, this section requires that
11 the Governor have a rational basis for doing so and that the Governor articulates that rational
12 basis in a report filed with the Legislature and made publicly available. The purpose of this
13 requirement is to prevent the Governor from arbitrarily or capriciously terminating a declaration
14 of a public-health emergency prematurely.
15

16 **Section 6. [Governor's] Authority: Declaration of Public Health Emergency; Public-** 17 **Health-Emergency Order**

18 (a) During the term of a declaration of public-health emergency, the [Governor] may
19 issue one or more public-health-emergency orders as specified in this section. The order applies
20 to all of part of a political subdivision or geographic area subject to the declaration.

21 (b) The [Governor] may issue any order in response to a public-health emergency
22 addressing:

23 (1) the acquisition, stockpiling, commandeering, management, distribution, or use
24 of drugs, devices, equipment, or tests;

25 (2) the acquisition, allocation, distribution, management, or spending of
26 authorized funds;

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

29 (4) the testing, isolation, quarantine, movement, or gathering of individuals;

- 1 (5) the testing, isolation, quarantine, culling, movement, or management of
2 animals;
- 3 (6) the management of state executive-branch operations, offices, agencies, or
4 programs;
- 5 (7) the surveillance, monitoring, or assessment of the public-health emergency or
6 any of its effects in the state;
- 7 (8) the waiver of state laws;
- 8 (9) access to and security of means of digital connection or communication in
9 support of, but not limited to, commerce, employment, education, notifications, or warnings;
- 10 (10) the evacuation or relocation of individuals or animals;
- 11 (11) the assessment of the nature, degree, and variation of harm related to the
12 public-health emergency, including the assessment of the need for food, clothing, housing, and
13 other necessities of life;
- 14 (12) the acquisition, allocation, distribution, or management of goods, services,
15 equipment, materials, or personnel;
- 16 (13) the coordination or cooperation of state or local governmental entities,
17 officials, or employees with federal authorities;
- 18 (14) public-health emergency planning, implementation of public-health
19 emergency plans, the coordination of public-health emergency plans or planning, or training to
20 implement or coordinate public-health emergency plans;
- 21 (15) the making or performance of [executive branch] agreements;
- 22 (16) the development, function, operation, use, assessment, or management of
23 warning or notifications systems;

1 (17) the assessment, operation, or management of, or access to emergency
2 services including without limitation fire, police, or medial services;

3 (18) the assessment, operation, or management of any form of public
4 transportation; [and]

5 (19) the zoning, operation, commandeering, use, or management of parks and
6 other outdoor space, and the management of any activities in those places[.] [; and]

7 (20) the reduction or elimination of any risks of harm posed by the public-health
8 emergency or the reduction, elimination, containment, or mitigation of any of the effects of the
9 public-health emergency not otherwise listed in this subsection.]

10 [(c) In addition to, separate from, and without limitation to or by the authority to issue
11 orders under subsection (b), the [Governor] also may issue any order to eliminate or reduce any
12 of the risks of harm posed by the public-health emergency or to eliminate, reduce, contain, or
13 mitigate any of the effects of the public-health emergency. This includes any order that does not
14 fall into or that cannot be analogized to or extrapolated from one or more of the categories listed
15 in subsection (b).]

16 **[To the committee, advisors, and observers: There is a decision of whether we use**
17 **subsection c or paragraph (20) of subsection b.]**
18

19 [(c)][(d)] In exercising the authority granted under subsection[s] (b) [and (c)], the
20 [Governor] may not issue any order suspending or terminating the operation of the [Judiciary] or
21 the [Legislature].

22 (d)[(e)] A public-health-emergency order must be designed rationally to eliminate,
23 reduce, contain, or mitigate the risks posed by or some or all of the effects of the public-health
24 emergency that gave rise to the declaration of public-health emergency.

25 (e)[(f)] The [Governor] shall consider following factors when issuing an order under this

1 section:

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

4 (2) the likelihood based upon then-available information that the order will result
5 in the outcome it is designed to achieve;

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

8 (4) the likelihood that the order will benefit individuals in the affected population
9 who are most vulnerable because of age, disability, income and other financial resources,
10 education, employment, location, or race to the risks of or harms from the public-health
11 emergency that the order is designed to reduce, eliminate, contain, or mitigate;

12 (5) the burdens on the state and on individuals and businesses in the affected
13 population that are likely to result from issuing the order, including deaths, illnesses, injuries,
14 financial losses, job losses, business closures, depletion of available financial resources, and
15 other relevant health and economic burdens; and

16 (6) the likelihood that the order will disproportionately impose burdens on
17 individuals in the affected population who are vulnerable due to age, disability, income and other
18 financial resources, education, employment, location, or race.

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

21 (g)[(h)] The [Governor] may renew an order issued under this section if the renewal
22 complies with Section 7.

23 (i)[(j)] This section does not prohibit the [Governor] from delegating authority as

1 authorized by other law of this state.

2 **Comments**

3 1. As specified in subsection (a), the Governor’s power to issue public-health-emergency
4 orders as described in this Section are triggered by the Governor’s declaration of a public-health
5 emergency under this Act.

6
7 2. Subsection (b) authorizes the Governor to issue public-health-emergency orders in
8 response to a public-health emergency and that fall within one or more of the purposes
9 categorized in the subsection. The authority of the Governor to issue orders for one or more of
10 the categorized purposes must be read in conjunction with the requirement elsewhere in the
11 subsection that any such orders are “in response to the public-health emergency.” Additionally,
12 the authority of the Governor under this subsection to issue orders for one or more of the
13 enumerated purposes must be read in conjunction with the requirement in subsection (d)[(e)] that
14 any such order be designed rationally to eliminate or reduce the risks posed by the public-health
15 emergency or to contain or mitigate the effects of the public-health emergency. Moreover, the
16 authority of the Governor under this subsection to issue orders for one or more of the enumerated
17 purposes must be read in conjunction with the requirement in subsection (e)[(f)] that the
18 Governor consider several factors relating to the benefits and burdens any order the Governor
19 might issue.

20
21 3. The purposes categorized in subsection (b) that a public-health-emergency order might
22 serve are intended to encompass an array of actions Governors or executive branch officials
23 might rationally take in response to a public-health emergency in an effort to end or mitigate the
24 effects of a public-health emergency. These include actions that Governors have commonly
25 taken in response to a public-health emergency, such as testing, quarantine, isolation, and disease
26 surveillance. They also include actions that a Governor might take to respond to a novel public-
27 health emergency or to a public-health emergency that lasts beyond the short-term.

28
29 4. [Subsection (b) also authorizes the Governor generally to issue public-health-
30 emergency orders designed to reduce, eliminate, contain, or mitigate the risks or the effects of
31 the public-health emergency even when the order does not serve one of the purposes enumerated
32 elsewhere in subsection (b). This more general authority is intended to assure that the Governor
33 has the authority needed to respond quickly and effectively to a wide range of public-health
34 emergencies, including those that might pose novel risks requiring a broader range of authority
35 than the enumerated purposes provide. Yet, even this more general authority is cabined by the
36 legislative requirement that any such order be designed to reduce, eliminate, contain, or mitigate
37 the risks of the effects of the public-health emergency that gave rise to the declaration of public-
38 health emergency. Additionally, any order issued under this more general authority is subject to
39 the procedural and reporting requirements elsewhere in the Act.] [Subsection (c) also authorizes
40 the Governor generally to issue public-health-emergency orders designed to reduce, eliminate,
41 contain, or mitigate the risks or the effects of the public-health emergency even when the order
42 does not serve one of the purposes enumerated elsewhere in subsection (b). Subsection (c)
43 specifies that this more general authority is wholly independent of the purposes enumerated in
44 subsection (b) and that the more general authority is not limited directly or indirectly by those

1 enumerated purposes in subsection (b). The more general authority is intended to assure that the
2 Governor has the authority needed to respond quickly and effectively to a wide range of public-
3 health emergencies, including those that might pose novel risks requiring a broader range of
4 authority than the enumerated purposes provide. Yet, even this more general authority is cabined
5 by the legislative requirement that any such order be designed to reduce, eliminate, contain, or
6 mitigate the risks of the effects of the public-health emergency that gave rise to the declaration of
7 public-health emergency. Additionally, any order issued under this more general authority is
8 subject to the procedural and reporting requirements elsewhere in the Act.]
9

10 5. Subsection (c)[(d)] prohibits the Governor from issuing an order under any authority
11 provided in this Section, which would suspend or terminate the operation of the judicial or
12 legislative branches of government. This prohibition is intended to respect the separation of
13 powers.
14

15 6. Subsection (d)[(e)] establishes any public-health-emergency order issued by the
16 Governor must be rationally designed to reduce, eliminate, contain, or mitigate one or more risks
17 or one or more effect of the underlying public-health emergency. This standard is intended to
18 provide legislative guidance to the Governor, to place a limitation on the scope of the Governor's
19 authority to issue orders during a public-health emergency, and to prevent the Governor in haste
20 from issuing arbitrary or capricious orders. This requirement must be read in conjunction with
21 the reporting requirements established in Section 7.
22

23 7. Subsection (e)[(f)] requires that the Governor consider several factors as a condition of
24 issuing any order under the Section. The factors are intended to assure that the Governor account
25 for the likelihood that the order can achieve its goal, that the benefits and the burdens are
26 distributed fairly taking into consideration vulnerable individuals, and that the benefits of issuing
27 an order justify the burdens of doing so. The requirement that the Governor take these factors
28 into consideration is intended to provide additional legislative guidance to the Governor and to
29 prevent the Governor in haste from issuing arbitrary or capricious orders. This requirement must
30 be read in conjunction with the reporting requirements established in Section 7.
31

32 8. Subsection (f)[(g)] exempts orders issued under this Section from any rule-making
33 procedures that might otherwise apply under state law to administrative statements of general
34 applicability. Because a public-health emergency may require quick action with respect to
35 substantial parts of or all of the population of a state, subsection (f)[(g)] exempts orders issued
36 under this Section from rule-making procedures that might delay action and thereby permit
37 unnecessary harm to public health. Subsection (f)[(g)] exempts orders issued under this Section
38 from any and all rule-making procedures, including emergency rule-making procedures because,
39 in most jurisdictions, even these procedures can cause some delay in the effective
40 implementation of administrative actions. This Act imposes other procedural requirements that
41 promote transparency and accountability while still empowering the Governor to act quickly and
42 broadly if necessary to respond to a public-health emergency.
43

44 9. Subsection (g)[(h)] authorizes the Governor to renew an order, and it does not set a
45 limit on the number of times that an order may be renewed so long as a renewed order meets the
46 same standards that are required for an initial order.

1 10. Subsection (h)[(i)] acknowledges that the Governor has authority elsewhere under
2 state law to delegate to others in the executive branch the power to issue orders under this
3 section. While this subsection does not limit those to whom the Governor may delegate this
4 power, it anticipates that the Governor will delegate some or all of that power to one or more
5 public health officials.

6
7 11. An initial or renewed public-health-emergency order issued under this section may be
8 applicable to individuals, businesses and state or local governments as determined by the
9 Governor.

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

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

12 (1) A declaration of a public-health emergency is in effect at the time the
13 [Governor] issues the order.

14 (2) The order is rationally based on the evidence then available to the [Governor]
15 about the nature of and risk posed by the public-health emergency and the order is rationally
16 designed to:

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

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

21 (3) The order is based on a rational consideration and balancing of all of the
22 factors under Section 6().

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

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

26 (6) The order states the governmental agency that or official who will administer
27 the order.

28 (b) The [Governor], not later than [seven] days after issuing or renewing a public-health

1 emergency order, shall submit a report in a record describing the evidence on which the
2 [Governor] based the initial order or renewal and the determination that the initial order or
3 renewal is necessary under subsection (a)(2). The report must include any additional evidence
4 the [Governor] considered after issuing or renewing the order. The report must describe how the
5 initial order or renewal and the determination of its necessity are rationally based on the
6 evidence. The [Governor] shall make the report publicly available and shall submit the report to
7 the [Legislature].

8 **Comments**

9 1. Section 7 establishes substantive and procedural standards for any order issued under
10 this Act. It is intended to promote accountability to the facts related to the agent, toxin or natural
11 disaster and the risks they pose to all or part of the state's population as those facts exist at the
12 time the Governor issues an order in response to a declared public-health emergency.
13 Additionally, the process is intended promote transparency for and accountability to both the
14 public and the Legislature through the reporting requirement established in subsection (b).
15

16 2. The requirement under subsection (b) that the Governor submit a report to the
17 Legislature does not establish a particular method for how that report is submitted to the
18 Legislature. This is meant to accommodate different methods for filing the required report. For
19 example, a State may require one method for filing the report when the Legislature is in session
20 and a different method for when the Legislature is out of session.
21

22 3. Subsection (a)(2) requires, among other things, that each order issued under the Act be
23 "rationally based" on evidence about the nature of and risks posed by the agent or toxin the
24 threat or presence of which the order is designed to respond to. The determination that an order is
25 necessary either to eliminate or reduce a risk posed by the public-health emergency or to
26 eliminate, reduce, contain or mitigate an effect of the public-health emergency must be rationally
27 based on such evidence. This requirement is not intended to change any applicable constitutional
28 standard of review. It is intended to promote accountability and transparency by creating a public
29 record of the evidentiary basis for an order issued under this Act, which will protect against an
30 arbitrary or capricious declaration.
31

32 4. The requirement to base any order issued under this Act on information about the
33 nature and risks of the relevant agent, toxin or natural disaster is limited to evidence "then
34 available" to the Governor. Information about the nature and risks of a public-health threat may
35 be scant at the time the Governor must respond to a public-health emergency. For example, there
36 may be little information about the nature and risks of a novel virus that is spreading and
37 harming all or part of a state's population. In such a case, this section requires only that the
38 Governor account for the little information that is then available when issuing or renewing an

1 order to respond to the declared public-health emergency. This section does not require that the
2 Governor wait for more complete or definitive information about the nature and risks posed by
3 an agent, toxin or natural disaster before issuing any order.

4 5 **Section 8. Termination of Public-Health-Emergency Order**

6 A public-health-emergency order terminates when:

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

8 (2) the order expires; or

9 (3) the declaration of public-health emergency is terminated under Section 5.

10 **Comments**

11 1. This section identifies the different ways that a public-health-emergency order is
12 terminated.

13
14 2. Subsection (3) establishes that a public-health-emergency order terminates when the
15 declaration of public-health emergency terminates under Section 5. This provision reflects the
16 fact that the Governor's power to issue any public-health-emergency order derives from a current
17 and effective declaration of public-health emergency. Because the Governor is authorized to
18 renew a declaration of public-health emergency under Section 4, the Governor may renew any
19 public-health-emergency orders under a properly renewed declaration of public-health
20 emergency. If, however, a declaration of public-health emergency expires, then any public-
21 health-emergency order expires as a result at the same time.

22 23 **Section 9. Executive Privilege; Open Records Act**

24 The [Governor] may exclude information from a record required under this [act] if the
25 information is subject to a privilege under other law of this state or an exception to [cite to state
26 open records act].

27 **Legislative Note:** *The Legislature should consider whether other state law, including open*
28 *records statutes, should be revised in accordance with the contents of Section 9.*

29 30 **Comments**

31 This section acknowledges that other state law exists privileging certain information that
32 this Act might otherwise require that the Governor disclose in report. This section clarifies that
33 the Act does not alter any such privilege under state law.

34 35 **Section 10. Preemption of Local Public Health Power**

Subject to other law of this state, 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 of the political subdivision conflicts with the order issued under this [act].

Comments

This section specifies that a public-health-emergency order issued by the Governor preempts the law of a political subdivision only when there is a conflict between the public-health-emergency order and the law of a political subdivision and only to the extent necessary to resolve the conflict. This section is intended to permit conflict preemption and not field preemption of local law.

Section 11. Judicial Review; Declaration of Public-Health Emergency; Public-Health-Emergency Order

(a) Any person with standing may file an action in a state court seeking to have a declaration of a public-health emergency or all or part of a public-health-emergency order set aside.

(b) In judicial review of a declaration of public-health emergency or all or part of a public-health-emergency order, the following rules apply:

(1) The burden of demonstrating the invalidity of a declaration of public-health emergency or all or part of a public-health-emergency order is on the party asserting invalidity.

(2) The court shall make a ruling on each material issue on which the court's decision is based.

(3) The court may grant relief only if it determines that a person seeking judicial review has been prejudiced by one or more of the following:

(A) the [Governor] erroneously interpreted the law;

(B) the [Governor] committed an error of procedure;

1 (C) the declaration of a public-health emergency or all or part of the
2 public-health-emergency order is arbitrary, capricious, an abuse of discretion, or otherwise not in
3 accordance with law;

4 (D) an agency determination of fact in a contested case is not supported by
5 substantial evidence in the record as a whole; or

6 (E) to the extent that the facts are subject to a trial de novo by the
7 reviewing court, the action was unwarranted by the facts.

8 (c) In making determinations under this section, the court shall review the governmental
9 record or the parts designated by the parties and shall apply the rule of harmless error.

10 (d) The court may delay temporarily setting aside a declaration of a public-health
11 emergency or all of part of a public-health-emergency order ruled to be invalid, and the court
12 shall exercise this discretion in a manner to reduce the likelihood of harm to public health that
13 could result by immediately setting aside a declaration or an order or part of an order.

14 (e) The court may modify a public-health-emergency order found to contain one or more
15 invalid provisions so as to save all provisions of the order not found to be invalid. In exercising
16 its discretion, the court shall presume that each of the provisions of a public-health-emergency
17 order are severable.

18 (f) This section supersedes other state law only if necessary to resolve a conflict with
19 state law or to carry out the purpose of this section .

20 **Comments**

21 1. This Section creates a right in anyone with standing to file an action in state court
22 seeking a court order setting aside the Governor's declaration of public-health emergency or
23 setting aside all or a portion of a public-health-emergency order issued by the Governor.
24

25 2. Subsection (b) sets the rules for judicial review of a declaration of public-health
26 emergency or a public-health-emergency order. This subsection was adapted from Section 508 of

1 the Revised Model State Administrative Procedure Act. Subsection (b)(3)(A) authorizes a court
2 to grant relief if it finds that the Governor has erroneously interpreted the law in the course of
3 issuing a declaration of public-health emergency or issuing a public-health-emergency order.
4 Subsection (b)(3)(A) is silent on the deference a review court will grant to the Governor's
5 interpretation of the relevant law so as to accommodate the standard of deference already in
6 adopted by the state, and this is true despite the preemption language in subsection (f) of this
7 Section. The arbitrary or capricious standard set in subsection (b)(3)(C) is the same as the
8 arbitrary or capricious standard set in the Revised Model State Administrative Procedure Act.
9 Requirements in this Act that the Governor rationally base a declaration or an order on the then-
10 available evidence of the public health risks and harms associated with the underlying public-
11 health emergency and the obligation of the Governor under this Act to make a report reflecting
12 the evidence and factors on which the Governor rationally based the Governor's declaration or
13 order are intended to assure that such declarations and orders are not arbitrary or capricious and
14 to assure that a record exists for the purposes of judicial review.

15
16 3. Subsection (c) requires a reviewing court to apply the harmless error rule. This
17 subsection was adapted from Section 508 of the Revised Model Administrative Procedure Act.
18 The harmless error rule is particularly important in the review of a declaration of public-health
19 emergency or a public-health-emergency order so as to avoid public health harm during an
20 emergency as a result of immaterial errors.

21
22 4. Subsections (d) and (e) grant discretion to a reviewing court to protect public health
23 during an emergency as much as possible even if the court finds that all or part of a declaration
24 of public-health emergency or a public-health-emergency order is invalid. Subsection (d)
25 encourages a reviewing court to delay temporarily setting aside an invalid declaration or order so
26 as to minimize the risk of public health harm that could result from doing so immediately.
27 Subsection (e) encourages a reviewing court to sever invalid provisions in a public-health-
28 emergency order from the remainder of such an order so as to minimize the risk of public health
29 harm that could result from setting aside the entire order.

30
31 5. Subsection (f) preempts state law of administrative procedure, but only to the extent
32 that such law conflicts with or otherwise interferes with achieving the purpose of Section 11 of
33 this Act.

34 35 **Section 12. Injunctive Relief**

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

37 ***Legislative Note:*** Insert appropriate state official authorized to bring an action for the state.

38 39 **Comments**

40 1. This section should be read in conjunction with Section 13. Together they create the
41 forms of relief authorized under the Act. The Act does not authorize criminal action against those
42 who violate the terms of a public-health-emergency order.

1 **Section 13. Civil [Penalty][Fine]**

2 (a) The governmental agency or official authorized to administer a public-health-
3 emergency may impose a [penalty][fine] for a knowing violation of a public-health-emergency
4 order of not more than:

5 (1) \$[250] per violation as specified in the public-health-emergency order by an
6 individual, except by a public official acting in their official capacity; or

7 (2) \$[1000] per violation as specified in the public-health-emergency order by a
8 business.

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

10 **Section 14. Private Right of Action**

11 This [act] does not create a private right of action.

12 **Comments**

13 1. This section should be read in conjunction with Section 12. Together they create the
14 forms of relief authorized under the Act. The Act does not authorize criminal action against those
15 who violate the terms of a public-health-emergency order.
16

17 2. Subsection (a) establishes two different maximum levels of civil fines or penalties for
18 violations of public-health-emergency orders issued under this Act. One is for individuals, and
19 the other is for businesses. The amount for individuals is set lower than the amount for
20 businesses on the belief that a larger fine or penalty may be necessary to incentivize compliance
21 by a business as compared to an individual.
22

23 3. Subsection (b) acknowledges that an action that violates a public-health-emergency
24 order issued under this Act might also violate other state law and may give rise to a different or
25 additional remedy not provided for under this Act. This subsection clarifies that it does not affect
26 the availability of any such remedies available through other state law. This is designed to
27 account for state and local agencies that administer business licensing laws that include their own
28 unique rights and remedies.
29

30 **Section 15. Relation to Electronic Signatures in Global and National Commerce Act**

31 This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National
32 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.*

Comments

This Section is included in keeping with the requirements of the Uniform Law Commission.

Section 16. Severability

[(a)] If a provision 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.

[Note to committee, advisors, and observers: This subsection seems misplaced. Should it be moved to the judicial review section? If placed in that section, is it duplicative?]

[(b) 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 subsection (b) 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.*

Comments

This Section is included in keeping with the requirements of the Uniform Law Commission.

Section 17. Effective Date

This [act] takes effect . . .