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Title 4

Alcoholic Liquors and Marijuana

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Chapter 1
GENERAL PROVISIONS

§ 101 Definitions.

As used in this title, in addition to their usual meaning:

(1) "Alcohol" means ethyl alcohol produced by the distillation of any fermented liquid, whether rectified or diluted with water or not, whatever may be the origin thereof, and includes synthetic ethyl alcohol, but it does not mean ethyl alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

(2) "Alcoholic liquor" or "alcoholic liquors" include the 5 varieties of liquor defined in this section (alcohol, spirits, wine, beer and alcoholic cider) as well as every liquid or solid, patented or not, containing alcohol, spirits, wine, beer or alcoholic cider and capable of being consumed by a human being, and any liquid or solid containing more than 1 of the 5 varieties defined in this section is considered as belonging to that variety which usually has the higher percentage of alcohol. "Alcoholic liquor" or "alcoholic liquors" does not include a powdered alcoholic beverage. Notwithstanding any other definition in this chapter, "alcoholic liquor" does not include solids and confections that contain 2% or less alcohol by weight, so long as the package which contains the product or any menu or other medium noticing the product for sale, if the product contains between ½ of 1% alcohol by volume and 2% alcohol by weight, is labeled with the word "alcoholic," the phrase "contains alcohol," or some other indication that the product contains alcohol.

(3) "Appeals Commission" shall mean 3 persons, 1 from each County, appointed by the Governor with the advice and consent of a majority of the Senate.

(4) "Barrel", when used as a container for beer, means such container having a capacity of 31 United States standard gallons of 231 cubic inches.

(5) "Beer" means any beverage containing more than $^{1}/_{2}$ of 1% of ethyl alcohol by volume, obtained by the alcoholic fermentation of any infusion or decoction of barley malt and hops in water and includes, among other things, ale, porter, stout and other malt or brewed liquors.

(6) "Beer garden" means a defined, outdoor establishment not less than 10,000 contiguous square feet, which is open to the public for at least 5 consecutive months. A beer garden may sell beer, wine, and spirits by the glass or beer by the bottle, for consumption on any portion of the licensed premises. The sale of food is not required for licensure. The boundaries of a beer garden must be enclosed with a barrier no less than 42 inches high from the floor elevation, constructed of wood, concrete, plastic, rope, or wrought iron fencing, or other approved material. A beer garden must have a physical structure, which may be permanent or removable, and must be substantial. A "substantial physical structure" shall mean equipment and structures costing no less than $250,000 at the time of acquisition. A beer garden license may not be used by an existing liquor license holder to expand the size or nature of the licensed establishment.

(7) "Bottle" means any vessel that is corked, capped or stopped or arranged so to be and intended to contain or to convey liquids.

(8) "Bottle club" means an establishment operated for profit or pecuniary gain where customers of the establishment enter on the premises for the purpose of consuming alcoholic liquors that are brought onto the premises by the customers, consumed on the premises by the customers, and removed by the customers when the customers depart.

(9) "Cabaret" means an establishment where patrons are entertained by performers who dance, sing, play instruments or perform other legal acts for entertainment, but not to include a dinner theater, and where such entertainment may be performed during or after service or dinner, and where a minor, as defined in § 708 of this title, is to be denied admission to or permission to remain on premises after 9:00 p.m. (official eastern time) unless accompanied by a parent or by a legal guardian.

(10) "Caterer" means any proprietorship, partnership or corporation engaged in the business of providing food and beverages at social gatherings such as weddings, dinners, benefits, banquets or other similar events for consideration on a regular basis and duly licensed by the State as caterers with at least 60% of its gross receipts resulting from the sale of food.

(11) Without regard to its usual meaning, and by way of limitation, "alcoholic cider" means any fermented beverage made from apples, containing more than $^{1}/_{2}$ of 1% but not more than 7% of ethyl alcohol by volume. For purposes of this title, alcoholic cider shall be treated as within the definition of "wine" unless the specific language of a particular section indicates a contrary intent.

(12) "Club" means a corporation or association created by competent authority, which is the owner, lessee or occupant of premises operated solely for objects of national, social, patriotic, political or athletic nature, or the like, whether or not for pecuniary gain, and the property as well as the advantages of which belong to or are enjoyed by the stockholders or by the members of such corporation or association. A public golf course, open to all members of the public, whether privately or publicly owned, whose primary purpose is the operation of a golf course shall be included within meanings of this definition. Members of the public, utilizing the golf facility, shall be considered guests of the club.

(13) "Commissioner" means the person appointed by the Governor and confirmed by the Senate who serves as the Alcoholic Beverage Control Commissioner for the State.

(14) "Concert hall" shall mean an indoor facility used to host live entertainment that is owned, leased, under easement, and/or operated by any person and that has capacity for at least 600 patrons for any single event. In order for a facility to be licensed as a concert hall, the facility shall host a minimum of 250 live music events in any biennial licensing period. A facility meeting this

definition may license the entire building, including patio, with the concert hall license.

(15) “Cooking wine” means a wine that is no more than 20% alcohol by volume and includes no less than 1.5% salt that is intended for cooking and not for beverage consumption.

(16) “Denatured alcohol” means ethyl alcohol or liquors containing ethyl alcohol to which substances or ingredients have been added to render the ethyl alcohol or liquors unfit for beverage purposes.

(17) “Disorderly house” means house, or reputed house, of prostitution, ill-fame or assignation.

(18) “Distillery”, “winery” and “brewery” mean not only the premises whereon alcohol or spirits is distilled or rectified, wine is fermented or beer is brewed, but, in addition, the person owning, representing or in charge of such premises and the operations conducted thereon, including the blending and bottling or other handling and preparation of alcoholic liquor in any form.

(19) “Division” means “Division of Alcohol and Tobacco Enforcement.”

(20) “Establishment” means any place located physically in this State where alcoholic liquor of 1 or more varieties is stored, sold or used by authority of any law of this State, including a hotel, restaurant, tavern, beer garden, or club as defined in this section, or where alcoholic liquor of 1 or more varieties is manufactured by virtue of any law of this State.

(21) “Fermented beverage” means any product similar to beer, including sake and seltzer, containing ½ of 1% or more of alcohol by volume, brewed from substitutes for malt, including rice, grain, bran, glucose, sugar and molasses.

(22) “Gathering of persons” or “gathering” means a banquet, picnic, bazaar, fair or similar private gathering or similar public gathering where food or drink are sold, served or dispensed by nonprofit organizations such as churches, colleges and universities, volunteer fire companies, political parties or other similar nonprofit groups having a common civic, social, educational or religious purpose, or where entrance tickets are sold or entrance fees are required by those nonprofit organizations.

(23) “Hotel” means any establishment, provided with special space and accommodation, where, in consideration of payment, food and lodging are habitually furnished to travelers.

(24) “Import” means the transporting or ordering or arranging for the transportation or shipment of alcoholic liquor into the State whether by a resident of the State or otherwise.

(25) “Importer” means the person transporting or ordering, authorizing or arranging the transportation or shipment of alcoholic liquors into this State, whether the person is a resident or citizen of this State or not, said person being permitted to sell said alcoholic liquors only to those persons licensed to resell alcoholic liquors; provided, however, that nothing contained in this definition shall be construed as prohibiting an importer from selling such alcoholic liquors to either an active owner of that business for that person’s use and not for resale or to a full-time, bona fide employee of that business for that person’s use and not for resale; and provided further, that nothing contained in this definition shall be construed as prohibiting an importer from selling beer in “half-barrel” or “quarter-barrel” containers to the holders of a personal license. The Commissioner may enact such rules regulating the sale of alcoholic liquor to active owners and employees of licensed importers as it deems necessary.

(26) “License” means any license or permit to manufacture, to sell, to purchase, to transport, to import or to possess alcoholic liquor authorized or issued by the Commissioner under the provisions of Chapter 5 of this title.

(27) “Manufacture” means distill, rectify, ferment, brew, make, mix, concoct or process any substance or substances capable of producing a beverage containing more than 1/2 of 1% of alcohol by volume and includes blending, bottling or other preparation for sale.

(28) “Manufacturer” means any person engaged in the manufacture of any alcoholic liquor and among others includes a distiller, a rectifier, a wine maker, a brewer, and includes a bottler or one who prepares alcoholic liquor for sale.

(29) “Mead” means an alcoholic beverage that is naturally fermented (not distilled or frozen) wherein the major source of fermentable sugars comes from honey.

(30) “Member of a club” means an individual who, whether as a charter member or admitted in accordance with the rules or the bylaws of the club, has become a member thereof, who maintains membership by the payment of dues in the manner established by the rules or bylaws, and whose name and address is entered on the list of members supplied to the Commissioner at the time of the application for a license under Chapter 5 of this title, or, if admitted thereafter, within 8 days after admission and payment of dues, if such dues are required. The Commissioner is authorized to extend the meaning of the words “member of a club” to include those who are granted temporary membership or membership of less than 1 year in accordance with a rule or bylaw of the club approved by the Commissioner. “Member of a club” which is a multiple activity club means a person who, pursuant to the charter, bylaws or rules of the club, is a member in good standing of such club, and whose name and address is supplied in writing to the Commissioner by the club within 8 days after admission to membership, or who holds a temporary membership in such club, pursuant to a charter provision, or bylaw or rule approved by the Commissioner.

(31) “Motorsports speedway” shall mean a motorsports speedway (including any contiguous land when being used in connection with its events) that is owned, leased, under easement, and/or operated by any person and having a seating capacity of at least 5,000 seats. A motorsports speedway may operate under its own license while using the premises of a license holder at a horse racetrack, but only to the extent that neither license holder uses the same portion of the premises at the same time and no commingling of inventory occurs. The converse of this shall also apply to a license holder at a horse racetrack using the premises of a motorsports speedway.

(32) “Movie theater” shall mean an indoor facility used to host showings of motion pictures and that has a capacity of at least 500 patrons for any single movie showing or for showing of multiple movies in separate theaters at the same time. In order for a facility to

be licensed as a movie theater, the facility shall host a minimum of 250 movie showings in any calendar year and shall be open at least 5 days a week.

(33) "Multiple activity club" is a club as to which, in the determination of the Commissioner, the service of spirits, wine or beer is not the principal activity in the premises of the club as established by the following:

a. Gross revenue of the club from the sale of spirits, wine and beer does not exceed 40% of its total annual revenue including dues, fees and assessments, and either

b. Meals are served by the club at regular hours on at least 6 days of the week,

c. The club has a physical facility, regularly used by members of the club, which is devoted primarily to activities other than the sale or consumption of spirits, wine or beer, or

d. A public golf course, as defined in paragraph (12) of this section, may be licensed as a multiple activity club, however, is not subject to the requirements as set forth in paragraph (33)c. of this section.

(34) "Multi-purpose sports facility" shall mean a stadium, featuring sporting events where admission fees are charged to the public and having a seating capacity of at least 2,500 seats, and excludes stadia which are operated and maintained by educational institutions, including, but not limited to, high schools, colleges or universities.

(35) "Off-site caterer" means any proprietorship, partnership or corporation engaged in the business of providing food and beverages at social gatherings, such as weddings, dinners, benefits, banquets or other similar events, that are held off the site of the caterer's business for consideration and on a regular basis. An off-site caterer must be duly licensed by the State under Title 30 as a caterer, with at least 60% of its gross receipts resulting from the sale of food.

(36) "Person" includes an individual, a partnership, a corporation, a club or any other association of individuals.

(37) "Powdered alcoholic beverage" means any powders or crystals that, after being mixed with sugar, water, or any other nonalcoholic materials, ferments or otherwise becomes a wine, beer, or other alcoholic beverage.

(38) "Preparation" means any medicine (patented or proprietary); any mixture containing drugs or mineral substances; any perfume, lotion, tincture, varnish, dressing, fluid extract or essence, vinegar, cream, ointment or salve; any distillate or decoction, whether or not containing other substances in solution or suspension, that contains ethyl alcohol or any alcoholic liquor to any amount exceeding 1/2 of 1% by volume.

(39) "Residence" means the place occupied by a person as a domicile or otherwise, either permanently or temporarily, and includes not only the premises occupied, but also every annex or dependency thereof held under the same title as the premises occupied.

(40) "Restaurant" means any establishment which is regularly used and kept open principally for the purpose of serving complete meals to persons for consideration and which has seating at tables for 12 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook.

(41) "Retailer" means the person permitted to sell alcoholic liquors in a store in the State, not for consumption on the premises.

(42) "Sale" means every act of selling as defined in this section.

(43) "Sell" means: solicit or receive an order for; keep or expose for sale; deliver for value or in any other way than purely gratuitously; keep with intent to sell; keep or transport in contravention of this title; traffic in; or for any valuable consideration, promised or obtained, directly or indirectly, or under any pretext or by any means whatsoever, procure or allow to be procured for any other person, to carry alcoholic liquors on one's person or to transport with one and with intent to sell the same, but not in any establishment where the sale thereof is allowed.

(44) "Spirits" means any beverage containing more than 1/2 of 1% of ethyl alcohol by volume mixed with water and other substances in solution, and includes, among other things, brandy, rum, whiskey and gin.

(45) "Spirits, wine and beer tasting" means the consumption of spirits, wine and beer for the purpose of sampling for prospective purchase only. The quantity of any individual spirit, wine and beer sampled is not to exceed 1 ounce for wine and beer and 1/2 ounce for spirits.

(46) "Taproom" means an establishment provided with special space and accommodations and operated primarily for the sale by the glass and for consumption on the premises of alcoholic liquors with the sale of food as a secondary object as distinguished from a restaurant where the sale of food is the primary object.

(47) "Tavern" means any establishment with special space and accommodation for sale of beer and wine as defined in this section to be sold to each customer in single servings.

(48) "Temporary large event" means a public or private gathering of more than 1,000 people where food or drink are sold, served or dispensed and which requires an entrance ticket or entrance fee to attend, including but not limited to a: music festival; car show; auction; convention or rally.

(49) "Temporary large event promoter" means the person arranging or promoting the temporary large event.

(50) "Third-party delivery service" means a company, organization, or entity that is outside of the operation of an establishment's business and acts as an intermediary to provide food-delivery services to customers.

(51) "Traveler" means an individual guest or customer of a hotel, restaurant or tavern.

(52) "Vehicle" means any means of transportation by land, by water or by air, and includes everything made use of in any way whatsoever for such transportation.

(53) “Whoever”, when used in reference to any offender under this title, includes every person who acts individually or by permission or agreement for any other person, and includes also such other person.

(54) “Wine” means any beverage containing more than 1/2 of 1% ethyl alcohol by volume obtained by the fermentation of the natural contents of fruits, vegetables or other products and other vinous liquors, and also includes such beverages when fortified by the addition of alcohol or spirits as defined in this section.

(38 Del. Laws, c. 18, §§ 3, 4; Code 1935, §§ 6132, 6133(12); 45 Del. Laws, c. 263, § 1; 4 Del. C. 1953, § 101; 50 Del. Laws, c. 300, § 1; 51 Del. Laws, c. 239; 56 Del. Laws, c. 335, §§ 1, 2; 59 Del. Laws, c. 107, §§ 1-3, 71; 59 Del. Laws, c. 128, § 1; 60 Del. Laws, c. 466, §§ 1, 2; 63 Del. Laws, c. 397, § 1; 64 Del. Laws, c. 437, § 1; 65 Del. Laws, c. 50, §§ 1-3; 65 Del. Laws, c. 283, § 1; 67 Del. Laws, c. 48, § 1; 67 Del. Laws, c. 109, § 1; 69 Del. Laws, c. 6, § 1; 69 Del. Laws, c. 18, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 353, § 1; 70 Del. Laws, c. 559, §§ 1-4; 71 Del. Laws, c. 210, § 1; 71 Del. Laws, c. 302, §§ 1, 2; 72 Del. Laws, c. 486, §§ 1-4; 73 Del. Laws, c. 244, § 1; 73 Del. Laws, c. 393, § 1; 74 Del. Laws, c. 250, § 1; 76 Del. Laws, c. 32, § 6; 77 Del. Laws, c. 339, § 1; 78 Del. Laws, c. 220, § 1; 79 Del. Laws, c. 6, § 1; 79 Del. Laws, c. 229, § 1; 79 Del. Laws, c. 308, § 1; 80 Del. Laws, c. 4, § 1; 80 Del. Laws, c. 109, § 1; 81 Del. Laws, c. 15, § 1; 81 Del. Laws, c. 69, § 1; 81 Del. Laws, c. 100, § 1; 81 Del. Laws, c. 372, § 1; 82 Del. Laws, c. 4, § 1; 83 Del. Laws, c. 36, § 1; 83 Del. Laws, c. 152, § 1; 83 Del. Laws, c. 207, § 1; 83 Del. Laws, c. 438, § 1; 84 Del. Laws, c. 37, § 1.)

§ 102 Statewide application; exceptions.

(a) This title shall apply to the State, but if, in any of the districts created by § 2, article XIII of the Constitution of this State, a majority of the qualified electors thereof vote against license, the application of this title and the provisions thereof shall be suspended therein.

(b) Nothing in this title shall be interpreted as authorizing the manufacture, distribution, sale, transportation or importation of alcoholic liquors, alcohol, spirits, wines or beer, as defined in § 101 of this title, where such manufacture, distribution, sale, transportation or importation is prohibited by the Constitution of the United States or of the State, or under the statutes thereof.

(38 Del. Laws, c. 18, § 2; Code 1935, § 6131(l); 4 Del. C. 1953, § 102.)

§ 103 Effective date; extent of effectiveness.

(a) Any section or provision of this title which purports to authorize or to license the manufacture, distribution, sale, transportation, importation, purchase or possession of alcoholic liquor, as defined in § 101 of this title, shall be effective only when and to such extent as may be permitted under the Constitutions of the United States and of the State, or under the statutes thereof.

(b) At such time or times as the manufacture and sale of alcoholic liquor is permitted in any of the districts created by § 2, article XIII of the Constitution of this State, such manufacture and sale shall be regulated under the provisions of this title and by the Commissioner mentioned in § 301 of this title.

(38 Del. Laws, c. 18, §§ 2, 4; Code 1935, §§ 6131(2), 6133(2); 4 Del. C. 1953, § 103; 72 Del. Laws, c. 486, § 5.)

§ 104 Sale or shipment out of State.

(a) No sale of alcoholic liquor shall be made to a person in a state or a division of a state where such sale is prohibited by law.

(b) No shipment of alcoholic liquor shall be made into a state or into a division of a state where such shipment is prohibited by law.

(38 Del. Laws, c. 18, § 2; Code 1935, § 6131(3), (4); 4 Del. C. 1953, § 104.)

Chapter 2
TRANSITION PROVISIONS

§ 201 Transition provisions.

(a) All definitions and references to any commission, division or agency which appear in any other act or law are to be construed, to the extent they are consistent with this chapter and in connection with the function transferred by this chapter, as referring or relating to the agency, department, division, office or subdivision to which the function is transferred.

(b) All orders, rules and regulations made by any commission, division or agency which govern the functions of such commission, division or agency, and which are in effect on December 1, 2000, shall remain in full force and effect until revoked or modified in accordance with law by the agency, department, division, office or subdivision to which the functions are transferred.

(c) All investigations, petitions, hearings and legal proceedings pending before or instituted by, any agency, commission or division from which functions are transferred by this chapter and which are not concluded by December 1, 2000, shall continue unabated and remain in full force and effect to be completed by the agency, department, division, office or subdivision assigned under this chapter.

(72 Del. Laws, c. 486, § 6.)

Chapter 3
DELAWARE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

§ 301 Delaware Alcoholic Beverage Control Commissioner; Appeals Commission; qualifications; appointment; term; compensation.

(a) The Commissioner shall be a resident of Delaware and suitably educated and experienced to carry out the duties and responsibilities set forth in this chapter.

(b) The Commissioner and 3 members of the Appeals Commission, 1 from each County, shall be appointed by the Governor and confirmed by a majority of the members elected to the Senate and shall serve at the pleasure of the Governor.

(c) In the event of death, resignation, temporary incapacity or removal of the Commissioner and prior to the appointment of a successor, the Governor may appoint the Deputy Commissioner, or such other person as deemed qualified by the Governor, to serve as Acting Commissioner. The Commissioner may name a Deputy Commissioner. The Commissioner may, during an absence from the State, appoint the Deputy Commissioner to serve as Acting Commissioner during such absence. In either case, the Acting Commissioner shall have all the powers and shall perform all the duties and functions of the Commissioner during the Commissioner's absence or incapacity or until a successor is duly qualified and appointed.

(d) The Commissioner shall be compensated as provided for in the Annual Budget Act.

(e) The members of the Appeals Commission shall be compensated at the rate of $150 per meeting together with the reasonable expenses for no more than 12 meetings per year.

(f) The Appeals Commission shall meet and elect a chairperson who shall convene meetings of the Commission as frequently as needed to consider appeals of the Commissioner's decision.

(38 Del. Laws, c. 18, § 4; Code 1935, § 6133(1), (5)-(7); 4 Del. C. 1953, § 301; 50 Del. Laws, c. 393, § 3; 50 Del. Laws, c. 547, § 3; 55 Del. Laws, c. 308, § 1; 60 Del. Laws, c. 265, § 1; 72 Del. Laws, c. 486, § 7; 73 Del. Laws, c. 135, § 1.)

§ 302 Location of office [Repealed].

38 Del. Laws, c. 18, § 4; Code 1935, § 6133(11); 4 Del. C. 1953, § 302; 57 Del. Laws, c. 404, § 1; 72 Del. Laws, c. 486, § 7; repealed by 83 Del. Laws, c. 339, § 39, effective June 30, 2022; repealed by 83 Del. Laws, c. 514, § 2, effective Oct. 26, 2022.

§ 303 Employees.

Necessary staff as required shall be employed as required to carry out the work under the chapter. After December 1, 2001, the Joint Legislative Oversight and Sunset Committee will review the duties and responsibilities of the Commissioner to determine if additional staff, including hearing officer or officers, is necessary. The Department of State shall provide personnel services and other necessary support services for the office of the Commissioner and the Appeals Commission.

(38 Del. Laws, c. 18, § 4; Code 1935, §§ 6133(8)-(10); 4 Del. C. 1953, § 303; 72 Del. Laws, c. 486, § 7; 74 Del. Laws, c. 110, § 138; 80 Del. Laws, c. 260, § 6; 84 Del. Laws, c. 81, § 124.)

§ 304 Duties and powers of the Commissioner.

(a) The Commissioner, in accordance with the Delaware Administrative Procedures Act, shall:

(1) Adopt and promulgate rules and regulations not inconsistent with this title or of any other law of the State, and all such rules and regulations shall have the force and effect of law; provided, however, that no such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof; and provided further, however, that such rules and regulations, as established by the Commissioner, shall focus primarily on public safety and the best interests of the consumer and shall not unduly restrict competition within the alcoholic beverage industry;

(2) Establish by rules and regulations an effective control of the business of manufacture, sale, dispensation, distribution and importation of alcoholic liquors within and into the State, including the time, place and manner in which alcoholic liquors shall be sold and dispensed, not inconsistent with this title or with any other law of this State. However, such rules and regulations, as established by the Commissioner, shall not control or regulate:

a. Recreational equipment located on the business premises of any business selling alcoholic beverages;

b. Credit transactions between licensed wholesalers and licensed retailers, to the extent permitted by federal law;

c. [Repealed.]

(3) Control the manufacture, possession, sale and delivery of alcoholic liquors in accordance with this title; and control the purchase, possession, transportation and sale of alcoholic liquors by those licensed to manufacture or to sell; provided, however, that the Commissioner's power to control the sale of alcoholic liquors shall not be exercised in such a manner as to prevent any holder of a retail license for the sale of alcoholic liquors not for consumption on the premises where sold from giving a retail purchaser of a case or more of spirits and/or wine a discount not to exceed 10% of the total dollar sale;

(4) Grant, refuse or cancel licenses required by this title for the manufacture or sale of alcoholic liquor, or other licenses required by this title in regard thereto, and to transfer any license granted;

(5) On petition signed by at least 10 individuals who are residents of the neighborhood, hear complaints in regard to the appointments

of, or the conduct of business in, any establishment where alcoholic liquor is licensed to be sold. Ten days' notice of such hearings, together with a recital of the complaint, shall be sent by registered mail by the Commissioner's office to the address of the holder of the license for the establishment and like notice shall be delivered at the establishment by affixing the notice addressed to the holder of the license to the outside of an entrance door to the establishment. The hearings shall be conducted by the Commissioner and shall be public. The Commissioner shall for the purpose of such hearings have power to issue subpoenas, compel the attendance of witnesses, administer oaths, take testimony and compel the production of pertinent books, payrolls, accounts, papers, records and documents. In case any person summoned to testify or to produce any such written or printed evidence shall refuse, without reasonable cause, to be examined or to answer a legal and pertinent question or to produce any such written or printed evidence, the Commissioner conducting the hearing may certify the fact of any such refusal to the Superior Court of the county in which such hearing is held and the court may proceed against the person so refusing as for a contempt and punish such person in the same manner as persons are punished for contempt of court;

(6) Determine and publish standards for the manner in which the dining room or dining rooms of a hotel, restaurant or club shall be equipped in order to be allowed to exercise the privilege of the sale of alcoholic liquors therein; and examine the plans or premises proposed for use as a dining room and authorize their use in connection with a license to sell alcoholic liquors, but such authorization shall not prevent the requirement by the Commissioner of future alterations in accordance with published standards;

(7) Compel the attendance of witnesses and the production of contracts, papers, books, accounts and other documents. Subpoenas issued shall be signed by the Commissioner and may be served by any sheriff, deputy sheriff, constable or any agent of the Division and return thereof made to the Commissioner. The Commissioner may enforce compliance with a subpoena issued pursuant to this subsection by filing a motion to compel in the Superior Court, which shall have jurisdiction over the matter. The court may award costs and attorney fees if it determines that noncompliance with a Commissioner subpoena was unjustified, intentional, or in bad faith.

(8) Act, for purposes of this Title, as the competent authority in connection with other matters pertinent thereto;

(9) Make an annual report submitted to the Governor and members of the General Assembly setting forth all matters of interest and all statistics concerning liquor regulation and control in the State, including:

a. The number of licenses of each variety issued within the State;

b. The name and address of each person licensed to manufacture or to sell alcohol, spirits, wine and beer;

c. The amount of alcohol, spirits, wine and beer sold within the State;

d. The number of licenses of each kind granted and the number cancelled during the year; and

e. Such other data as may make a complete report to the people of this State;

(10) Negotiate and, with the approval of the Governor, enter into reciprocal agreements with the duly authorized officials of other states of the United States relative to the manufacture, importation, sale and transportation of alcoholic liquors in the several states;

(11) Provide such special seals, labels and wrappers as deemed necessary for protection of the public against imitations, adulterations and frauds, and prescribe the proper use of the seals, labels and wrappers; and

(12) Provide such warning signs as may be required by § 903(16) of this title and distribute such signs to license holders and promulgate regulations with respect to the posting of said signs. A nominal fee may be charged by the Commissioner to cover printing, handling and distribution costs.

(b) The Commissioner's decision shall be final and conclusive unless, within 30 days after notice thereof has been mailed by the Commissioner's office, a party to such hearing files an appeal in the office of the Commissioner. Upon receipt of the appeal, the Commissioner shall cause the Chairperson of the Appeals Commission to be advised of the pending appeal and the Chairperson shall cause the Commission to be convened with at least 20 days notice to all parties. The appeal shall be heard by the Appeals Commission, who shall, in accordance with the Administrative Procedures Act, Title 29 of the Delaware Code, review the matter on the record and affirm, reverse or modify the decision of the Commissioner.

(c) The Commissioner may appear before the Appeals Commission for any appeal of the Commissioner's decision and may appeal any decision of the Appeals Commission or any decision of the Superior Court on appeal from the Appeals Commission.

(38 Del. Laws, c. 18, §§ 5, 27, 35; Code 1935, §§ 6134, 6156, 6164; 42 Del. Laws, c. 193, § 1; 4 Del. C. 1953, § 304; 49 Del. Laws, c. 387; 50 Del. Laws, c. 547, § 4; 57 Del. Laws, c. 494, § 2; 57 Del. Laws, c. 740, §§ 5A, B; 59 Del. Laws, c. 107, §§ 4-7; 59 Del. Laws, c. 590, § 1; 65 Del. Laws, c. 322, § 1; 67 Del. Laws, c. 23, § 3; 67 Del. Laws, c. 110, § 1; 67 Del. Laws, c. 109, §§ 2, 3; 67 Del. Laws, c. 344, § 2; 69 Del. Laws, c. 314, § 1; 69 Del. Laws, c. 340, §§ 1, 2; 71 Del. Laws, c. 271, § 1; 72 Del. Laws, c. 486, § 7; 73 Del. Laws, c. 133, § 1; 80 Del. Laws, c. 325, § 1; 82 Del. Laws, c. 99, § 1.)

§ 305 Oath of Office of Commissioner and employees.

The Commissioner, Appeals Commission and any hearing officer(s) shall, on entering office, take the oath of the Constitution of the State. Any other employee may be required to take the oath of the Constitution of the State at the discretion of the Secretary of State.

(38 Del. Laws, c. 18, § 6; Code 1935, § 6135(1); 4 Del. C. 1953, § 305; 57 Del. Laws, c. 740, § 5C; 67 Del. Laws, c. 109, § 4; 69 Del. Laws, c. 314, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 7; 84 Del. Laws, c. 81, § 124.)

§ 306 Conflict of interest.

(a) The Commissioner, Appeals Commission, and any hearing officer(s) or such person's spouse, or such person's son or daughter residing at such person's residence, shall not have a financial interest in any entity that sells, manufactures, or uses alcohol; provided,

however, such persons may invest in mutual funds or similar financial instruments that hold no more than a 10% interest in any such entity.

(b) Neither the Commissioner nor any person employed in the office of the Commissioner shall receive any commission or profit whatsoever from, or have any interest whatsoever in a business licensed under this chapter to purchase or sell alcoholic liquors; provided, however, that nothing in this section shall prevent the Commissioner, Appeals Commission, hearing officer(s) or employee from purchasing and keeping alcoholic liquors in his or her possession for the personal use of him or herself, members of his or her family or his or her guests if such purchase is otherwise permitted by this title.

(c) The Commissioner and the Appeals Commission shall annually file with the Public Integrity Commission the Financial Report pursuant to § 5813 of Title 29.

(38 Del. Laws, c. 18, § 7; Code 1935, § 6136(1), (3); 4 Del. C. 1953, § 307; 57 Del. Laws, c. 740, §§ 5E, F; 59 Del. Laws, c. 107, § 8; 72 Del. Laws, c. 486, § 7.)

§ 307 Commissioner's statement of interest in liquor business.

When notified of appointment as Commissioner or Appeals Commissioner, the individual so notified shall furnish in duplicate and in writing to the Governor and to the President Pro Tempore of the Senate a statement of every interest, direct or indirect, and however small, held or owned by him or her as a member or as a stockholder in any partnership, corporation or other association engaged in the sale or in the manufacture of alcoholic liquors or in any undertaking, industry or business in which alcoholic liquors are used or required and prior to taking the oath of office the Commissioner and Appeals Commission must wholly and fully dispose of all interests. One copy of the statement shall be inserted in the permanent records of the office of the Commissioner open to public inspection.

(38 Del. Laws, c. 18, § 6; Code 1935, § 6135(2), (3); 4 Del. C. 1953, § 306; 57 Del. Laws, c. 740, § 5D; 69 Del. Laws, c. 314, § 3; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 7.)

§ 308 Promulgation, repeal and amendment of rules and regulations.

(a) All rules and regulations of the former Alcoholic Beverage Control Commission currently in place as of December 1, 2000, shall remain in full force and effect until revoked or modified in accordance with the procedures set forth in this chapter.

(b) The Commissioner may make any regulation and may amend or repeal any regulation as the Commissioner deems necessary for carrying out this title respecting internal economy and the conduct of business, and may amend or repeal any such regulation. Such regulations shall be published in form open to public inspection at the office of the Commissioner and in accordance with the Administrative Procedures Act.

(c) Any regulation made by the Commissioner and approved and published as provided by this chapter may be repealed or amended either by another regulation of the Commissioner, approved and published as so provided, or by an act of the General Assembly of this State.

(38 Del. Laws, c. 18, § 8; Code 1935, § 6137; 4 Del. C. 1953, § 309; 57 Del. Laws, c. 494, § 1; 72 Del. Laws, c. 486, § 7.)

§ 309 Bond [Repealed].

Repealed by 73 Del. Laws, c. 134, § 1, eff. July 9, 2001.

§ 310 Deposit of receipts with Division of Revenue.

All moneys received by the Commissioner shall be paid to the Division of Revenue of the Department of Finance. A monthly report of all receipts of the Commissioner shall be made to the State Treasurer.

(38 Del. Laws, c. 18, § 11; 40 Del. Laws, c. 24, § 1; Code 1935, § 6140(1); 42 Del. Laws, c. 77, §§ 1-3; 4 Del. C. 1953, § 311; 59 Del. Laws, c. 107, § 9; 67 Del. Laws, c. 109, § 5; 72 Del. Laws, c. 486, § 7.)

§ 311 Property and profits of the office of the Commissioner.

All property owned by the office of the Commissioner and all associated profits shall be the property of the State.

(38 Del. Laws, c. 18, § 11; Code 1935, § 6141; 4 Del. C. 1953, § 313; 67 Del. Laws, c. 109, § 5; 72 Del. Laws, c. 486, § 7.)

§ 312 Financial statements of the Commissioner.

The Commissioner shall render an account to the State Treasurer, in the manner and at the time required by the latter, of its receipts and disbursements, and of its assets and liabilities. The State Treasurer will not, however, require such reports to be rendered more often than quarterly.

(38 Del. Laws, c. 18, § 13; Code 1935, § 6142(1); 4 Del. C. 1953, § 314; 59 Del. Laws, c. 107, § 11; 67 Del. Laws, c. 109, § 5; 72 Del. Laws, c. 486, § 7.)

§ 313 Annual audit.

The operation of the office of the Commissioner shall annually be examined and audited by the State Auditor of Accounts.

(38 Del. Laws, c. 18, § 13; Code 1935, § 6142(2); 4 Del. C. 1953, § 315; 59 Del. Laws, c. 107, § 12; 67 Del. Laws, c. 109, § 5; 72 Del. Laws, c. 486, § 7.)

Chapter 4
DIVISION OF ALCOHOL AND TOBACCO ENFORCEMENT

§ 401 Division of Alcohol and Tobacco Enforcement.

The Division of Alcohol and Tobacco Enforcement of the Department of Safety and Homeland Security is established as follows for the administrative, ministerial, budgetary and clerical functions for the enforcement of the alcohol laws of this Code, youth access to tobacco laws in §§ 1115 through 1127 of Title 11, and the marijuana laws of this title.

(72 Del. Laws, c. 486, § 8; 74 Del. Laws, c. 110, § 138; 74 Del. Laws, c. 250, § 1; 84 Del. Laws, c. 24, § 3.)

§ 402 Location of office [Repealed].

72 Del. Laws, c. 486, § 8; repealed by 78 Del. Laws, c. 348, § 1, eff. July 18, 2012.

§ 403 Duties and powers of the Division.

The Division shall:

(1) Investigate, prevent and arrest for violations of this title, make seizure of alcoholic liquor, manufactured, sold, kept or transported in contravention thereof, and confiscate such alcoholic liquor whenever required by any provision of this title.

(2) Arrange for the proper sampling, testing and analyzing of alcoholic liquor offered for sale in this State upon receipt of a complaint regarding health by entering into an agreement with the Director of Forensic Science Laboratories of the Department of Health and Social Services to test alcoholic liquor product when requested by the Division. This subsection does not apply to home breweries.

(3) Only require an inventory by a package store licensee if it has evidence to support a finding that such licensee has violated this title.

(4) Investigate, prevent, and arrest for violations of this title; seize marijuana, including marijuana products and accessories that are manufactured, sold, kept, or transported in contravention thereof; and confiscate such marijuana, including marijuana products and accessories, whenever required by any provision of this title.

(5) Conduct administrative inspections of a premise licensed under any provision of this title, any provision of the rules and regulations of the Alcoholic Beverage Control Commissioner, or any provision of the rules and regulations of the Marijuana Commissioner, at any time the licensee, employee of the licensee, or customer is upon the licensed premise. Administrative inspections under this paragraph may be conducted only for the purpose of ensuring compliance with the regulations of this title, the rules and regulations of the Alcoholic Beverage Control Commissioner, or the rules and regulations of the Marijuana Commissioner.

(72 Del. Laws, c. 486, § 8; 84 Del. Laws, c. 24, § 3; 84 Del. Laws, c. 301, § 1.)

§ 404 Employees of the Division.

The Department of Safety and Homeland Security shall appoint, employ or dismiss every officer or employee necessary for carrying out the work of the Division, establish salaries, subject to the Annual Appropriation in the Budget Act, and assign them their official titles and duties, and engage the services of experts and persons engaged in the practice of a profession at the discretion of the Secretary of the Department of Safety and Homeland Security. At the discretion of the Secretary of the Department of Safety and Homeland Security, officers and employees appointed by the Department of Safety and Homeland Security shall have the police powers of constables and other police officers of the State, counties and other subdivisions of the State, and they shall be conservators of the peace throughout the State, and they shall be eligible for certification by the Police Officer Standards and Training Commission, and may suppress all acts of violence and enforce the provisions of this title.

(72 Del. Laws, c. 486, § 8; 74 Del. Laws, c. 110, § 138; 84 Del. Laws, c. 149, § 16.)

Chapter 5
LICENSES AND TAXES

Subchapter I

Manufacture and Import

§ 501 Supplier and representative licenses; delivery and storage at in-state warehouse.

(a) Before any person sells any alcoholic liquor intended for importation into this State, such person shall procure from the Commissioner a supplier's license in the form to be prescribed by the Commissioner and shall pay therefor a biennial fee in the amount of $100 to be permitted to sell not more than 200 cases of alcoholic liquors for importation into the State during the calendar year or a biennial fee in the amount of $1,000 to be permitted to sell more than 200 cases of alcoholic liquors for importation into this State during the calendar year. This subsection shall not apply to any person licensed under subsection (b) of this section or to any person who either is licensed by the Commissioner and has a place of business in this State for the manufacture or sale of alcoholic liquors or is an officer, director, or employee of a person, licensed by the Commissioner, having a place of business in this State for the manufacture or sale of alcoholic liquors.

(b) Before any person shall do any business in this State in any manner whatsoever as a sales representative of a person who sells any alcoholic liquors intended for importation into this State, such person shall first obtain from the Commissioner a sales representative license in the form to be prescribed by the Commissioner and shall pay a biennial fee therefor in the amount of $50. Unless employed in any way by a person required to be licensed under subsection (a) of this section above, this subsection shall not apply to any person, who either is licensed by the Commissioner and shall not apply to any person, who either is licensed by the Commissioner and has a place of business in this State for the manufacture or sale of alcoholic liquors or is an officer, director or employee of a person, licensed by the Commissioner, having a place of business in this State for the manufacture or sale of alcoholic liquors.

(c) This section shall not apply to a daily importation into the State of a quantity of alcoholic liquor which does not exceed that amount which the United states government permits to be imported into the United States without payment of any duty thereon, provided such alcoholic liquor is imported by a person permitted by the laws of this State to purchase and consume alcoholic liquor and that such alcoholic liquor is imported solely for consumption by the person importing it or the person's family or guests. If such importation is by motor vehicle, the alcoholic liquor shall be transported in an area of the motor vehicle not immediately accessible to the driver or to any passenger therein.

(d) Persons licensed by the Commissioner as suppliers pursuant to this section shall be authorized only to sell, ship or deliver alcoholic liquors to licensed Delaware importers or manufacturers, and persons licensed by the Commissioner as sales representatives pursuant to this section shall be authorized only to solicit orders, on behalf of licensed Delaware importers or manufacturers, from persons licensed by the Commissioner to sell alcoholic liquors.

(e) The Commissioner may promulgate such rules and regulations as it deems necessary for the enforcement or furtherance of the objectives of this section and it may provide by such rules or regulations that the applicant for a supplier's license may pay a fee for each calendar year or pay the increased fee during any calendar year without the filing of an additional application.

(f) No person may import into this State any alcoholic liquor unless it is delivered directly to a licensed warehouse or warehouses in Delaware owned, leased or operated by a licensed Delaware importer and is unloaded and physically stored in said warehouse or warehouses.

(38 Del. Laws, c. 18, § 15; Code 1935, § 6144(1); 4 Del. C. 1953, § 501; 58 Del. Laws, c. 25; 59 Del. Laws, c. 107, § 13; 67 Del. Laws, c. 48, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 408, §§ 1, 2; 72 Del. Laws, c. 486, § 9; 77 Del. Laws, c. 72, § 2.)

§ 502 Application; requirements.

(a) The application for a license to manufacture or to import alcoholic liquor shall be made upon a blank form furnished by the Commissioner and shall state:

(1) The name, age, and previous occupation of an individual applicant or the name and description of a partnership, corporation, or other applicant organization;

(2) The location and description of the premises, located in this State, where it is proposed that such alcoholic liquor is to be manufactured or is to be stored by the importer prior to its resale in the State and whether the premises are owned or leased by the applicant and, if leased, the name of the owner thereof;

(3) The amount of capital proposed to be invested in the undertaking;

(4) The kind and approximate amount of alcoholic liquor proposed to be manufactured or imported;

(5) The approximate date on which it is proposed to start such manufacture or importation;

(6) Such other information as is required by the Commissioner.

(b) The individual signing the application for a license to manufacture or to import alcoholic liquor shall be over 21 years of age.

(38 Del. Laws, c. 18, § 15; Code 1935, § 6144(1); 4 Del. C. 1953, § 502; 59 Del. Laws, c. 107, § 14; 67 Del. Laws, c. 48, § 3; 67 Del. Laws, c. 109, § 6; 72 Del. Laws, c. 486, § 9.)

§ 503 Inspection of premises.

The Commissioner shall inspect or cause to be inspected premises, located in this State, which are proposed by any applicant to be used for manufacture or storage, and shall make record of the date of such inspection, the name of the inspector and the result of the inspection.

(38 Del. Laws, c. 18, § 15; Code 1935, § 6144(2); 4 Del. C. 1953, § 503; 72 Del. Laws, c. 486, § 9.)

§ 504 Bond.

The Commissioner may require that any person licensed in accordance with § 501 of this title shall furnish a satisfactory bond in such amount as the Commissioner deems necessary to guarantee the performance of the requirements of this title.

(38 Del. Laws, c. 18, § 15; Code 1935, § 6144(9); 4 Del. C. 1953, § 504; 59 Del. Laws, c. 107, § 15; 72 Del. Laws, c. 486, § 9.)

§ 505 Conditions for issuance of license.

No license to manufacture or import shall be issued unless the Commissioner is satisfied as to the responsibility of the applicant, as to the condition of the premises proposed to be used and as to the means proposed to be used to determine the amount of alcoholic liquor manufactured or imported.

(38 Del. Laws, c. 18, § 15; Code 1935, § 6144(3); 4 Del. C. 1953, § 505; 72 Del. Laws, c. 486, § 9.)

§ 506 Interest in establishment selling to consumer.

(a) It shall be unlawful:

(1) For a manufacturer or supplier, or the owner, partner or stockholder of a manufacturer or supplier, to own or be interested in any manner in any establishment licensed by the Commissioner to sell alcoholic liquors, either by the bottle or by the glass to the consumer thereof for consumption either on or off the premises where sold; or

(2) For a manufacturer, as defined in § 101 of this title, and whether or not said "manufacturing" takes place within this State and whether or not the activity is licensed by the Commissioner, or the owner, partner or stockholder of such a manufacturer, to own or be interested in any manner in any establishment licensed by the Commissioner to import alcoholic liquors into the State; or

(3) For a supplier, whether or not licensed by the Commissioner, who manufactures or has an interest in a manufacturer, or the owner, partner or stockholder of such a supplier, to own or be interested in any manner in any establishment licensed by the Commissioner to import alcoholic liquors into the State; or

(4) For a supplier licensed by the Commissioner, or the owner, partner or stockholder of such a licensed supplier, to own or be interested in any manner in any establishment licensed by the Commissioner to import alcoholic liquors into the State; or

(5) For any importer, or the owner, partner or stockholder of an importer, to own or be interested in any manner in any establishment licensed by the Commissioner to sell alcoholic liquors, either by the bottle or by the glass, to the consumer thereof, for consumption either on or off the premises where sold.

(b) This section shall not be construed to prohibit a manufacturer, supplier or importer doing business as a corporation, or the stockholders thereof, from having an interest in any establishment licensed to sell alcoholic liquors to the consumer thereof, where:

(1) The stock of such manufacturer, supplier or importer and such establishment is publicly traded on a national or regional exchange or over-the-counter;

(2) The manufacturer, supplier or importer does not use its ownership interest in such establishment as to induce, directly or indirectly, such establishment to purchase any products from the manufacturer, supplier or importer to the exclusion, in whole or in part, of products sold or offered for sale by other manufacturers, suppliers or importers.

(c) This section shall not be construed to prohibit a manufacturer or supplier doing business as a corporation, or the stockholders or affiliates thereof, from having an interest in or obtaining a license for a boat pursuant to § 554(b) of this title.

(38 Del. Laws, c. 18, § 15; Code 1935, § 6144(4); 4 Del. C. 1953, § 506; 63 Del. Laws, c. 258, § 1; 65 Del. Laws, c. 291, § 1; 72 Del. Laws, c. 486, § 9; 74 Del. Laws, c. 252, § 1; 78 Del. Laws, c. 220, § 1.)

§ 507 Monthly report.

(a) Notwithstanding any of the provisions of this chapter, every importer of alcoholic liquors licensed by the Commissioner shall make a report to the Commissioner every month, in the form that the Commissioner determines, which report shall contain an exact return of the gross amount of each variety of alcoholic liquors bought by the importer and alcoholic liquors sold within this State during the preceding calendar month. The Commissioner may require such returns to be certified under oath or affirmation of the holder of the license, or of such other person approved by the Commissioner.

(b) Any importer who fails to make a return to the Commissioner within 15 days following the expiration of any calendar month for which it should be made shall be fined $50 per day for each day's delay counting from the expiration of said 15 days, and the license of such importer shall be suspended by the Commissioner if the return is not made within 15 additional days.

(38 Del. Laws, c. 18, § 15; Code 1935, §§ 6144(5)-(8); 4 Del. C. 1953, § 507; 59 Del. Laws, c. 107, § 16; 72 Del. Laws, c. 486, § 9.)

§ 508 Filing of price schedules required.

(a) All manufacturers and distilleries offering for sale in the State alcoholic liquors other than beer or wine, shall file by January 15 of each year or within 30 days of the first time they become licensed in the State to sell such alcoholic liquors, a verified schedule, in writing,

in the number of copies and on the form required by the Commissioner, which schedule shall contain the following information as to each item they are offering for sale at that time, in the State, by brand or trade name:

(1) The capacity of each package thereof so offered for sale;

(2) The nature of the contents thereof;

(3) The age and proof thereof where stated on the container label;

(4) The number of bottles thereof contained in a case of such items;

(5) The bottle and case price to the Delaware wholesaler or importer, which prices in each such instance shall be individual for each item and not in combination with any other item; and

(6) The discount given for quantity or time of payment, if any.

Any such schedule need not contain any such information as to any brand which is owned exclusively by a retailer and sold at retail in Delaware exclusively by such a retailer.

(b) Such schedule of prices or price of individual item need not be filed at any time other than provided for in subsection (a) of this section and need not be updated any time a manufacturer or distillery changes such prices between such required filing times.

(4 Del. C. 1953, § 508; 59 Del. Laws, c. 107, § 66; 67 Del. Laws, c. 109, § 7; 72 Del. Laws, c. 486, § 9.)

Subchapter II

Purchase, Sale and Dispensing

§ 511 General licensing requirements.

(a) (1) Upon proper application, the Commissioner may grant licenses to persons described in §§ 512-521 of this title to purchase and resell or dispense alcoholic liquor in the manner and to the extent provided in those sections. The person to whom such license is granted may purchase, resell or dispense alcoholic liquor in accordance with the person's license if the license fee has been paid and the license is still in force.

(2) a. Except as provided in paragraph (a)(2)b. of this section, a person licensed under §§ 512 and 516 of this title may purchase product only from an importer licensed by the Commissioner.

b. A person licensed under §§ 512 and 516 of this title may purchase up to 20 gallons of product per day from a licensee licensed by the Commissioner for off-premises sales.

(b) If a licensee holds an on premises license and an off premises license, voluntary relinquishment of 1 of the said licenses and the retention of the other license shall be permitted automatically by the Commissioner.

(c) If a person applies for a license as a motorsports speedway under § 512(a) of this title, in lieu of compliance with the procedural notice and protest requirements of §§ 524 and 541 of this title, the Commissioner shall, on the date the application is filed, schedule a hearing to consider the application to be held at least 20 days after the application filing date and notify applicant of the hearing date. Within 3 days thereof, the applicant shall:

(1) Mail a notice by certified mail, return receipt requested, to all property owners within 1,000 feet from any point on the boundary line of the premises to which the license shall apply; and

(2) Cause to be advertised a notice in at least 2 different newspapers for 3 issues circulated in the community in which the applicant will operate.

The said notices of the time and location of the hearing shall be approved by the Commissioner prior to distribution.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 511; 59 Del. Laws, c. 107, § 17; 72 Del. Laws, c. 486, § 9; 73 Del. Laws, c. 244, § 11; 82 Del. Laws, c. 99, § 2.)

§ 512 Licenses.

(a) Any person, who is the owner or lessee, or who is recognized by the Commissioner as being in charge of a hotel, beer garden, motel, taproom, restaurant, motorsports speedway, concert hall, horse racetrack, multi-purpose sports facility, club or multiple activity club, may apply to the Commissioner for a license to purchase spirits, beer, or wine from an importer and to receive, keep and sell such spirits, beer, or wine either by the glass or by the bottle for consumption on any portion of the premises approved by the Commissioner for that purpose. Such a license entitles a club to sell such spirits, wine, or beer only to members of that club. A multiple activity club which holds such a license may apply for an additional license to sell such spirits, wine, or beer to any person who is a guest of such club or of a member of such club who is duly registered in accordance with a bylaw or rule of such club, approved by the Commissioner, provided that if the Commissioner determines that any applicant is not a multiple activity club, as defined in § 101 of this title, the application shall be denied. There shall be no age restrictions on persons permitted on the premises of a licensed multiple activity club.

(1) Notwithstanding any law, regulation, or rule to the contrary, any restaurant, brewpub, tavern, or taproom, or other entity with a valid on-premise license issued pursuant to subchapter II of Chapter 5 of this title may sell alcoholic liquors in transactions for take-out, curbside, drive through, or delivery service. No person shall provide alcoholic beverage delivery services unless such person or business entity holds a third-party delivery license. Upon proper application, the Commissioner may grant a third-party delivery license to provide alcoholic liquor delivery services to customers so long as the person or business entity is also registered to do business in this

State. The Commissioner shall not grant a third-party delivery license to a person or entity that also holds an on-premise license. Delivery service must be made by a licensed third-party vendor, or such third party's employee or independent contractor, provided that the on-premise licensee has entered into a written agreement with a licensed third-party delivery vendor that authorizes the third-party vendor, or such third-party vendor's employee or independent contractor, to deliver alcoholic liquors on behalf of the on-premise licensee. The licensed third-party vendor may not include an entity whose business is primarily the interstate shipment of goods.

(2) All alcoholic liquors sold for off-premise consumption under this subsection must comply with all of the following requirements:

a. Be sold in containers that are securely closed, which means a container that is designed to prevent consumption without removal of the lid, cap, or seal, and does not include a container with a lid with sipping holes or openings for straws.

b. [Repealed.]

c. Be limited per customer to 2 750 ML bottles of wine, 6 servings of beer, and mixed cocktails which are made in the restaurant, brewpub, tavern, taproom or other entity with a valid on-premise license.

d. Be sold and served on the premises only by a person certified as a responsible alcoholic beverage server pursuant to § 1205 of this title.

e. If sold by a restaurant, comply with 1 of the following requirements:

1. The alcoholic liquor is sold with the customer's purchase of food that costs at least $10.

2. The alcoholic liquor is ice cream containing up to 10% alcohol by volume.

f. If sold in a transaction for delivery service:

1. Be delivered by a licensed third-party vendor, or such licensed third-party vendor's employee or independent contractor, who is at least 21 years of age, and has been provided a program of learning content related to the responsible delivery of alcoholic beverages that has been approved by the Commissioner. A third-party delivery vendor's program shall address the following topics:

A. Age requirements for possessing, purchasing, and consuming alcoholic beverages;

B. Acceptable forms of identification;

C. Methods to detect fake and altered forms of identification;

D. Typical signs of intoxication;

E. Methods of detecting intoxication in consumers;

F. Reasons to refuse delivery, including that a consumer failed to provide valid identification, was underage, or displayed signs of intoxication; and

G. How to use ID scanning technology to verify a recipient's age.

2. If delivered by motor vehicle, be placed in a trunk, rear compartment, back seat, or other area that is not readily accessible to the driver of the vehicle.

3. Be conveyed to the purchaser to whom the alcoholic liquors are being delivered only after the licensed third-party delivery vendor, or such third party's employee or independent contractor, has verified that the recipient is not intoxicated and is 21 years of age or older, signified by the recipient's identification with a photograph that reasonably appears to match the appearance of the recipient. The licensed third-party delivery vendor shall maintain a record of the following information for all recipients for a period of 2 years: name, date of birth, and address to which the alcoholic beverages were delivered. If such person's age and apparent sobriety cannot be verified, the alcoholic liquors must be returned to the premises of the licensee.

4. The delivery is completed during the hours in which the on-premise licensee is lawfully allowed to sell alcoholic liquors.

5. If the on-premise licensee uses a web application or internet website to facilitate delivery of alcoholic liquors by a licensed third-party vendor, the sales transactions take place between the customer and the on-premise licensee, and the on-premise licensee appears as the merchant of record.

6. Only alcoholic beverages obtained directly from the on-premise licensee with which the order was placed may be delivered.

7. May not be delivered out-of-state or to a state-operated facility, a correctional facility, a hospital, a locker mailbox, a post office box, a package shipping or storage facility, a retail licensee, a public school, a charter school, a grade school, a middle school, a high school, undergraduate housing at an institution of higher learning, or outside of Delaware.

8. In addition to application requirements and any regulations promulgated by the Commissioner, third-party delivery licensees shall provide to the Commissioner, upon request, a copy of any contracts entered into by the third-party delivery licensee with any on-premise licensee offering alcoholic beverages for delivery.

g. An on-premise licensee's responsibilities under this section regarding delivery of alcoholic liquor to a consumer by a licensed third-party delivery vendor are considered satisfied at the time the on-premise licensee transfers possession of the alcoholic liquor to the licensed third-party delivery vendor, or such third party's employee or independent contractor. The acts during delivery of a licensed third-party delivery vendor or such third party's employee or independent contractor are not attributable to the on-premise licensee.

(b) (1) The license issued to a horse racetrack or multi-purpose sports facility pursuant to this section shall continue to be valid whether or not a race meet or sporting event is in progress.

(2) Subject to the provisions, restrictions and prohibitions of this title, the Commissioner may allow a horse racetrack to brew beer on

its premises under all of the following conditions and restrictions:

a. The brewing facility must be situated on the premises of, or be physically a part of, the horse racetrack.

b. The brewing facility must not brew more than 4,000 barrels of beer in any calendar year.

c. In addition to other permitted sales, the horse racetrack may sell at the licensed premises beer manufactured on the licensed premises for on-premises consumption.

d. In addition to other permitted sales, the horse racetrack may sell at the licensed premises beer manufactured on the licensed premises for consumption off of the premises if the beer is sold in a growler.

e. The horse racetrack may sell beer manufactured on licensed premises in labeled barrels, bottles, or other closed containers to wholesalers licensed under this title for delivery by them to persons inside or outside this State.

f. The horse racetrack is prohibited from owning, operating, or being affiliated with any importer of alcoholic liquor, either in or without this State.

g. The Commissioner may make and publish such rules and regulations with respect to the assessment and payment of the tax on beer, under § 581 of this title, as the Commissioner deems proper, and all such rules and regulations that are not inconsistent with this title shall have the force and effect of law.

(3) The issuance of a horse racetrack license that permits the manufacture and sale of beer for off-premises consumption are exempt from the distance requirements for establishments licensed or to be licensed under § 543(d) of this title, and such requirements do not affect the granting of a horse racetrack license.

(c) Any person operating a dinner theater presenting public performances featuring live actors in dramatic or musical productions may apply to the Commissioner for a license to keep and sell alcoholic liquor to patrons for consumption on the premises served at such performances, and for consumption on the premises during intermissions, subject to such rules and regulations as may be promulgated by the Delaware Alcoholic Beverage Control Commissioner, provided that the licensee does not serve alcohol unaccompanied by a meal at more than 10 performances during the calendar year.

(d) Any person who has purchased a bottle of alcoholic liquor other than beer from a premises licensed for the sale and consumption on the premises where sold licensed under this title, and who has partially consumed the contents of such bottle on the licensed premises, may, if the bottle is capped, remove it from the licensed premises for the purpose of consumption off the licensed premises.

(e) Any person receiving a license under this section shall be permitted to charge a cover charge at any time live entertainment is actually being provided by the licensee, provided that any licensee charging a cover charge shall prominently display the fact that a cover charge is being made, both at the entrance to the premises and on the menu if one is used on the premises.

(f) Any person operating a bowling alley or movie theater may apply to the Commissioner for a license to keep and sell alcoholic liquor to patrons for consumption on the premises only. A license for a movie theater shall allow for consumption by patrons within the theater or theaters where movies are being shown. A movie theater which obtains a license must sell alcoholic liquors at a separate bar or location away from other food and drink, may only sell 1 alcoholic beverage at a time per age-verified patron and may only serve 2 alcoholic beverages per patron per movie showing. Movie theater managers and employees involved in serving alcohol must complete alcohol service training as prescribed by the Commissioner.

(g) (1) A caterer may apply to the Commissioner for a license to purchase alcoholic liquors from an importer and to receive, keep and sell such alcoholic liquors either by the glass or by the bottle, for consumption on any portion of the premises approved by the Commissioner for that purpose.

(2) An off-site caterer may apply to the Commissioner for a license to purchase alcoholic liquors from an importer and to receive, keep, transport and sell such alcoholic liquors either by the glass or by the bottle for consumption on any portion of off-site premises approved by the Commissioner for that purpose. Transporting of alcoholic liquors by an off-site caterer must be done in accordance with the Commissioner's rules.

(h) Notwithstanding any provision of this title to the contrary, motorsports speedways may permit patrons to bring inside with them alcoholic beverages regulated under this title for their own personal consumption, provided that they have a lawful ticket for admission to the facility and are of the lawful age to consume alcoholic beverages. The motorsports speedway may restrict the portions of the facility that patrons may act in accord with this section. Notwithstanding any provision of this title to the contrary, a motorsports speedway is not required to maintain a license required pursuant to § 554 of this title in order to permit patrons to bring inside with them alcoholic beverages regulated under this title for their own personal consumption.

(i) A certificated air passenger carrier maintaining and operating a warehouse storage facility in the State may apply to the Commissioner for a license to purchase alcoholic liquors from an importer and to receive at the carrier's warehouse or airport facility, keep at the carrier's warehouse or airport facility, transport to the carrier's airport facility, and sell such alcoholic liquor to its passengers for consumption on its aircraft only.

(j) An establishment licensed as a restaurant shall not be required to use the word "restaurant" in its tradename, menus, advertisements or signage unless the Commissioner specifically finds that the public may be confused as to its status as a restaurant.

(k) Any person who holds a valid restaurant license issued by the Commissioner may deny a minor, as defined in § 708 of this title, admission to or permission to remain on the premises after 9:00 p.m. (official Eastern time) unless accompanied by a parent or by a legal guardian.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 512; 55 Del. Laws, c. 283, § 1; 56 Del. Laws, c. 335, § 3; 57 Del. Laws, c. 189; 57 Del. Laws, c. 447; 58 Del. Laws, c. 199; 59 Del. Laws, c. 107, § 17A; 59 Del. Laws, c. 590, §§ 2, 4; 60 Del. Laws, c. 466, §§ 3, 9; 64 Del. Laws, c. 434, §§ 1, 2; 67 Del. Laws, c. 109, §§ 8-10; 69 Del. Laws, c. 6, § 2; 71 Del. Laws, c. 42, § 1; 71 Del. Laws, c. 182, § 1; 71 Del. Laws, c. 210, § 2; 71 Del. Laws, c. 472, § 1; 72 Del. Laws, c. 486, § 9; 73 Del. Laws, c. 244, §§ 2-6; 73 Del. Laws, c. 393, § 2; 75 Del. Laws, c. 246, § 1; 78 Del. Laws, c. 220, § 2; 79 Del. Laws, c. 308, § 2; 80 Del. Laws, c. 109, § 2; 81 Del. Laws, c. 69, § 2; 81 Del. Laws, c. 254, § 1; 82 Del. Laws, c. 4, § 2; 82 Del. Laws, c. 99, § 3; 82 Del. Laws, c. 117, § 1; 82 Del. Laws, c. 141, § 1; 82 Del. Laws, c. 247, §§ ? 2, 5; 82 Del. Laws, c. 279, § 1; 83 Del. Laws, c. 9, § 2; 83 Del. Laws, c. 9, § 5; 83 Del. Laws, c. 284, § 1; 83 Del. Laws, c. 523, § 1; 84 Del. Laws, c. 442, § 1.)

§ 512A Farm wineries.

(a) Upon proper application and subject to the provisions, restrictions and prohibitions of this title, the Commissioner may grant a license to any person who is the owner or lessee of a farm winery to manufacture, ferment, blend, age, store and bottle wine, mead, and cider on the premises designated in the license. For purposes of this title, a “farm winery” is defined as an establishment at which the basic ingredients, including but not limited to the harvesting of grapes, to make wine are grown and where wine, mead, or cider are fermented or manufactured. Notwithstanding any provisions of this title to the contrary, a farm winery licensee shall be authorized to sell, deliver and ship such wine, mead, and cider in barrels, bottles or other closed containers to persons licensed under the provisions of this title to import wine, mead, and cider; and to sell and ship wine, mead, and cider to persons outside of the State in accordance with this title.

(b) A farm winery licensee shall also be authorized to store and sell wine, mead, and cider on the premises by the bottle or by the glass for consumption on or off the premises where sold. A farm winery licensee shall be permitted to purchase and store product from a Delaware licensed importer or retailer licensed under § 516 of this title, and sell said product to its retail customers for consumption on the premises where sold so long as the product is manufactured by an entity that holds a Delaware license pursuant to § 512A, § 512B, § 512C or § 512E of this title or the manufacturer, as determined by the Commissioner, would qualify for a license under said sections if it were physically located in the State.

(c) A farm winery licensee shall be exempt from the distance requirements for establishments licensed, or to be licensed, for consumption off the premises, as contained in § 543(d) of this title, and shall not affect the granting of a license of the same type.

(d) A farm winery licensee may sell, on the licensed premises, food items, souvenirs, wine-related supplies and educational material as approved by the Commissioner.

(e) The Commissioner may grant a tasting license to a farm winery licensee consistent with the provisions of §§ 525 and 554(ff) of this title.

(f) All wine, mead, and cider sold by a farm winery licensee shall be in a container which is securely sealed and has attached thereto a label setting forth such information as required by this title, Commissioner rules and laws of the State.

(g) A farm winery licensee may not engage in any business or activity in the licensed establishment unless authorized by this title or approved by the Commissioner.

(h) A farm winery licensee or a temporary licensee not to exceed 3 years shall be authorized to purchase and receive shipments of bottled, finished wine, mead, and cider from importers located within the State that are licensed in accordance with this title. Such purchases and shipments, if in bottled, finished form, must be manufactured specifically for the Delaware farm winery licensee and bear the private label of the Delaware farm winery licensee on each bottle, and, if being imported from without the State, shall be limited, as follows:

(1) During the first year of operation, no more than 10,000 gallons of the combination of wine, mead, and cider;

(2) During the second year of operation, no more than 7,500 gallons of the combination of wine, mead, and cider;

(3) During the third year of operation, no more than 5,000 gallons of the combination of wine, mead, and cider; and

(4) After 3 years of operation, no more than 25% of the total gallons of the combination of wine, mead, and cider manufactured within the State.

(5) Notwithstanding the importation limitations for bottled wine established in this paragraph, at such time when there is sufficient quantity, variety and quality of wine grapes grown in the State, then the Secretary of the Department of Agriculture may mandate that all licensed Delaware farm wineries must use at least 51% Delaware-grown fruit in their blend inventories. In the case of hardship due to crop loss, the Secretary of the Department of Agriculture may issue a special permit to import fruit, juice or other raw materials to compensate for such crop loss. Until such time as the Secretary of the Department of Agriculture makes such mandate, the licensee or a temporary licensee not to exceed 3 years shall be authorized to import grapes or grape juice from other locations within or outside of the State, pursuant to the rules and regulations of the Department of Agriculture, for the purpose of fermentation, blending, bottling and aging.

(6) [Repealed.]

(7) A temporary farm winery license may be issued, for not more than 3 years, allowing the temporary licensee to operate according to paragraphs (h)(1), (2) and (3) of this section herein if all the licensing requirements have been met except for those required in § 543(j) of this title, which requires government permitting to manufacture or ferment wine, mead and cider at the location. The temporary licensee shall, however, have obtained all necessary government permitting to operate as a temporary licensee.

(i) A farm winery licensee shall be authorized to purchase and receive shipments of unfinished wine, mead, and cider in bulk form from suppliers and importers located within and without the State that are licensed in accordance with this title.

(j) A farm winery licensee shall be prohibited from owning or operating or being affiliated with any importer or retailer of alcoholic

liquor either within or without this State. Notwithstanding the foregoing, it shall be permissible for a farm winery to apply to the Commissioner for a license, under § 512(g)(1) of this title, for use of a portion of the farm winery premises as a caterer, or to apply to the Commissioner for a license, under this title generally, for use of a portion of the farm winery premises as a restaurant.

(k) The Commissioner may promulgate such rules and regulations with respect to the enforcement or furtherance of the objectives and provisions of this section as the Commissioner may deem necessary, and all such rules and regulations that are not inconsistent with the provisions of this title shall have the force and effect of law.

(*l*) A Delaware winery or farm winery shall be permitted to sell wine, mead, and cider at times permitted pursuant to § 709 of this title.

(m) A farm winery licensee shall be authorized to export grapes, grape juice or unfinished wine grown in this State in bulk to persons outside the State for crushing, fermenting, bottling and labeling and shall be authorized to receive the finished product from that person, so long as no grapes, grape juice or wine, grown or manufactured outside the State, are added to the finished product.

(n) The provisions of § 506 of this title to the contrary notwithstanding, a farm winery licensee shall be permitted to have an interest in, be affiliated with, operate, or own another supplier or manufacturer located outside the State and have an interest in a brewery-pub, microbrewery, and/or craft distillery licensed under this chapter and actually located in this State.

(68 Del. Laws, c. 107, § 1; 70 Del. Laws, c. 353, § 3; 72 Del. Laws, c. 486, § 9; 75 Del. Laws, c. 71, §§ 1, 2; 75 Del. Laws, c. 252, § 1; 77 Del. Laws, c. 61, §§ 1, 2; 79 Del. Laws, c. 157, § 1; 80 Del. Laws, c. 62, § 1; 80 Del. Laws, c. 336, § 1; 80 Del. Laws, c. 382, § 2; 81 Del. Laws, c. 78, § 1; 81 Del. Laws, c. 261, § 1; 83 Del. Laws, c. 284, § 3; 84 Del. Laws, c. 499, § 1.)

§ 512B Brewery-pubs.

(a) Subject to the provisions, restrictions, and prohibitions of this title, the Commissioner may grant a brewery-pub license to each qualified applicant. No person shall own or operate a brewery-pub unless licensed to do so by the Commissioner. For purposes of this section, a "brewery-pub" means an establishment in which beer, cider, mead, or fermented beverages are manufactured on the premises of the licensed establishment, limited to restaurants owned or leased by the brewery-pub applicant.

(b) The following conditions and restrictions shall apply to the holder of each brewery-pub license:

(1) It must be situated on the premises of, or be physically a part of, a restaurant.

(2) It may brew, bottle, and sell beer at no more than 3 licensed establishments, provided that each such licensed establishment qualifies as a separate brewery-pub under this section.

(3) It shall brew no more than 4,000 barrels of beer in any calendar year.

(4) It may sell beer manufactured on licensed premises in labeled barrels, bottles, or other closed containers to wholesalers licensed under this title for delivery by them to persons inside or outside this State.

(5) It may sell at the licensed premises beer manufactured on the licensed premises at retail for consumption off the premises.

(6) It may sell at the licensed premises beer manufactured on the licensed premises for on-premises consumption.

(7) It is prohibited from owning, operating, or being affiliated with any importer of alcoholic liquor, either in or without this State.

(8) The provisions of § 506 of this title to the contrary notwithstanding, it may have an interest in, be affiliated with, operate, or own another supplier or manufacturer located outside the State and have an interest in 1 or more farm winery, microbrewery, or craft distillery licensed under this chapter and physically located in this State, if the total domestic sales of beer of all affiliated suppliers or manufacturers does not exceed 6 million barrels in a calendar year.

(c) It is unlawful for a person to operate a brewery-pub if any of the following apply:

(1) The restaurant portion of the licensed establishment fails to offer complete meals for consideration to patrons or fails to operate as a bona fide restaurant as defined by Commissioner rules or this title.

(2) The license is denied, cancelled, suspended, or revoked for any of the grounds contained in § 543 or § 561 of this title.

(3) The business is transferred to a different location.

(d) This section does not prohibit the granting of a restaurant license to sell alcoholic liquors, for on-premises consumption, under § 512 of this title.

(e) The Commissioner may make and publish such rules and regulations with respect to the assessment and payment of the tax on beer, as contained in § 581 of this title, as it deems proper, and all such rules and regulations that are not inconsistent with this title shall have the force and effect of law.

(f) Notwithstanding any other provision of this title to the contrary, the holder of a brewery-pub license may also make, bottle, and sell an alcoholic liquor that is fermented or distilled on the premises, subject to all of the following conditions and restrictions:

(1) All of the conditions and restrictions relating to beer under subsection (b) of this section.

(2) Alcoholic liquor that is fermented or distilled on the premises shall be taxed under § 581 of this title.

(g) The provisions of § 546 of this title to the contrary notwithstanding, the sale for off-premises consumption at up to a combined total of 3 licensees licensed under this section or 2 licensees licensed under this section and a microbrewery licensed under § 512C of this title all owned or controlled by the same person is permitted.

(h) Notwithstanding any provision of this title to the contrary, a brewery-pub located within the premises of a public golf course, as defined in "club" under § 101 of this title, may apply to the Commissioner for authorization to sell alcoholic beverages at retail to members of the public for consumption on the public golf course, if the public golf course owns, is owned by, or is under common ownership with an entity that holds a membership or ownership interest in the licensed brewery-pub.

(68 Del. Laws, c. 205, § 1; 70 Del. Laws, c. 469, §§ 1, 2; 71 Del. Laws, c. 83, § 1; 72 Del. Laws, c. 486, § 9; 73 Del. Laws, c. 225, § 1; 77 Del. Laws, c. 432, §§ 4, 5; 79 Del. Laws, c. 157, § 1; 82 Del. Laws, c. 22, § 1; 82 Del. Laws, c. 141, § 2; 83 Del. Laws, c. 36, § 2; 83 Del. Laws, c. 283, § 4; 84 Del. Laws, c. 316, § 1.)

§ 512C Microbreweries; license; alternating premises.

(a) Upon proper application and subject to the applicable provisions, restrictions, and prohibitions under this title, the Commissioner may grant a license to any of the following:

(1) A person who is the owner or lessee of a microbrewery to manufacture and sell beer, fermented beverages, mead, and cider.

(2) A person who owns a tenant microbrewery under subsection (i) of this section.

(b) For purposes of this section:

(1) "Alternating premises" means the portion of a microbrewery's premises that is used at different times by 2 or more microbreweries to manufacture beer, fermented beverages, mead, or cider.

(2) "Host microbrewery" means the microbrewery that owns the brewing equipment in an alternating premises.

(3) "Microbrewery" means a single establishment in which beer, fermented beverages, mead, or cider is manufactured and which is operated by the licensee under this section.

(4) "Tenant microbrewery" means the microbrewery that does not own, but uses, the brewing equipment in an alternating premises.

(c) Notwithstanding any provision of this title to the contrary, a microbrewery license allows the licensee to do all of the following:

(1) To manufacture and sell on the licensed premises beer, fermented beverages, mead, or cider or a combination thereof, but the licensee may not manufacture or sell more than the maximum amount permitted by federal regulations to qualify for a "reduced rate of tax for certain brewers" under 27 C.F.R., Part 25, § 25.152(a)(2).

(2) To manufacture on the licensed premises beer, fermented beverages, mead, or cider for persons, other than the licensee, licensed under this title or for persons outside this State.

(3) To sell beer, fermented beverages, mead, and cider manufactured on the licensed premises in labeled barrels, bottles, or other closed containers to importers licensed under this title for delivery by them to persons inside or outside the State.

(4) To sell at the licensed premises beer, fermented beverages, mead, and cider manufactured on the licensed premises for consumption on or off the licensed premises. The amount of beer, fermented beverages, mead, and cider sold for off-premises consumption is limited to a maximum of 5 cases per day to each retail customer.

(5) To purchase and store product from a Delaware licensed importer or retailer licensed under § 516 of this title, and sell the product to its retail customers for consumption on the premises where sold so long as the product is manufactured by an entity that holds a Delaware license under § 512A, § 512B, § 512C, or § 512E of this title or the manufacturer, as determined by the Commissioner, would qualify for a license under 1 or more of these sections if the manufacturer were physically located in the State.

(6) The provisions of § 506 of this title to the contrary notwithstanding, to be permitted to have an interest in, be affiliated with, operate, or own another supplier or manufacturer located outside the State and have an interest in a farm winery, brewery-pub, or craft distillery licensed under this chapter and actually located in this State, provided that the total domestic sales of beer of all affiliated suppliers or manufacturers does not exceed 6 million barrels in a calendar year.

(d) It is unlawful for a person to operate a microbrewery if any of the following apply:

(1) The license is denied, canceled, suspended, or revoked for any of the grounds under § 543 or § 561 of this title.

(2) The establishment is moved to a location other than the licensed premises.

(3) The licensee owns, operates, or is affiliated with any importer of alcoholic liquor either in or without this State.

(e) A microbrewery licensee is exempt from the distance requirements for establishments licensed or to be licensed under § 543(d) of this title, and such requirements may not affect the granting of a microbrewery license.

(f) All beer, fermented beverages, mead, and cider sold by a microbrewery licensee for off-premise consumption must be in containers that are securely sealed and have an attached label setting forth the information required under this title, Commissioner rules, and laws of the State.

(g) Any microbrewery or brewery licensed by the Commissioner to manufacture beer, fermented beverages, mead, or cider in this State may provide samples of the beer, fermented beverages, mead, or cider manufactured at the licensed premises in a manner approved by the Commissioner.

(h) Notwithstanding § 546 of this title, a microbrewery may sell a product that the microbrewery manufactures for off-premises consumption at a licensee licensed under this section and either at up to 2 brewery-pubs licensed under § 512B of this title or 1 additional microbrewery licensed under this section and 1 brewery-pub licensed under § 512B of this title that are all owned or controlled by the same person.

(i) (1) The requirements to grant a license to a tenant microbrewery must include all of the following:

a. An agreement with a host microbrewery that allows the tenant microbrewery to use the host microbrewery's brewing equipment for specified periods of time to manufacture beer, fermented beverages, mead, or cider. The compensation to the host microbrewery under an agreement may not be based upon the profit of the tenant microbrewery and is subject to the approval of the Commissioner.

b. The host microbrewery and the tenant microbrewery must have the approval of the Federal Trade and Tax Bureau ("TTB"), or its successor, to operate as an alternating premises.

c. The tenant microbrewery must retain title to all of the tenant microbrewery's raw materials, except for water.

d. The tenant microbrewery must act as the brewer of the beer, fermented beverages, mead, or cider.

e. Upon completion of the manufacturing process, the tenant microbrewery shall remove all product from the alternating premises and transport the product to a location approved by the Commissioner for the tenant microbrewery to store and sell for on or off premises consumption. A tenant microbrewery may satisfy the requirement under this paragraph (i)(1)e. by leasing space from the host microbrewery but the tenant microbrewery may only store the tenant microbrewery's brands in the leased space.

(2) The Commissioner may suspend or revoke the license of the tenant microbrewery upon the termination of the agreement between the host microbrewery and the tenant microbrewery.

(3) The Commissioner may suspend all licenses at the alternating premises if the TTB suspends the approval of the host or tenant microbrewery, The Commissioner must provide reasons for and conditions of a suspension under this paragraph (i)(3).

(69 Del. Laws, c. 361, § 1; 71 Del. Laws, c. 211, §§ 1-3; 72 Del. Laws, c. 486, § 9; 76 Del. Laws, c. 32, §§ 1-5; 77 Del. Laws, c. 432, §§ 1-3; 79 Del. Laws, c. 157, § 1; 81 Del. Laws, c. 261, § 1; 82 Del. Laws, c. 22, § 1; 82 Del. Laws, c. 141, § 3; 83 Del. Laws, c. 36, § 3; 83 Del. Laws, c. 168, § 1; 83 Del. Laws, c. 283, § 5; 85 Del. Laws, c. 41, § 1.)

§ 512D Wine auctions.

(a) Subject to the provisions, restrictions and prohibitions of this title, the Commissioner may grant a wine auction license to each qualified applicant therefor. No person shall operate a wine auction unless licensed to do so by the Commissioner. For purposes of this section, a "wine auction" shall mean a person, partnership or corporation that sells rare or fine wines on consignment from the owners of said wines at public auction to those persons who are of legal age to purchase such items. A nonprofit organization may apply for a "wine auction-gathering license" for a specific date upon application to the Commissioner as a fund raiser for their organization.

(b) Said "wine auction" license holder must have an office situated within the State, however said auctions may take place at any location within the State subject to the rules and regulations of the Commissioner which shall have the force of law. A nonprofit organization does not need to maintain an office within the State.

(c) No more than 12 auctions may be conducted within a calendar year.

(d) The wine auction license holder shall have the responsibility for collecting and remitting the applicable excise taxes and gross receipt taxes due for all products auctioned. Provided further, that any products purchased at auction shall not be stocked as inventory or made available for further retail sale in any facility or store licensed under this title.

(71 Del. Laws, c. 383, § 1; 72 Del. Laws, c. 486, § 9.)

§ 512E Craft distillery.

(a) Upon proper application and subject to the applicable provisions, restrictions and prohibitions of this title, the Commissioner may grant a license to any person who is the owner or lessee of a craft distillery to manufacture and sell spirits.

(b) For purposes of this section, "craft distillery" shall mean a single establishment in which spirits are manufactured and which is operated by the licensee in accordance with this section.

(c) Notwithstanding any provision of this title to the contrary, a craft distillery license shall allow the licensee:

(1) To manufacture on the licensed premises and sell not more than 750,000 proof gallons of distilled spirits in any calendar year;

(2) To manufacture spirits, on the licensed premises, for persons other than the licensee who are licensed under this title or for persons outside this State;

(3) To sell, deliver and ship such spirits in labeled barrels, bottles or other closed containers to persons licensed under the provisions of this title to import spirits; and to sell and ship spirits to persons outside of the State in accordance with this title;

(4) To store and sell spirits on the premises by the bottle or by the glass for consumption on or off the premises where sold; and to purchase alcoholic beverages from licensed Delaware importers or retailers to add to product manufactured by the craft distillery to sell to patrons for on premises consumption only. The amount of spirits sold for off-premises consumption shall be limited to a maximum of 1 case (i.e., not more than 12-750 ml bottles) per day to each retail customer for consumption off the premises;

(5) To purchase and store product from a Delaware licensed importer or retailer licensed under § 516 of this title, and sell said product to its retail customers for consumption on the premises where sold so long as the product is manufactured by an entity that holds a Delaware license pursuant to § 512A, § 512B, § 512C or § 512E of this title or the manufacturer, as determined by the Commissioner, would qualify for a license under said sections if it were physically located in the State; and

(6) To sell, on the licensed premises, food items, souvenirs, spirit-related supplies and educational material as approved by the Commissioner.

(d) It shall be unlawful for a person to operate a craft distillery if:

(1) The license is denied, canceled, suspended or revoked for any of the grounds contained in § 543 or § 561 of this title;

(2) The establishment is moved to a location other than the licensed premises; or

(3) It is owned, operated or affiliated with any importer of alcoholic liquor, either in or without this State; except that the holder of a craft distillery license may have an interest in, be affiliated with, operate, or own in common ownership a microbrewery, farm winery, and/or brewery-pub licensed under this chapter and actually located within this State.

(e) A craft distillery licensee shall be exempt from the distance requirements for establishments licensed or to be licensed as contained in § 543(d) of this title, and such requirements shall not affect the granting of a craft distillery license.

(f) All spirits sold by a craft distillery licensee for off-premise consumption shall be in containers which are securely sealed and have

attached thereto a label setting forth such information as required by this title, Commissioner rules and laws of the State.

(g) Any craft distillery licensed by the Commissioner to manufacture spirits in this State may provide tastings of the spirits at said premises pursuant to a spirits tasting license granted by the Commissioner pursuant to § 525 of this title.

(h) The provisions of § 546 of this title to the contrary notwithstanding, the sale for off-premises consumption at up to a combined total of 3 licenses licensed under this section, § 512A, § 512B, or § 512C of this title all owned or controlled by the same person shall be permitted.

(i) A craft distillery licensee shall be authorized to purchase and receive shipments of unfinished neutral grain spirit in bulk form from suppliers and importers located within and without the State that are licensed in accordance with this title.

(j) A craft distillery licensee shall be authorized to export unfinished spirit manufactured in this State in bulk to persons within or outside the State for blending, aging, finishing, bottling or labeling and shall be authorized to receive the finished product from that person.

(k) A craft distillery shall be exempt from the prohibition of sales on Sundays as proscribed in § 709 of this title, but any sales on Sundays shall be limited to the hours during which the holders of licenses for the sale of spirits in a store may sell on Sundays pursuant to § 709 of this title. A craft distillery shall remain closed on Thanksgiving, Christmas and Easter.

(*l*) The Commissioner may promulgate such rules and regulations with respect to the enforcement or furtherance of the objectives and provisions of this section as the Commissioner may deem necessary, and all such rules and regulations that are not inconsistent with the provisions of this title shall have the force and effect of law.

(m) The provisions of § 506 of this title to the contrary notwithstanding, the holder of a craft distillery license shall be permitted to have an interest in, be affiliated with, or own another supplier or manufacturer, whether located inside or outside the State, provided that the total domestic sales of all affiliated suppliers or manufacturers shall not exceed 750,000 proof gallons in any calendar year.

(78 Del. Laws, c. 251, § 1; 79 Del. Laws, c. 157, § 1; 80 Del. Laws, c. 62, § 1; 80 Del. Laws, c. 73, § 1; 80 Del. Laws, c. 251, § 1; 80 Del. Laws, c. 382, § 3; 81 Del. Laws, c. 261, § 1.)

§ 512F Temporary large events.

Any person licensed under § 512 of this title hosting a temporary large event may share the profits from the event, including the profits from alcohol sales, with the temporary large event promoter, and such sharing of profits shall not be in violation of this title, including § 561 of this title or any regulations promulgated by the Commissioner, provided that:

(1) The licensee shall be responsible for the purchase and resale or dispensing of all alcohol at the temporary large event as provided in and in compliance with this title and may not allow the temporary large event promoter to participate in such purchasing, reselling or dispensing; and

(2) The temporary large event promoter shall, prior to the temporary large event, obtain a temporary large event license from the Commissioner. Application for a temporary large event license shall be on a form prescribed by the Commissioner, made under oath or affirmation and signed before 2 witnesses, containing a statement to the effect that the temporary large event promoter:

a. Will comply with this title and the regulations promulgated hereunder;

b. Agrees to submit to the jurisdiction of the Commissioner and the courts of the State;

c. Is not a manufacturer, supplier or importer;

d. Has not been convicted of violating the liquor laws of this State or been convicted and imprisoned for a crime; and

e. Such other matters as the Commissioner may prescribe by rule or regulation.

The Commissioner may promulgate such rules and regulations with respect to the enforcement or furtherance of the objectives and provisions of this section as it may deem necessary, and all such rules and regulations that are not inconsistent with the provisions of this title shall have the force and effect of law.

(79 Del. Laws, c. 6, § 2.)

§ 512G Shipment of alcoholic beverages between commonly-owned entities.

(a) Any entity licensed in this State pursuant to § 512A, § 512B, § 512C or § 512E of this title, or any out-of-state supplier licensed pursuant to § 501 of this title who, as determined by the Commissioner, would meet the requirements of § 512A, § 512B, § 512C or § 512E of this title if it were located in this State, is permitted to sell or ship alcoholic beverages they manufacture to an entity licensed in this State pursuant to § 512A, § 512B, § 512C or § 512E of this title subject to all of the following conditions:

(1) The shipping and receiving licensees must be under common ownership and control, the licensees' domestic sales of beer must be less than 6 million barrels in a calendar year, and must both apply for and receive a permit pursuant to this section.

(2) A licensee must apply for a permit with the Commissioner setting forth the nature of its license, naming the licensees or out-of-state suppliers that it desires to ship to directly or receive alcoholic beverages from directly, and such other information as the Commissioner may require.

(3) The Commissioner shall determine if a licensee meets the requirements of § 512A, § 512B, § 512C or § 512E of this title and is otherwise qualified for a permit pursuant to this section.

(4) If the Commissioner determines the licensee is eligible, the Commissioner shall issue a permit to the licensee.

(5) A permit holder under this section shall be permitted to sell product properly received under the terms of its permit as though it were manufactured at its premises, in accordance with the terms and conditions of its license, so long as it is permitted to manufacture that type of alcohol.

(6) If a licensee's total domestic sales of beer for all affiliated suppliers or manufacturers is between 2 million and 6 million barrels of beer in a calendar year, transfers authorized by this section from licensees pursuant to § 501 and § 512C of this title to commonly owned licensees pursuant to § 512B of this title for the purpose of sales to consumers for consumption on the brewery-pub premises may be made only if the brands transferred for on-premise consumption are produced under the same trade name approved by the Commissioner for the licensee pursuant to § 512B of this title. Licensees pursuant to § 512B of this title may sell product to consumers produced by affiliated licensees under different trade names for consumption on the brewery premises if such product is purchased from a licensee pursuant to § 522 of this title.

(7) For purposes of this section, "trade name" means a trade name approved by the Commissioner that is consistent with the definition in § 3302 of Title 6 or a successor statute.

(b) As used in this section, "common ownership and control" means that the shipping and receiving licensees applying for a permit under this section manufacture and sell the same brands of alcoholic liquor that each such licensee desires to ship to directly or receive from directly the other, share at least a majority of the same directors, officers, members, or other fiduciaries, and are owned 51 percent or more by 1 person. It shall be permitted for the interest of 51 percent or more in the shipping licensee and the interest of 51 percent or more in the receiving licensee to be held by more than 1 person, but only if 1 of the following is satisfied:

(1) One person is an individual and the other person(s) is 1 or more trusts, the beneficiaries of which include such individual, such individual's spouse, or such individual's lineal descendants; or

(2) Each person is 1 or more trusts established by the same settlor for the benefit of the settlor, the settlor's spouse, or the settlor's lineal descendants, and are managed by the same fiduciaries; or

(3) Such interests are held by the same individuals.

(c) For the purposes of this section, "person" shall be defined as set forth in § 1-201(b)(27) of Title 6.

(81 Del. Laws, c. 276, § 1; 82 Del. Laws, c. 22, § 1; 82 Del. Laws, c. 141, § 4.)

§ 513 Sale of beer and wine for consumption on premises of tavern.

(a) Any person in charge of a tavern may apply to the Commissioner for a license to purchase from an importer and to receive, keep, and sell beer and wine, if such beverages are consumed on the premises where sold.

(b), (c) [Repealed.]

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 513; 54 Del. Laws, c. 377, § 1; 67 Del. Laws, c. 109, § 11; 69 Del. Laws, c. 6, § 3; 72 Del. Laws, c. 486, § 9; 73 Del. Laws, c. 244, §§ 7, 8; 82 Del. Laws, c. 4, § 3; 83 Del. Laws, c. 207, § 2.)

§ 514 Gathering licenses; consumption on premises.

(a) If alcoholic liquors are to be sold during a gathering of persons, the manager or person in charge of such gathering, or the owner, tenant or person in charge of the premises in which the gathering is being held, must obtain 1 of the types of gathering licenses provided for in this section. Either of said licenses shall permit consumption of alcohol on the premises where sold and shall permit sale of alcohol for consumption off the premises where sold by way of a raffle or auction, live or silent, so long as the amount of alcohol sold for consumption off of the premises where sold does not exceed 10 gallons (or 38 liters) in a single day.

(b) There shall be 2 types of gathering licenses which may be granted hereunder:

(1) Gathering License — Group. — The manager or person in charge of a gathering of persons at which alcoholic liquors are to be sold shall apply for a group type gathering license, which license, if granted, shall be valid only for the time, and at the location, specified in the application therefor. A group gathering license shall not be required if the said gathering is being held on premises which are validly licensed under a biennial premises gathering license issued pursuant to paragraph (2) of this subsection.

(2) Gathering License — Biennial Premises. — The owner, tenant or person in charge of the premises, other than a residence, on which gatherings of persons are held, may apply for a biennial premises type gathering license, which license shall be valid for the entire 2 years for gatherings of persons at the location specified in the application therefor.

(c) A holder of a gathering license may purchase alcoholic liquors for sale at a gathering of persons from either retailers or importers and such retailers and importers shall be permitted to make deliveries to persons holding gathering licenses. A holder of a gathering license granted pursuant to this section shall be exempt from paying the application process fee as provided in subsection (x) of § 554 of this title.

(d) For purposes of this section only, the price paid for alcoholic liquors to be sold at a gathering of persons licensed under this section shall be a price agreed upon between the said licensee and the retailer or importer from whom said alcoholic liquors are purchased. It is permissible for a retailer or importer to donate some or all of the liquor to the gathering licensee so long as a license has been granted for the gathering by the Commissioner prior to the donation.

(e) Any person holding a biennial premises gathering license granted hereunder must report each gathering of persons to be held in its facilities to the Commissioner, which report may be made in person, in writing, or by telephone and the report must be received by the Commissioner not later than 12:00 noon of the day on which the gathering is to be held, unless it is to be held on a day on which the Commissioner shall be closed, in which case it must be so reported on the last day on which the Commissioner is open immediately preceding such a gathering.

(f) Any person holding a gathering license of either type granted hereunder who has purchased alcoholic liquors for sale at a gathering of persons may return any unopened bottles so purchased to the licensee from whom they were purchased and shall receive therefor the amount paid for each said bottle, so long as such return is made within 30 days of the date of the gathering for which they were purchased.

A biennial premises type gathering licensee shall not be required to return bottles it has purchased for sale during such gathering, but may store them in a suitable storage facility for sale at a future gathering of persons to be held within its facilities.

(g) All holders of gathering licenses hereunder shall be subject to the restrictions on the hours of sale of alcoholic liquors set forth in § 709(c) of this title and to the prohibitions of sales to minors set forth in § 708 of this title.

(h) It shall not be necessary to obtain a license to dispense alcoholic liquors at a gathering of persons if no alcoholic liquors are to be sold at that gathering of persons. Importers may sell and deliver beer directly to persons for dispensing at a gathering of persons and not for resale.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 514; 59 Del. Laws, c. 107, § 18; 59 Del. Laws, c. 128, §§ 2-4; 67 Del. Laws, c. 273, § 24; 72 Del. Laws, c. 486, § 9; 78 Del. Laws, c. 64, §§ 1, 2.)

§ 515 Sale to members of club and multiple activity club.

(a) A club or multiple activity club may apply to the Commissioner for a license to purchase spirits, wine, or beer and to sell the spirits, wine, or beer to a member of the club.

(b) (1) A bottle club is not a club.

(2) [Repealed.]

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 515; 56 Del. Laws, c. 335, § 4; 59 Del. Laws, c. 107, §§ 19, 20; 63 Del. Laws, c. 232, § 1; 67 Del. Laws, c. 109, § 12; 67 Del. Laws, c. 122, § 1; 72 Del. Laws, c. 486, § 9; 81 Del. Laws, c. 69, § 1; 83 Del. Laws, c. 152, § 2.)

§ 515A Licenses for bottle clubs.

(a) Except as provided in this section, it is unlawful to operate a bottle club for profit or pecuniary gain.

(b) The Commissioner may, upon application, grant a license to the owner, lessor, or person in charge of the premises to operate a bottle club in accordance with this chapter.

(c) The Commissioner may only grant a bottle club license to the following:

(1) A person doing business in an establishment meeting the standards of a restaurant. The license permits the establishment to operate as a bottle club on every day of the week and on holidays, except between the hours of 2:00 a.m. and 9:00 a.m. during which time alcoholic liquors may not be consumed on the premises of the establishment.

(2) A person renting premises to customers for holding weddings or other social gatherings where there is adequate food, as determined by the Commissioner, provided by the customer or a caterer. The license permits the establishment to operate as a bottle club on every day of the week and on holidays, except between the hours of 2:00 a.m. and 9:00 a.m. during which time alcoholic liquors may not be consumed on the premises of the establishment. If a bottle club licensed under this paragraph (c)(2) has a function that utilizes an off-site caterer, all alcohol must be provided by the off-site caterer.

(63 Del. Laws, c. 232, § 2; 67 Del. Laws, c. 122, § 2; 72 Del. Laws, c. 486, § 9; 83 Del. Laws, c. 152, § 3.)

§ 516 Consumption off premises of hotel, restaurant, club, store or taproom.

(a) (1) Any person in charge of a hotel, restaurant, club or store (other than a grocery, delicatessen or cigar store), whether owner, lessee or manager, and recognized as such by the Commissioner, may apply to the Commissioner for a license to purchase from an importer and to keep and sell and deliver on the premises only spirits, wine or beer by the bottle, half bottle, keg, half keg, quarter keg, or sixtel, but not for consumption on the premises where sold, or in any dependency thereof. All vessels so sold shall be delivered to the purchaser and shall be removed from the premises where sold with the seals of such vessels unbroken, with the exception of those licenses that are approved by the Commissioner for a growler filler permit which allows a licensee to purchase beer by the keg or partial keg and fill containers at time of purchase which will then be capped to leave the licensed premises for consumption off of the premises. For purposes of issuing a new license under this section, all establishments licensed for the sale of alcoholic liquors, but not for consumption on the premises where sold, shall be considered as being of the same type; provided, however, this shall not apply to the transfer of ownership or the renewal of an existing license.

(2) Any person in charge of a store (other than a grocery, delicatessen or cigar store), whether owner, lessee, or manager, and recognized as such by the Commissioner with a valid license for consumption off premises issued pursuant to this section may sell spirits, wine or beer pursuant to paragraph (a)(1) of this section for curbside service. Any entity with a valid off premise license pursuant to §§ 512A through 512E of this title may sell alcoholic liquor pursuant to its license for curbside service. All sales for curbside service must do all of the following:

a. Comply with Chapter 7 of this title including § 706 of this title, which prohibits sales to intoxicated individuals, and § 708 of this title, which prohibits sales to individuals who have not reached the age of 21 years.

b. Be completed and delivered by a person certified as a responsible alcoholic beverage server pursuant to § 1205 of this title.

(b) Notwithstanding the provisions of subsection (a) of this section, any person, firm or corporation duly licensed by the government of the United States as a ships chandler, may apply to the Commissioner for a license to purchase and to keep, sell and deliver off the premises, spirits, wine or beer. The Commissioner may issue said license if it is satisfied that: (1) The applicant is a ships chandler operating a customs bonded warehouse under a license issued by the United States government, and (2) sales by ships chandler are limited to vessels of the United States or of a foreign country engaged in foreign trade pursuant to § 1309 of Title 19 of the United States Code.

(c) No person in charge of a taproom, whether as owner, lessee, manager or otherwise, may apply for a license to sell alcoholic liquors for consumption off the premises where sold, and the Commissioner shall not issue such a license for use in a taproom. Provided, however, that any person issued a license which authorizes the person to sell alcoholic liquors in a taproom for consumption off the premises prior to July 6, 1983, shall be permitted to retain said license, unless revoked by the Commissioner pursuant to this title; and provided further, that any person issued a license which authorizes the person to sell alcoholic liquors in a taproom for consumption off the premises prior to July 6, 1983, shall be permitted to transfer said license with the approval of the Commissioner as provided in § 571 of this title.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146(6); 42 Del. Laws, c. 186; 42 Del. Laws, c. 191, § 2; 44 Del. Laws, c. 203, § 2; 47 Del. Laws, c. 337, § 1; 4 Del. C. 1953, § 516; 55 Del. Laws, c. 82, § 1; 56 Del. Laws, c. 311, § 4; 62 Del. Laws, c. 69, § 1; 64 Del. Laws, c. 104, § 1; 67 Del. Laws, c. 109, § 13; 72 Del. Laws, c. 486, § 9; 79 Del. Laws, c. 23, § 1; 82 Del. Laws, c. 99, § 4; 83 Del. Laws, c. 275, § 1; 84 Del. Laws, c. 42, § 42.)

§ 517 Pharmacists.

Any person, whether as owner, lessee or manager, who conducts a pharmacy which is recognized as such by the Commissioner, and in which pharmacy there is in constant attendance a pharmacist, may purchase alcoholic liquors and may keep and sell the same on the prescription of any physician, and otherwise supply or sell alcoholic liquors for medicinal purposes as provided in § 518 of this title without a permit or license from the Commissioner.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 517; 59 Del. Laws, c. 107, § 21; 72 Del. Laws, c. 486, § 9.)

§ 518 Physicians, dentists, veterinarians and medical institutions.

(a) A physician or dentist may purchase alcoholic liquors for professional purposes without a permit or license. A physician may administer alcoholic beverages to a bona fide patient in cases of actual need when in the judgment of the physician the use of alcoholic beverages is necessary.

(b) A veterinarian may purchase alcoholic liquors for professional purposes without a permit or license. A veterinarian may, in the course of the veterinarian's practice, administer or cause to be administered alcoholic beverages to any animal under treatment.

(c) A person in charge of an institution regularly conducted as a hospital or sanitarium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may purchase alcoholic beverages for professional purposes without the requirement of a permit or license. Such person may, after obtaining proper permission, administer alcoholic beverages to any bona fide patient of a medical institution who is in need of the same, either by way of external application or otherwise for emergency medical purposes.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 518; 59 Del. Laws, c. 107, § 22; 84 Del. Laws, c. 42, § 43.)

§ 519 Hospital; retention and use.

Any person in charge of a hospital recognized by the Commissioner as such may purchase alcoholic liquors, and may keep and administer alcoholic liquors for purposes of compounding medicines or to use alcohol for purposes of sterilization without a permit or license.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 519; 59 Del. Laws, c. 107, § 23; 72 Del. Laws, c. 486, § 9.)

§ 520 Clergymen; wine for sacramental purposes.

Any minister, priest, rabbi or clergyman of any established or recognized church or religious sect may purchase wine for sacramental purposes, and may keep and use wine for sacramental purposes, without a permit or license.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 520; 59 Del. Laws, c. 107, § 24.)

§ 521 Temporary license to sell by the glass.

A temporary license to sell alcoholic liquor of 1 or more varieties, by the glass only, and for a period of not more than 3 months, may be granted by the Commissioner to any person to whom a biennial license may be issued under this chapter, but such temporary license shall not be renewed more than once during the same 12 months' period.

(38 Del. Laws, c. 18, § 25; Code 1935, § 6154; 4 Del. C. 1953, § 521; 67 Del. Laws, c. 273, § 25; 72 Del. Laws, c. 486, § 9.)

§ 522 Application for license to purchase for resale.

(a) Any person proposing to purchase alcoholic liquor for resale shall make application to the Commissioner for license.

(b) Any individual 21 years of age or older may apply for a license permitting the purchase of alcoholic liquors for resale. Any partnership may apply for a license permitting the purchase of alcoholic liquors for resale if such application is approved by a majority of the partners and each of the partners is 21 years of age or older. A corporation may apply for a license permitting the purchase of alcoholic liquors for resale if all the officers and directors of the corporation making the application are 21 years of age or older, and no stockholder under the age of 21 years owns or controls, either directly or through a custodian, more than 25% of the outstanding shares of stock of the applicant corporation, with the further provision that no group of such minor stockholders and/or custodians may own or control in the aggregate, more than 45% of the stock of the applicant corporation.

(c) The application shall be made on a blank form furnished by the Commissioner and shall be signed by the applicant before two witnesses. The application shall give the name, age, occupation and residence of the applicant and the kind of license requested.

(d) The application furnished by the Commissioner shall contain a statement to the effect that the applicant will comply with this title and the rules of the Delaware Alcoholic Beverage Control Commissioner.

(e) The Commissioner shall require that the statement of the applicant and of the witnesses be made under oath or affirmation.

(38 Del. Laws, c. 18, § 18; Code 1935, § 6147; 4 Del. C. 1953, § 522; 57 Del. Laws, c. 418, §§ 1, 2; 59 Del. Laws, c. 107, §§ 26-28; 60 Del. Laws, c. 242, § 1; 67 Del. Laws, c. 109, § 14; 71 Del. Laws, c. 383, § 2; 72 Del. Laws, c. 486, § 9; 84 Del. Laws, c. 42, § 44.)

§ 523 Application by partnership or corporation; liability for fines or costs.

If a license to purchase for resale is to be used on behalf of a partnership or corporation, the application therefor shall be accompanied by a declaration to that effect signed by an authorized member of such partnership or an authorized officer of such corporation. In such case the partnership or corporation, or the directors and officers thereof shall be liable jointly and severally for any fine and costs to which the holder of the license is liable.

(38 Del. Laws, c. 18, § 18; Code 1935, § 6147; 4 Del. C. 1953, § 523.)

§ 524 Notice of application.

(a) An application for a new license to purchase for resale, for transfer of an existing license, or for a substantive change to a license or licensed premise shall be filed with the Commissioner's office.

(b) Upon filing of an application for a new license to purchase for resale or for a substantive change to a license or licensed premise the applicant shall cause notice to be advertised in at least 2 different newspapers circulated in the community in which the applicant will operate if the application is approved for 3 issues. One of the newspapers must be a "local newspaper," as determined by the Commissioner either through rules or on a case by case basis. If the newspaper is a daily newspaper, the first publication shall be made within 3 days of the filing of the application and the third publishing shall occur within 10 days of filing the application. If the newspaper is a weekly publication, the first publication shall be made within 8 days of filing the application and the third publishing shall occur within 22 days of filing the application.

(c) Within 3 days of filing of an application for a new license to purchase for resale or for a substantive change to a license or licensed premise a notice shall be mailed by certified mail or first class mail as evidenced by a certificate of mailing postage-pre-paid to the following entities, individuals or groups of individuals:

(1) Except as provided in paragraph (c)(2) of this section, all property owners within 200 feet from any point on the property boundary line of the premises to which the license is to apply;

(2) All property owners within 1,000 feet from any point on the property boundary line of the premises to which the license is to apply if the premises is located within 1/4 of a mile of a riverfront, beachfront or other open water, or if the applicant intends to include space for outside dining, outside entertainment or the outside service or consumption of alcoholic beverages;

(3) The governing body of any incorporated areas within 1 mile from any point on the property boundary line of the premises to which the license is to apply.

(d) The notices referred to in subsections (b) and (c) of this section shall provide such information as determined by the Commissioner either through duly adopted rules or on a case by case basis. The following notice will, in addition to the aforesaid Commissioner approved notice, satisfy this notice provision:

"[Name of applicant] has on [Date of application] applied with the Alcoholic Beverage Control ("Commissioner") for [Nature of application] for a premises located at [Location of the premises, including street and city]. Persons who are against this application should provide written notice of their objections to the Commissioner. For the Commissioner to be required to hold a hearing to consider additional input from persons against the application, the Commissioner must receive one or more documents containing a total of at least 10 signatures of residents or property owners located within 1 mile of the premises or in any incorporated areas located within 1 mile of the premises. The protest(s) must be filed with the Alcoholic Beverage Control Commissioner at the 3rd Floor, Carvel State Office Building, 820 North French Street, Wilmington, DE 19801. The protest(s) must be received by the Commissioner's office on or before [state a date at least 30 days after the application is filed]. Failure to file such a protest may result in the Commissioner considering the application without further notice, input or hearing. If you have questions regarding this matter please contact the Commissioner's Office."

(e) The term "substantive change" referenced in this section shall mean any of the following:

(1) Any permanent change that will increase the square footage of the licensed premises;

(2) Any temporary change that will last longer than 60 days and result in an increase of the square footage of the licensed premises;

(3) Any change that would require a variance of the Commissioner's rules or suspension thereof and results in:

a. Live entertainment on a licensed patio;

b. External speakers or amplifiers on a licensed patio; or

c. Wet bar on a licensed patio;

(4) Any change in the floor plan of a restaurant licensee which would increase the number of bar seats or increase the area utilized for entertainment; or

(5) Any additional circumstance that the Commissioner determines is a substantive change.

(f)-(h) [Repealed.]

(i) Notwithstanding subsection (e) of this section or any other law, rule, or regulation to the contrary, substantive change does not mean any of the following:

(1) An expansion of outdoor seating for serving of food and drinks that as of March 31, 2022, was approved by the Commissioner.

(2) An expansion of outdoor seating for serving of food and drinks that meets all of the following requirements:

a. A plan approved by the appropriate political subdivision that does all of the following:

1. Considers local traffic patterns and parking capacity needs, but may extend the boundaries of seating beyond current property boundaries under the discretion of the appropriate political subdivision and applicable property owners on all local right of ways.

2. Does not intrude upon the State's right of way, unless approved by the Delaware Department of Transportation in writing.

3. Maintains current access, unless approved by Delaware Department of Transportation in writing.

4. Maintains proper access to the property for all emergency services.

5. Complies with the Americans Disabilities Act [42 U.S.C. § 12101 et seq.].

6. Adheres to all local noise ordinances.

7. Allows for the proper control over the distribution of alcoholic beverages.

b. Approval by the Commissioner regarding the service of alcohol on premises.

c. Complies with the Delaware Food Code.

(j) Any plan approved by or submitted to the appropriate political subdivision and the Commissioner pursuant to subsection (i) of this section may allow for the service of alcoholic beverages without the requirement to serve food.

(k) Any plan submitted to the appropriate political subdivision and the Commissioner pursuant to subsection (i) of this section that meets all of the requirements of paragraph (i)(2) of this section should not be denied approval absent exceptional circumstances.

(*l*) Any political subdivision that revokes or modifies its approval for an expansion of outdoor seating for serving of food and drinks under subsection (i) of this section must notify the Commissioner within 30 days of such revocation or modification.

(38 Del. Laws, c. 18, § 18; Code 1935, § 6147; 43 Del. Laws, c. 275, § 1; 44 Del. Laws, c. 205, § 1; 46 Del. Laws, c. 222, § 1; 4 Del. C. 1953, § 524; 59 Del. Laws, c. 107, §§ 29, 30; 67 Del. Laws, c. 118, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 435, § 1; 72 Del. Laws, c. 221, §§ 2-4; 72 Del. Laws, c. 486, § 9; 73 Del. Laws, c. 136, § 1; 74 Del. Laws, c. 242, § 1; 82 Del. Laws, c. 247, §§ ? 3, 5; 83 Del. Laws, c. 9, § 3; 83 Del. Laws, c. 9, § 5; 83 Del. Laws, c. 284, § 3.)

§ 525 Spirits, wine and beer tasting.

A license to permit spirits, wine and beer tasting may be granted by the Commissioner to any person holding a license under this title as a retailer. Spirits, wine and beer tasting may take place only in a separate portion of a licensee's premises where alcoholic beverages are not sold. The separate portion of the premises shall be an area designated for spirits, wine and beer tasting by the Commissioner. No charge may be made for the spirits, wine and beer tasting.

(65 Del. Laws, c. 283, § 2; 70 Del. Laws, c. 353, § 2; 72 Del. Laws, c. 486, § 9.)

§ 526 Direct purchasing of wine and beer [Effective until Aug. 15, 2026].

(a) Notwithstanding any other provision in this title, a natural person who is a Delaware resident may purchase sparkling wine, still wine and beer that is not readily available to consumers throughout the State directly from a manufacturer or retailer of such beverages domiciled outside of Delaware provided that the following apply:

(1) The resident is 21 years of age or older;

(2) The sparkling wine, still wine or beer is for the resident's personal consumption and not for resale;

(3) The total amount of sparkling wine or still wine purchased in 1 calendar year by the resident may not exceed 60 750-milliliter bottles per calendar year;

(4) The total amount of beer purchased in 1 calendar year by the resident may not exceed 6 cases of 12 ounce bottles or the equivalent;

(5) The manufacturer or retailer engaging in such direct sales holds a valid manufacturer's or retailer's license issued by the state of its domicile;

(6) The package in which the sparkling wine, still wine or beer is shipped is prominently labeled as containing alcoholic beverages;

(7) The package in which such sparkling wine, still wine or beer is shipped is received by a person 21 years of age or older;

(8) The package in which such sparkling wine, still wine or beer is shipped contains an invoice indicating the date of the shipment, providing a full and complete description of all items included in the shipment, and stating the price thereof.

(b) A person who is licensed in its state of domicile as an alcoholic beverage manufacturer, importer, wholesaler or licensee and who may legally ship alcoholic beverages out of state may apply to the Commissioner for a direct shipper license. Only a person holding a direct shipper license may accept an order for the purchase of sparkling wine, still wine and/or beer from a natural person who is a Delaware resident. The license fee for a direct shipper shall be determined by the Commissioner. The amount of the fee must approximate and reasonably reflect the costs necessary to defray the expenses of the Commissioner's service and activities in connection with this section.

(c) All persons licensed under this section to ship wine and beer shall pay a tax on all wine and beer sold to residents in this State at the rates set forth in § 581(d) of this title. Taxes levied by § 581(d) of this title shall be collected, as far as practical, from the direct shipper in the manner set forth by the Commissioner. If for any reason the direct shipper who first handles the taxable beer and wine to be shipped to Delaware has escaped payment of taxes, those taxes shall be collected from any person in whose hands the taxable beer and wine is found. In no case, however, shall there be a duplication.

(d) Direct shippers shall file invoices for each shipment with the Commissioner showing the retail price of the product, the quantity

shipped, the customer's name and address and the tax collected and paid to the State. Such filings shall be quarterly and arrive at the Commissioner no later than the 10th of March, June, September and December. Direct shippers shall maintain the records for at least 3 years.

(e) Under no circumstance may the wine or beer be shipped directly to the resident. Direct shippers must deliver the wine and beer by common carrier to a Delaware wholesaler, who will in turn deliver the shipment to a holder of a Delaware off-premises retail license. The retail licensee must then deliver the wine or beer to the resident in a manner consistent with this title and as set forth by Commissioner rules. The direct shipper shall pay a handling fee in the amount of $4 dollars per case or partial case of wine and $2 dollars per case or partial case of beer to the wholesaler who receives the shipment on behalf of the Delaware resident. The wholesaler shall then remit to the retail licensee one-half of the total handling fee.

(72 Del. Laws, c. 230, § 1; 72 Del. Laws, c. 486, § 9.)

§ 526 Direct shipping of wine [Effective Aug. 15, 2026; Effective until Aug. 15, 2030].

(a) Notwithstanding § 501 of this title, upon proper application and subject to the applicable provisions, restrictions and prohibitions of this title, the Commissioner may grant a wine direct shipper license to any person who is a farm winery as defined by § 512A of this title or a manufacturer, as determined by the Commissioner, that would qualify for a license under § 512A of this title if the manufacturer were physically located in this State.

(b) A person who is licensed as a wine direct shipper under this section may ship up to 3 9-liter cases of wine annually to a household located in this State if a member of the household is at least 21 years of age and the wine is for the household's personal use and not for resale.

(c) An application for a wine direct shipper license must contain all of the following:

(1) The application materials required by the Commissioner.

(2) A true copy of the applicant's state-issued alcohol license and Federal Basic Permit.

(d) A wine direct shipper licensee may not:

(1) Ship wine to any person who is under the age of 21. In any prosecution for an offense under this subsection, it is an affirmative defense if the individual, who has not reached the age of 21 years, presented to the accused identification, with a photograph of such individual affixed thereon, which identification sets forth information which would lead a reasonable person to believe such individual was 21 years of age or older.

(2) Ship more than 3 9-liter cases of wine annually to any household for the household's personal use.

(3) Ship any wine for resale.

(4) Ship more than 1,800 9-liter cases into this State per year under this section. A direct shipper licensee that ships into Delaware 1,800 9-liter cases in 1 year will have its direct shipper license cancelled by the Commissioner and must apply for a supplier license pursuant to § 501 of this title.

(5) Ship wine if they are currently represented in this State by a licensed importer/wholesaler. This shall include wineries that are a subsidiary of a larger wine manufacturer or a supplier licensed pursuant to § 501 of this title that is listed in a licensed importer/wholesaler's current price publication designated by the Commissioner. All licensed importers/wholesalers shall provide in the manner and timing as required by the Commissioner, monthly price lists that include the manufacturers, names of the products, and any identifying SKU numbers. The Commissioner will remove proprietary price information before posting the importer/wholesaler's monthly lists on the Office of the Alcoholic Beverage Control Commissioner's publicly-available webpage.

(e) A wine direct shipper licensee must:

(1) Deliver wine for shipment into this State only to a common carrier who has a common carrier license issued by the Commissioner as provided in § 527 of this title.

(2) Ensure that all containers of wine shipped directly to a resident of this State are conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF INDIVIDUAL AGE 21 OR OLDER REQUIRED FOR DELIVERY". Upon delivery, the carrier delivery person shall be required to scan, and retain as proof of age verification, the required state-issued driver's license or state-issued identification card.

(3) a. If located outside of this State:

1. Report the following to the Commissioner and the Division of Alcohol and Tobacco Enforcement ("DATE") monthly, or more frequently as required by rules promulgated by the Commissioner that are based upon quantity of product shipped:

A. The total amount of wine shipped into this State in the preceding quarter.

B. The name and address of the individuals to whom the wine was sold and the amount of wine sold in each sale.

C. The tracking number for each shipment.

D. The name and license number of the common carrier to whom the order was sent for delivery.

2. Pay to the Division of Revenue monthly, or as otherwise required by regulations promulgated by the Commissioner, all excise taxes due on sales to residents of this State at the rate set forth in § 581(d) of this title. The amount of such taxes must be calculated as if the sale were in this State at the location where delivery is made.

b. The information reported under paragraph (e)(3)a.1. of this section is exempt from the requirements of Chapter 100 of Title 29.

(4) a. If located within this State, pay to the Division of Revenue monthly, or as otherwise required by regulations promulgated by the

Commissioner, all excise taxes due on sales to residents of this State as required by § 581(b) of this title and provide the Division of Revenue, DATE, and the Commissioner any additional information deemed necessary beyond that already required for retail sales from a farm winery to ensure compliance with this section including the following:

1. The total amount of wine shipped under this section in the preceding quarter.
2. The name and address of the individuals to whom the wine was sold and the amount of wine sold in each sale.
3. The tracking number for each shipment.
4. The name and license number of the common carrier to whom the order was sent for delivery.

b. The information reported under paragraph (e)(4)a. of this section is exempt from the requirements of Chapter 100 of Title 29.

(5) Permit DATE, the Commissioner, or the Division of Revenue to perform an audit of the wine direct shipper licensee's records upon request.

(f) A wine direct shipper licensee is deemed to have consented to the jurisdiction of the Commissioner or any other state agency and the courts of this State concerning enforcement of this section and any related laws, rules, or regulations.

(g) The Commissioner and the Division of Revenue may establish rules and regulations necessary for the implementation of this section.

(72 Del. Laws, c. 230, § 1; 72 Del. Laws, c. 486, § 9; 85 Del. Laws, c. 139, § 1.)

§ 526 Direct purchasing of wine and beer [Effective Aug. 15, 2030].

(a) Notwithstanding any other provision in this title, a natural person who is a Delaware resident may purchase sparkling wine, still wine and beer that is not readily available to consumers throughout the State directly from a manufacturer or retailer of such beverages domiciled outside of Delaware provided that the following apply:

(1) The resident is 21 years of age or older;

(2) The sparkling wine, still wine or beer is for the resident's personal consumption and not for resale;

(3) The total amount of sparkling wine or still wine purchased in 1 calendar year by the resident may not exceed 60 750-milliliter bottles per calendar year;

(4) The total amount of beer purchased in 1 calendar year by the resident may not exceed 6 cases of 12 ounce bottles or the equivalent;

(5) The manufacturer or retailer engaging in such direct sales holds a valid manufacturer's or retailer's license issued by the state of its domicile;

(6) The package in which the sparkling wine, still wine or beer is shipped is prominently labeled as containing alcoholic beverages;

(7) The package in which such sparkling wine, still wine or beer is shipped is received by a person 21 years of age or older;

(8) The package in which such sparkling wine, still wine or beer is shipped contains an invoice indicating the date of the shipment, providing a full and complete description of all items included in the shipment, and stating the price thereof.

(b) A person who is licensed in its state of domicile as an alcoholic beverage manufacturer, importer, wholesaler or licensee and who may legally ship alcoholic beverages out of state may apply to the Commissioner for a direct shipper license. Only a person holding a direct shipper license may accept an order for the purchase of sparkling wine, still wine and/or beer from a natural person who is a Delaware resident. The license fee for a direct shipper shall be determined by the Commissioner. The amount of the fee must approximate and reasonably reflect the costs necessary to defray the expenses of the Commissioner's service and activities in connection with this section.

(c) All persons licensed under this section to ship wine and beer shall pay a tax on all wine and beer sold to residents in this State at the rates set forth in § 581(d) of this title. Taxes levied by § 581(d) of this title shall be collected, as far as practical, from the direct shipper in the manner set forth by the Commissioner. If for any reason the direct shipper who first handles the taxable beer and wine to be shipped to Delaware has escaped payment of taxes, those taxes shall be collected from any person in whose hands the taxable beer and wine is found. In no case, however, shall there be a duplication.

(d) Direct shippers shall file invoices for each shipment with the Commissioner showing the retail price of the product, the quantity shipped, the customer's name and address and the tax collected and paid to the State. Such filings shall be quarterly and arrive at the Commissioner no later than the 10th of March, June, September and December. Direct shippers shall maintain the records for at least 3 years.

(e) Under no circumstance may the wine or beer be shipped directly to the resident. Direct shippers must deliver the wine and beer by common carrier to a Delaware wholesaler, who will in turn deliver the shipment to a holder of a Delaware off-premises retail license. The retail licensee must then deliver the wine or beer to the resident in a manner consistent with this title and as set forth by Commissioner rules. The direct shipper shall pay a handling fee in the amount of $4 dollars per case or partial case of wine and $2 dollars per case or partial case of beer to the wholesaler who receives the shipment on behalf of the Delaware resident. The wholesaler shall then remit to the retail licensee one-half of the total handling fee.

(72 Del. Laws, c. 230, § 1; 72 Del. Laws, c. 486, § 9; 85 Del. Laws, c. 139, § 7.)

§ 527 Common carrier license [Expires Aug. 15, 2030, pursuant to 85 Del. Laws, c. 139, § 7] [Effective Aug. 15, 2026].

(a) For the purposes of this title, "common carrier" means a business entity that:

(1) Holds itself out as being available to the public to transport in interstate or foreign commerce for compensation any class of passenger or property; and

(2) Holds a common carrier permit issued under this section.

(3) "Common carrier" does not include a business entity that transports only property the business entity owns or that is consigned to the business entity.

(b) Upon proper application and subject to the applicable provisions, restrictions and prohibits of this title, the Commissioner may grant a common carrier license to approved persons. Upon approval, the person shall pay the license as set forth in § 554 of this title.

(c) A common carrier permit licensee shall do all the following:

(1) Provide the Commissioner, the Division of Alcohol and Tobacco Enforcement, and the Division of Revenue a monthly report containing the following:

a. The names and addresses of the consignor of the shipment.

b. The name and address of the consignee of the shipment.

c. The tracking number for each shipment made under this section.

d. The information reported under this paragraph (c)(1) is exempt from the requirements of Chapter 100 of Title 29.

(2) Deliver wine only on behalf of a wine direct shipper licensed by the Commissioner. The employee or independent contractor of the licensed common carrier shall deliver the wine to the address provided by the wine direct shipper licensee Upon delivery, the carrier delivery person shall be required to scan, and retain as proof of age verification, the required state-issued driver's license or state-issued identification card.

a. In any proceeding for an offense under this subsection, it is an affirmative defense if the individual, who has not reached the age of 21 years, presented to the accused identification, with a photograph of such individual affixed thereon, which identification sets forth information which would lead a reasonable person to believe such individual was 21 years of age or older.

b. To ensure effective age verification for deliveries, a common carrier licensee shall provide its employees and independent contractors with age verification training approved by the Commissioner.

(d) At least once a year, in a manner acceptable to the Commissioner, a holder of a common carrier license shall verify that the shipper of wine into this State holds a valid direct wine shipper's license issued by the Commissioner.

(e) A common carrier licensee is deemed to have consented to the jurisdiction of the Commissioner or any other state agency and the courts of this State concerning enforcement of this section and any related laws, rules, or regulations.

(f) The Commissioner shall provide the common carrier licensee charged with violating any provision of this section with a hearing. The Commissioner may suspend or cancel a common carrier license if the common carrier license if the common carrier licensee is found to have committed 3 or more violations. The Commissioner may impose a suspension or monetary fine against a common carrier licensee but may not impose a fine under this section greater than $5,000. Failure to pay such fine and costs may result in an automatic license suspension until such fines and costs are paid.

(85 Del. Laws, c. 139, § 2.)

Subchapter III

Determination of Applications

§ 541 Procedural requirements governing Commissioner's action; hearing; appeal.

(a) The Commissioner shall distribute and receive all of the applications for licensure under this chapter, and shall refer the application to the Division for investigation, and if it appears that any application should not be granted, the Commissioner shall so notify the applicant stating the cause for denial.

(b) If 10 or more persons who reside or own property within 1 mile of the premises where the license is to operate or in any incorporated areas located within 1 mile of the premises where the license is to operate file a protest against the issuance of the license with the Commissioner within 30 days from the filing of the application, then a hearing must be held to consider the application and protest and, specifically, the concerns of the members of the community within which the license is to operate. The Commissioner may hold a hearing in the absence of a protest. The Commissioner shall cause notice of the time and location of the hearing to be published in 2 consecutive issues of the same newspapers within which the applicant published notice of the applicant's application for the license. The Commissioner shall send notice of the time and location of the hearing to the applicant and to each of the persons who signed the protest and provided a legible name and address; provided, however, that it is sufficient for the Commissioner to send notice to the attorney of a person who is represented by legal counsel. The Commissioner shall conduct the hearing and shall make and keep a record of the hearing. The record must include the evidence, the Commissioner's findings of fact, the Commissioner's decision and a brief statement of the reasons therefor. The Commissioner's decision must show the manner in which the Commissioner construed the law and applied it to the facts, must recite any objections presented by the community, and must show how and the extent to which the Commissioner took community concerns into account and gave them due consideration when making the decision.

(c) The Commissioner's decision must be in writing and shall be final and conclusive unless, within 30 days from the date of the

postmark on the Commissioner's decision, a party to the hearing files a written appeal in the office of the Commissioner. Upon receipt of the appeal, the Commissioner shall cause the Chairperson of the Appeals Commission to be advised of the pending appeal and the Chairperson shall cause the Appeals Commission to be convened with at least 20 days' notice to all parties. The Appeals Commission's review of an appeal from the Commissioner's final decision shall be on the record and in accordance with the Administrative Procedures Act, subchapter III of Chapter 101 of Title 29. A decision of the Commissioner shall be reversed only upon a finding of abuse of discretion.

(d) A party who is aggrieved by a final decision of the Appeals Commission may file a written appeal with the Superior Court within 30 days of the date that the Appeals Commission's decision was mailed. The Superior Court's review of an appeal shall be on the record and in accordance with the Administrative Procedures Act, subchapter V of Chapter 101 of Title 29. The Superior Court's review shall take into account the experience and specialized competence of the agency and the purpose under which the agency acted. Further, the Superior Court's review, in the absence of fraud, shall be limited to whether the agency's decision is supported by substantial evidence on the record and is free from legal error.

(38 Del. Laws, c. 18, § 21; Code 1935, § 6150; 42 Del. Laws, c. 188, § 1; 43 Del. Laws, c. 275, § 2; 4 Del. C. 1953, § 541; 59 Del. Laws, c. 107, §§ 32, 33; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 384, § 1; 71 Del. Laws, c. 435, §§ 2, 3; 72 Del. Laws, c. 486, §§ 9, 16-18; 73 Del. Laws, c. 133, § 2; 73 Del. Laws, c. 383, § 1; 78 Del. Laws, c. 384, § 1.)

§ 542 Decision upon application for renewal of license; time of making.

On or before the first day of the month preceding the biennial expiration date of a license, the Commissioner shall render its decision upon every application properly and completely made to it on or before the first day of the third month preceding the biennial expiration date of a license.

(38 Del. Laws, c. 18, § 25; Code 1935, § 6154; 4 Del. C. 1953, § 542; 57 Del. Laws, c. 404, § 2; 67 Del. Laws, c. 273, § 23; 72 Del. Laws, c. 486, § 9.)

§ 543 Grounds for refusal of license; transfer or extension of premises.

(a) The Commissioner shall refuse to grant a license to be used in any county or subdivision thereof, if contrary to any prohibitory law then in force, in such county or subdivision thereof.

(b) The Commissioner may refuse to license an applicant if the Commissioner has substantial evidence that would reasonably support a belief that:

(1) Except for restaurants, there are sufficient licensed premises in the locality; or the granting of a license in the locality stated in the application is not otherwise demanded by public interest or convenience;

(2) The applicant is an importer of alcoholic liquors and has not furnished an acceptable bond for the purpose of assuring tax payments;

(3) The applicant appears to be financially irresponsible;

(4) The applicant has been provided with funds by, or has any forbidden connection with, a manufacturer, supplier or importer of alcoholic liquors;

(5) The applicant has made false statements to the Commissioner;

(6) The applicant has been convicted of violating any of the liquor laws of this State, or has been convicted and imprisoned for a crime;

(7) The applicant or any of the applicant's directors or officers, or any of the applicant's shareholders who hold more than 10% of the outstanding issued shares has been convicted of violating any of the prohibited acts defined in Chapter 47 of Title 16, the Uniform Controlled Substances Act, or its functional equivalent under the laws of the United States, any state or territory or any other country, including, but not limited to, the illegal manufacture, delivery, trafficking, possession or consumption of any controlled or noncontrolled substance, or the delivery or possession of illegal drug paraphernalia or illegal hypodermic syringes or needles, or the conspiracy, solicitation or other attempt to engage in such illegal activities;

(8) As to a restaurant applicant, the applicant has failed to designate a substantial portion of the premises' floor space, as determined by the Commissioner, to be used for the storage, preparation, service and consumption of complete meals;

(9) As to a restaurant applicant, the applicant's projected or actual receipts from the sale of complete meals fails to represent a substantial portion of the establishment's total gross receipts as determined by the Commissioner, provided that gross receipts received as payments from the State Lottery Office shall not be included by the Commissioner in the Commissioner's determination;

(10) As to a restaurant applicant, the applicant's proposed premises or any proposed extension of the premises of an existing licensed restaurant is protested in accordance with the provisions contained in § 541(b) of this title or any applicable Commissioner rule, and the Commissioner finds that substantial evidence exists to conclude that the establishment's primary purpose will be the serving of alcoholic liquor to patrons. In reaching its decision, the Commissioner shall consider factors including, but not limited to, the number and sizes of bars in the establishment, the establishment's floor plan, an approximate percentage of the projected revenue to be derived from the sale of alcoholic liquor as compared to the percentage of revenue to be derived from the sale of complete meals, the establishment's seating capacity, storage and preparation area for food service, and the number of service employees employed, or to be employed, in the establishment and their functions.

(11) A substantial objection to the granting of the license has been presented by the community within which the license is to operate, or that the granting of such license is otherwise not in the public interest. For the purposes of this subsection, the term "substantial

objection" shall include:

a. Any objection, or group of objections, presented to the Commissioner either individually or as a group, by persons who reside within the election district where the license is to operate and all contiguous election districts, sufficient to give the Commissioner reason to believe that a majority of the residents of the community within which the license is to operate oppose the issuance of the license; or

b. Any objection, or group of objections, presented to the Commissioner either individually or as a group, the content of which gives the Commissioner reason to believe the quality of life of the community within which the license is to operate will be adversely affected by the granting of the license.

(c) The Commissioner may refuse to grant a license to sell alcoholic liquor to any new establishment to be located in the vicinity of a church, school or college. The Commissioner may issue a license to any establishment located in the vicinity of a church, school or college when such establishment has been located in a place prior to the time any church, school or college may thereafter be located in the vicinity of such establishment.

(d) The Commissioner shall refuse to grant a license for the sale of alcoholic liquor by any store, or establishment for consumption off the premises, when there is an existing licensed establishment of similar type within a ½ mile by accessible public road or street in any incorporated city or town, or within 3 miles by accessible public road or street in any unincorporated or rural area measured in driving distance both ways between the existing and proposed establishments. This subsection does not apply to any of the following:

(1) An existing license or to the sale, transfer of ownership, or renewal of an existing license.

(2) A club licensed to sell off the premises where sold, farm winery, brewery-pub, microbrewery, or craft distillery.

(3) A licensee who desires to move the location of the license to a location within 500 feet thereof by accessible public road or street. However, a licensee located in a shopping center or shopping mall may move the location of the license any distance within the same shopping center or shopping mall, whether such center or mall consist of 1 or more than 1 separate buildings.

(4) [Repealed.]

(e) The Commissioner may grant a new license to a licensee who desires to move the location of the license due to the destruction of the building, loss of lease, diversion of highway traffic pattern, or similar reason beyond the control of the licensee, if the application meets all of the following:

(1) The requirements under subsection (d) of this section and all other requirements under this title.

(2) The location to which the licensee proposes to move meets either of the following:

a. If in an incorporated city or town, is within 500 feet of the existing location of the licensee.

b. If in an unincorporated or rural area, is within a ½ mile by accessible public road or street of the existing location of the licensee.

(f) (1) The Commissioner shall refuse to grant a license to sell alcoholic liquor to any restaurant or eating place located on or a part of the Delaware Turnpike.

(2) The Commissioner shall refuse to grant a license to sell alcoholic liquor to any new store located in an unincorporated area on or along any state highway listed in § 701(d) of Title 21 within 1½ miles of a Department of Motor Vehicles' facility on or along the same state highway.

(g) [Repealed.]

(h) Any existing restaurant which was licensed by the State to permit the sale of alcoholic beverages and which was in compliance with applicable state, county or municipal laws and regulations as of June 14, 1991 shall be permitted to continue to operate in the same manner as it was operating on said date so long as said license is in effect, notwithstanding any ordinance or other restriction subsequently enacted by a municipal corporation.

(i) The Commissioner shall refuse to grant a license for the sale of alcoholic liquor by any beer garden, taproom, or tavern establishment when there is an existing licensed establishment of any of these types within 1200 feet by accessible public road or street in any incorporated city or town, or within $^{9}/_{10}$ of a mile by accessible public road or street in any unincorporated or rural area measured in driving distance both ways between the existing and proposed establishments. This subsection does not apply to any of the following:

(1) An existing license or to the sale, transfer of ownership, or renewal of an existing license.

(2) A licensee who desires to move the location of the license to a location within 500 feet thereof by accessible public road or street. However, a licensee located in a shopping center or shopping mall may move the location of the license any distance within the same shopping center or shopping mall, whether the center or mall consists of 1 or more separate buildings.

(j) The Commissioner shall not grant a new license of any type and shall not grant an extension of premises of an existing license of any type unless the application for said new license or for said extension is accompanied by a Certificate of Compliance from the appropriate political subdivision showing:

(1) That the premises where the license is to be used are properly zoned for the applicant's intended use; and

(2) That all necessary permits have been approved; and

(3) That the applicant has complied with all other applicable licensing requirements of the appropriate political subdivision.

This subsection shall not apply to any application for a temporary extension of premises as authorized by Commissioner rule; provided, that any such application has not been objected to by the appropriate political subdivision which shall be provided with notice of the application by the applicant within 7 days of the date the application is filed with the Commissioner.

This subsection shall not apply to any extension of premises of an existing license granted by the Commissioner pursuant to § 524(i) of this title even if the State of Emergency is no longer in effect.

(38 Del. Laws, c. 18, §§ 22, 24; Code 1935, §§ 6151, 6153; 4 Del. C. 1953, § 543; 54 Del. Laws, c. 324; 54 Del. Laws, c. 377, § 2; 55 Del. Laws, c. 116, § 1; 55 Del. Laws, c. 283, § 2; 55 Del. Laws, c. 342, §§ 1, 2; 55 Del. Laws, c. 446; 56 Del. Laws, c. 34; 57 Del. Laws, c. 708; 58 Del. Laws, c. 542; 59 Del. Laws, c. 107, §§ 34-37; 61 Del. Laws, c. 145, § 1; 63 Del. Laws, c. 373, § 1; 64 Del. Laws, c. 430, § 1; 66 Del. Laws, c. 178, § 1; 67 Del. Laws, c. 109, § 15; 68 Del. Laws, c. 44, §§ 1, 2; 69 Del. Laws, c. 338, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 435, §§ 4, 5; 72 Del. Laws, c. 157, § 1; 72 Del. Laws, c. 486, § 9; 78 Del. Laws, c. 285, § 21; 82 Del. Laws, c. 98, § 1; 82 Del. Laws, c. 247, §§ ? 3, 5; 83 Del. Laws, c. 9, § 3; 83 Del. Laws, c. 9, § 5; 83 Del. Laws, c. 56, § 106; 83 Del. Laws, c. 176, § 1; 83 Del. Laws, c. 284, § 3; 83 Del. Laws, c. 287, § 1; 84 Del. Laws, c. 37, § 2; 84 Del. Laws, c. 42, § 1.)

§ 544 Finality of Commissioner's decision refusing license.

If an application is not timely protested, but the Commissioner determines that the application should nevertheless be denied, the Commissioner shall render the decision promptly in writing. The Commissioner's decision shall be final and conclusive unless, within 30 days after notice thereof has been mailed by the Commissioner's office, the applicant files an appeal in the office of the Commissioner. The appeal shall follow the procedure outlined in § 541 of this title.

(38 Del. Laws, c. 18, § 22; Code 1935, § 6151; 45 Del. Laws, c. 262, § 1; 4 Del. C. 1953, § 544; 59 Del. Laws, c. 107, § 38; 72 Del. Laws, c. 486, § 9; 73 Del. Laws, c. 133, § 3.)

§ 545 Improvements to premises.

The Commissioner may not require an applicant to make improvements to the premises before the issuance of a license; however, the Commissioner may issue a license to sell alcoholic liquor upon the condition that certain improvements shall be made to the premises.

(4 Del. C. 1953, § 545; 55 Del. Laws, c. 291; 59 Del. Laws, c. 107, § 39; 72 Del. Laws, c. 486, § 9.)

§ 546 Limit on number of retail licenses.

(a) The General Assembly finds that, in order for the Delaware Alcoholic Beverage Control Commissioner to maintain effective control of the importation, distribution and sale of alcoholic liquor into and within this State, and in order to prevent geographical price fixing of alcoholic liquor at the retail level, there shall be a limitation placed on the number of retail licenses issued, held, controlled or acquired directly or indirectly by 1 person. The General Assembly further finds that a limitation on the number of retail licenses held by 1 person is necessary to ensure a stable system for the lawful distribution of alcoholic liquor, serve the public need and convenience and prevent the public harm associated with a monopoly of the retail alcoholic liquor trade by any person or group of persons, whether such licenses are held by a corporation, partnership, association, proprietorship, individual or other entity. The General Assembly further finds that a reasonable restriction on the number of retail licenses held by 1 person will further the State's interest in maintaining a 3-tier system for the importation, distribution and sale of alcoholic liquor by minimizing or limiting absentee ownership and the domination of retail establishments by suppliers, manufacturers, importers or other economically powerful interests.

Therefore, it is declared to be the public policy of this State that limitations, as hereinafter specified, be placed on the number of retail licenses that any person may at 1 time hold, directly or indirectly, and that the Commissioner shall actively supervise and enforce these limitations.

(b) The Commissioner shall refuse to grant a license for the sale of alcoholic liquor by any restaurant, taproom, hotel, store or other establishment for consumption off the premises where sold if the Commissioner has substantial evidence that would reasonably support a belief that the applicant, or any of the applicant's directors, officers or shareholders, or any of the applicant's partners, corporations, proprietorships or other legal entities engaged in any undertaking, industry or business is singularly, or in combination with the applicant, the holder of 2 or more retail licenses, or has any financial, pecuniary, beneficial, management, supervisory or other interest whatsoever, direct or indirect, and however small, in 2 or more retail licenses; provided, however, that nothing herein shall require any person who, prior to April 1, 1992, acquired an interest in more than 2 retail licenses to surrender, dispose of, or release their interest in any such license; nor shall anything herein affect such person's right to continue to hold, use and renew any such license.

(c) For the purposes of this section, a person shall be deemed to acquire a financial, pecuniary, beneficial, management, supervisory or other interest in a retail license to purchase and re-sell or dispense alcoholic liquor if such person or person's spouse or child under 21 years of age has either (i) any interest whatsoever, direct or indirect, and however small, as a director, officer, shareholder, partner, associate, employee or member in any corporation, partnership, association, proprietorship or other entity engaged in any undertaking, industry or business which holds a retail license pursuant to this chapter, or (ii) any authority whatsoever to supervise, manage, control or direct the operation of the licensee's business, or to hire, terminate or discipline its employees, or to issue any orders, policies or directives concerning its business; provided, however, that any person whose relationship with the licensee is, as determined by the Commissioner, merely that of a bona fide lender, lending institution, secured party or lienholder, or merely that of a bona fide landlord or lessor of real or personal property, shall not, for the purposes of this section, be deemed to acquire a financial, pecuniary, beneficial, management, supervisory or other interest in such license.

(d) The Commissioner may promulgate such rules and regulations with respect to the enforcement and furtherance of the objectives and provisions of this section as it may deem necessary, and all such rules and regulations that are not inconsistent with provisions of this title and the Delaware Code shall have the force and effect of law.

(68 Del. Laws, c. 376, § 1; 72 Del. Laws, c. 486, § 9.)

Subchapter IV
Certificate of License, Term of License and Fees

§ 551 Issuance of certificate.

If the Commissioner grants the license and payment therefor has been made, a certificate to that effect shall be issued. The certificate shall set forth the name, the kind of license granted, the date of expiration of the license, and if a license to manufacture or to sell or to keep in stock, the place or places in which it is to be manufactured, sold or kept.

(38 Del. Laws, c. 18, § 23; Code 1935, § 6152; 4 Del. C. 1953, § 551; 59 Del. Laws, c. 107, § 40; 72 Del. Laws, c. 486, § 9.)

§ 552 Term and expiration date of licenses.

All licenses issued under this title shall be valid for a period of 2 years, unless it is specifically stated in this title or by the Commissioner to be for a shorter period of time, or unless the license shall be cancelled, revoked or suspended by the Commissioner, or unless the license shall be surrendered by the licensee, or unless the license shall expire. The Commissioner shall determine the precise dates of the validity of a license issued under this title. A license issued by the Commissioner, which is not a renewal of a former license, within 3 months of the date the license would have to be renewed under the rules of the Commissioner may be made to terminate by the Commissioner 2 years after the first applicable biennial expiration date.

(38 Del. Laws, c. 18, § 25; Code 1935, § 6154; 4 Del. C. 1953, § 552; 57 Del. Laws, c. 404, § 3; 67 Del. Laws, c. 273, §§ 1, 26; 72 Del. Laws, c. 486, § 9.)

§ 553 Rate of payment for license issued for other than 2 years.

A license issued for a time other than 2 years shall be paid for when issued at the rate of one twenty-fourth of the biennial fee for each month of the term.

(38 Del. Laws, c. 18, § 25; Code 1935, § 6154; 4 Del. C. 1953, § 553; 67 Del. Laws, c. 273, §§ 2, 3.)

§ 554 License fees [Effective until Aug. 15, 2026].

(a) For a license to sell alcoholic liquor in a hotel or restaurant the biennial license fee shall be $1,000.

(b) For a license to sell alcoholic liquor on a boat the biennial license fee shall be $1,000.

(c) For a license to sell alcoholic liquor in the passenger cars of a railroad the biennial license fee shall be $600 for each railroad.

(d) For a license to sell alcoholic liquor in a club, to members of that club, the biennial license fee shall be $300 if the club has an active membership in good standing of less than 400 members; or $600 if the club has an active membership in good standing of 400 or more members.

(e) For a license to sell beer and/or wine only in a restaurant the biennial license fee shall be $500.

(f) For a license to sell beer only in a tavern the biennial license fee shall be $500.

(g) For a license to sell alcoholic liquors in a taproom the biennial license fee shall be $1,000.

(h) For a license to sell alcoholic liquor from a hotel, restaurant, taproom, or store, not for consumption on the premises, the biennial license fee shall be $1,000.

(i) For a license to sell alcoholic liquors at gatherings of persons, the license fee shall be as follows:

(1) For a group-type gathering license, the license fee shall be $5.00 for each such license granted, unless the said license shall be for a period of more than 2 days in which case the license fee shall be $5.00 plus the additional sum of $2.00 for each such additional day or unless the said license shall be for a Sunday, Thanksgiving, Christmas, or Easter, in which case the license fee shall be an additional $5.00 for each such day.

(2) *Biennial license.* — a. For a biennial premises type gathering license for a facility in which not more than 25 gatherings of persons at which alcoholic liquors are to be sold are to be held, the biennial license fee shall be $200.

b. For a biennial premises type gathering license for a facility in which more than 25 but not more than 75 such gatherings of persons are to be held, the biennial license fee shall be $400.

c. For a biennial premises type gathering license for a facility in which more than 75 such gatherings of persons are to be held, the biennial license fee shall be $1,000.

d. For the holder of a biennial premises type gathering license to sell alcoholic liquor on a Sunday, Thanksgiving, Christmas, or Easter, the biennial license fee shall be:

1. An additional $200 for a license issued pursuant to paragraph (i)(2)a. of this section;
2. An additional $300 for a license issued pursuant to paragraph (i)(2)b. of this section; and
3. An additional $400 for a license issued pursuant to paragraph (i)(2)c. of this section.

(j) For a license to “manufacture” and to “sell” beer and cider, the biennial license fee shall be based upon annual production and shall be computed as follows: $1,500 for a brewery or microbrewery manufacturing not more than 25,000 barrels of beer and cider per year; $3,000 for a microbrewery or brewery manufacturing more than 25,000 but not more than 50,000 barrels of beer and cider per year; $6,000 for a microbrewery or brewery manufacturing more than 50,000 but not more than 100,000 barrels of beer and cider per year; and $9,000 for a microbrewery or brewery manufacturing more than 100,000 barrels of beer and cider per year.

(k) For a license to operate a distillery for distillation or rectification, the biennial license fee shall be based upon annual production and shall be computed as follows: For the first 500 gallons, $100; for the next 5,000 gallons, or fraction thereof, at the rate of 6 cents per gallon; for the next 10,000 gallons, or fraction thereof, at the rate of 4.5 cents per gallon; for the next 50,000 gallons, or fraction thereof, at the rate of 3 cents per gallon; for the next 100,000 gallons, or fraction thereof, at the rate of 1.5 cents per gallon; for each gallon in excess of 165,500 gallons, at the rate of three quarters cent per gallon.

(*l*) For a license to bottle beer the biennial license fee shall be $100 for the first 500 barrels or less, and $100 for each additional 500 barrels, or fraction, bottled.

(m) For a license to operate a winery or to bottle and sell wine the biennial license fee shall be $1,500.

(n) For a license to import or to ship alcoholic liquor, other than beer and wine, into this State and to sell and deliver such alcoholic liquor as provided in this chapter the biennial license fee shall be $7,500; but a sale and delivery of alcoholic liquor to pharmacists, physicians, dentists, veterinarians, wholesale druggists, manufacturing plants where the alcohol is used in scientific work, or for the manufacture of pharmaceutical products shall not be subject to the license fee.

(o) For a license to import or to ship beer into this State and to sell and deliver such beer the biennial license fee shall be $3,000; and for a license to import or to ship unlimited amounts of wine into this State and to sell and deliver such wine the biennial license fee shall be $3,000. A license for a limited wine importer, an importer that imports, sells and delivers less than 1000 cases of wine per year, shall be $200. A limited wine importer need not pay the application fee required by subsection (x) of this section.

(p) For a license to sell alcoholic liquor as an off-site caterer the biennial license fee shall be $500.

(q) For a license to transport a stock of alcoholic liquor from the place where sale or storage of such stock has been authorized to another location, the license fee shall be fixed by the Commissioner.

(r) For a license to purchase sacramental wine, no license fee shall be charged.

(s) For a temporary license, the license fee shall be not less than $^1/_2$ nor more than double the amount of the annual license fee for a regular license for the same privilege, in the discretion of the Commissioner.

(t) For a license to sell alcoholic liquor at a horse racetrack the biennial license fee shall be $3,000.

(u) For a license to sell alcoholic liquor at a motorsports speedway the biennial license fee shall be $3,000.

(v) For license to sell alcoholic liquors as a ship's chandler the biennial license fee shall be $1,000.

(w) For a license for a multiple activity club to sell alcoholic beverages to any person who is a member of such club or a guest of a member of such club, the biennial license fee shall be $1,500.

(x) *Application process fee.* — If any application for a license under this title requires any investigation by the staff or a hearing by the Commissioner before the Commissioner reaches a decision on the application, the applicant shall pay an application process fee of $1,000 in addition to any other fees required by this title or the rules of the Commissioner. The application process fee is not refundable regardless of the decision of the Commissioner. This provision for an application process fee does not apply to a gathering of persons under § 514 of this title, a limited suppliers license issued pursuant to § 501 of this title, a license to sell on Sunday, and a tasting permit. This provision for an application process fee shall not apply to applications for change of officers, directors or stockholders of a corporate licensee if there is no change in the majority of stockholders or majority of directors. Six hundred dollars of the application process fee shall be retained by the Commissioner and deposited in a special fund for the sole purpose of providing for the implementation, administration and enforcement of the Delaware Responsible Alcoholic Beverage Server Training Program established pursuant to Chapter 12 of this title.

(y) For a license to sell alcoholic liquor in a dinner theater the biennial license fee shall be $1,000.

(z) For a license to sell alcoholic liquors as a caterer for consumption on the premises where sold the biennial license fee shall be $1,000.

(aa) For a license as a "bottle club" authorized by § 515A of this title the biennial license fee shall be $300.

(bb) For a license to sell alcoholic liquors in a cabaret the biennial license fee shall be $2,000.

(cc) For a license as an air passenger carrier, as defined in § 512(i) of this title, the biennial license fee shall be $1,000.

(dd) For a license to conduct wine auctions the biennial license fee shall be $1,500. For a gathering license to conduct a wine auction by a nonprofit organization the fee shall be $50 per event.

(ee) For a license to permit spirits, wine and beer tasting the biennial license fee shall be $150.

(ff) For a farm winery license the biennial license fee shall be $1,500.

(gg) For a brewery-pub license the biennial license fee shall be $2,000.

(hh) For a license to sell alcoholic liquors at a multi-purpose sports facility the biennial license fee shall be $3,000.

(ii) For a license to sell alcoholic liquors at a bowling alley the biennial license fee shall be $1,000.

(jj) For a license as a "direct shipper" as provided in § 526 of Title 4 the biennial license fee shall be $100.

(kk) Each of the licensees identified in subsections (a)-(h), (t)-(w), (y), (z), (bb), (cc), (dd), (ff), (gg), (hh), (ii), (mm), and (qq) of this section, shall pay an additional annual fee of $100. The Commissioner shall deposit said funds into a special account designated as the "Overservice Investigation Fund." Said fund shall be utilized by the Division of Alcohol and Tobacco Enforcement to pay overtime to its agents and/or to hire and equip additional agents for the purpose of investigating and prosecuting licensees that serve intoxicated individuals.

(*ll*) For a permit to sell alcoholic liquors on a patio, the biennial fee shall be $1,000. If the holder of a patio permit desires a variance to Rule 42.1 [4 DE Admin. Code § 704, formerly Rule 42.1], or a subsequently adopted rule, the biennial variance permit fee shall be $100

per variance.

(mm) For a license to sell alcoholic liquor in a concert hall the biennial fee shall be $1,500.

(nn) For a license as a "craft distillery" as provided in § 512E of this title the biennial license fee shall be $1,500.

(oo) For a "temporary large event" license as provided in § 512F of this title, the fee shall be $500 for each temporary large event and no application process fee as permitted under subsection (x) of this section shall be assessed.

(pp) For a growler filler permit as provided in § 516(a) of this title, the biennial license fee shall be $150.

(qq) For a license to sell alcoholic liquor in a movie theater the biennial fee shall be $1,500.

(rr) For a license to sell alcoholic liquor in a beer garden, the biennial fee shall be $2,000. The holder of a beer garden license is not required to have a patio permit, but if the beer garden license holder desires a variance to Rule 42.1 (4 DE Admin. Code § 704, formerly Rule 42.1), or a subsequently adopted rule, the biennial variance permit fee shall be $100 per variance.

(ss) For a license to provide third-party delivery services as provided in § 512 of this title, the biennial fee shall be $1,000.

(38 Del. Laws, c. 18, § 30; 39 Del. Laws, c. 6; Code 1935, § 6159; 41 Del. Laws, c. 247, § 1; 41 Del. Laws, c. 248, §§ 1, 2; 42 Del. Laws, c. 191, § 4; 44 Del. Laws, c. 203, § 5; 4 Del. C. 1953, § 555; 49 Del. Laws, c. 341; 49 Del. Laws, c. 342, §§ 1-12; 50 Del. Laws, c. 424, §§ 1, 2; 54 Del. Laws, c. 377, § 3; 55 Del. Laws, c. 82, §§ 4, 5; 55 Del. Laws, c. 283, § 3; 55 Del. Laws, c. 416, §§ 1-3; 56 Del. Laws, c. 311, § 4; 56 Del. Laws, c. 335, §§ 6-8; 57 Del. Laws, c. 404, § 4; 57 Del. Laws, c. 448; 59 Del. Laws, c. 107, § 42; 60 Del. Laws, c. 466, §§ 4-6; 63 Del. Laws, c. 232, § 4; 64 Del. Laws, c. 436, § 1; 64 Del. Laws, c. 437, § 2; 65 Del. Laws, c. 152, § 1; 65 Del. Laws, c. 283, § 3; 67 Del. Laws, c. 109, § 16; 67 Del. Laws, c. 273, §§ 4-22; 68 Del. Laws, c. 107, § 2; 68 Del. Laws, c. 168, § 2; 68 Del. Laws, c. 205, § 2; 69 Del. Laws, c. 6, § 4; 70 Del. Laws, c. 353, § 3; 71 Del. Laws, c. 182, § 2; 71 Del. Laws, c. 211, § 4; 71 Del. Laws, c. 383, § 3; 72 Del. Laws, c. 486, § 9; 73 Del. Laws, c. 244, § 9; 73 Del. Laws, c. 393, § 3; 75 Del. Laws, c. 80, § 9; 75 Del. Laws, c. 253, §§ 1, 2; 77 Del. Laws, c. 72, § 1; 78 Del. Laws, c. 220, § 3; 78 Del. Laws, c. 251, § 2; 79 Del. Laws, c. 6, § 3; 79 Del. Laws, c. 23, § 2; 79 Del. Laws, c. 308, § 3; 80 Del. Laws, c. 62, § 1; 81 Del. Laws, c. 69, § 3; 81 Del. Laws, c. 79, § 1; 84 Del. Laws, c. 442, § 2.)

§ 554 License fees [Effective Aug. 15, 2026; Effective until Aug. 15, 2030].

(a) For a license to sell alcoholic liquor in a hotel or restaurant the biennial license fee shall be $1,000.

(b) For a license to sell alcoholic liquor on a boat the biennial license fee shall be $1,000.

(c) For a license to sell alcoholic liquor in the passenger cars of a railroad the biennial license fee shall be $600 for each railroad.

(d) For a license to sell alcoholic liquor in a club, to members of that club, the biennial license fee shall be $300 if the club has an active membership in good standing of less than 400 members; or $600 if the club has an active membership in good standing of 400 or more members.

(e) For a license to sell beer and/or wine only in a restaurant the biennial license fee shall be $500.

(f) For a license to sell beer only in a tavern the biennial license fee shall be $500.

(g) For a license to sell alcoholic liquors in a taproom the biennial license fee shall be $1,000.

(h) For a license to sell alcoholic liquor from a hotel, restaurant, taproom, or store, not for consumption on the premises, the biennial license fee shall be $1,000.

(i) For a license to sell alcoholic liquors at gatherings of persons, the license fee shall be as follows:

(1) For a group-type gathering license, the license fee shall be $5.00 for each such license granted, unless the said license shall be for a period of more than 2 days in which case the license fee shall be $5.00 plus the additional sum of $2.00 for each such additional day or unless the said license shall be for a Sunday, Thanksgiving, Christmas, or Easter, in which case the license fee shall be an additional $5.00 for each such day.

(2) *Biennial license.* — a. For a biennial premises type gathering license for a facility in which not more than 25 gatherings of persons at which alcoholic liquors are to be sold are to be held, the biennial license fee shall be $200.

b. For a biennial premises type gathering license for a facility in which more than 25 but not more than 75 such gatherings of persons are to be held, the biennial license fee shall be $400.

c. For a biennial premises type gathering license for a facility in which more than 75 such gatherings of persons are to be held, the biennial license fee shall be $1,000.

d. For the holder of a biennial premises type gathering license to sell alcoholic liquor on a Sunday, Thanksgiving, Christmas, or Easter, the biennial license fee shall be:

1. An additional $200 for a license issued pursuant to paragraph (i)(2)a. of this section;
2. An additional $300 for a license issued pursuant to paragraph (i)(2)b. of this section; and
3. An additional $400 for a license issued pursuant to paragraph (i)(2)c. of this section.

(j) For a license to "manufacture" and to "sell" beer and cider, the biennial license fee shall be based upon annual production and shall be computed as follows: $1,500 for a brewery or microbrewery manufacturing not more than 25,000 barrels of beer and cider per year; $3,000 for a microbrewery or brewery manufacturing more than 25,000 but not more than 50,000 barrels of beer and cider per year; $6,000 for a microbrewery or brewery manufacturing more than 50,000 but not more than 100,000 barrels of beer and cider per year; and $9,000 for a microbrewery or brewery manufacturing more than 100,000 barrels of beer and cider per year.

(k) For a license to operate a distillery for distillation or rectification, the biennial license fee shall be based upon annual production and shall be computed as follows: For the first 500 gallons, $100; for the next 5,000 gallons, or fraction thereof, at the rate of 6 cents per gallon; for the next 10,000 gallons, or fraction thereof, at the rate of 4.5 cents per gallon; for the next 50,000 gallons, or fraction thereof, at the rate of 3 cents per gallon; for the next 100,000 gallons, or fraction thereof, at the rate of 1.5 cents per gallon; for each gallon in excess of

165,500 gallons, at the rate of three quarters cent per gallon.

(*l*) For a license to bottle beer the biennial license fee shall be $100 for the first 500 barrels or less, and $100 for each additional 500 barrels, or fraction, bottled.

(m) For a license to operate a winery or to bottle and sell wine the biennial license fee shall be $1,500.

(n) For a license to import or to ship alcoholic liquor, other than beer and wine, into this State and to sell and deliver such alcoholic liquor as provided in this chapter the biennial license fee shall be $7,500; but a sale and delivery of alcoholic liquor to pharmacists, physicians, dentists, veterinarians, wholesale druggists, manufacturing plants where the alcohol is used in scientific work, or for the manufacture of pharmaceutical products shall not be subject to the license fee.

(o) For a license to import or to ship beer into this State and to sell and deliver such beer the biennial license fee shall be $3,000; and for a license to import or to ship unlimited amounts of wine into this State and to sell and deliver such wine the biennial license fee shall be $3,000. A license for a limited wine importer, an importer that imports, sells and delivers less than 1000 cases of wine per year, shall be $200. A limited wine importer need not pay the application fee required by subsection (x) of this section.

(p) For a license to sell alcoholic liquor as an off-site caterer the biennial license fee shall be $500.

(q) For a license to transport a stock of alcoholic liquor from the place where sale or storage of such stock has been authorized to another location, the license fee shall be fixed by the Commissioner.

(r) For a license to purchase sacramental wine, no license fee shall be charged.

(s) For a temporary license, the license fee shall be not less than $^1/_2$ nor more than double the amount of the annual license fee for a regular license for the same privilege, in the discretion of the Commissioner.

(t) For a license to sell alcoholic liquor at a horse racetrack the biennial license fee shall be $3,000.

(u) For a license to sell alcoholic liquor at a motorsports speedway the biennial license fee shall be $3,000.

(v) For license to sell alcoholic liquors as a ship's chandler the biennial license fee shall be $1,000.

(w) For a license for a multiple activity club to sell alcoholic beverages to any person who is a member of such club or a guest of a member of such club, the biennial license fee shall be $1,500.

(x) *Application process fee.* — If any application for a license under this title requires any investigation by the staff or a hearing by the Commissioner before the Commissioner reaches a decision on the application, the applicant shall pay an application process fee of $1,000 in addition to any other fees required by this title or the rules of the Commissioner. The application process fee is not refundable regardless of the decision of the Commissioner. This provision for an application process fee does not apply to a gathering of persons under § 514 of this title, a limited suppliers license issued pursuant to § 501 of this title, a license to sell on Sunday, and a tasting permit. This provision for an application process fee shall not apply to applications for change of officers, directors or stockholders of a corporate licensee if there is no change in the majority of stockholders or majority of directors. Six hundred dollars of the application process fee shall be retained by the Commissioner and deposited in a special fund for the sole purpose of providing for the implementation, administration and enforcement of the Delaware Responsible Alcoholic Beverage Server Training Program established pursuant to Chapter 12 of this title.

(y) For a license to sell alcoholic liquor in a dinner theater the biennial license fee shall be $1,000.

(z) For a license to sell alcoholic liquors as a caterer for consumption on the premises where sold the biennial license fee shall be $1,000.

(aa) For a license as a "bottle club" authorized by § 515A of this title the biennial license fee shall be $300.

(bb) For a license to sell alcoholic liquors in a cabaret the biennial license fee shall be $2,000.

(cc) For a license as an air passenger carrier, as defined in § 512(i) of this title, the biennial license fee shall be $1,000.

(dd) For a license to conduct wine auctions the biennial license fee shall be $1,500. For a gathering license to conduct a wine auction by a nonprofit organization the fee shall be $50 per event.

(ee) For a license to permit spirits, wine and beer tasting the biennial license fee shall be $150.

(ff) For a farm winery license the biennial license fee shall be $1,500.

(gg) For a brewery-pub license the biennial license fee shall be $2,000.

(hh) For a license to sell alcoholic liquors at a multi-purpose sports facility the biennial license fee shall be $3,000.

(ii) For a license to sell alcoholic liquors at a bowling alley the biennial license fee shall be $1,000.

(jj) For a license as a "direct shipper" as provided in § 526 of this title, the biennial license fee shall be $400, unless the direct shipper licensee ships more than 200 cases annually to residents of this State, in which case the biennial license fee shall be $3,600.

(kk) Each of the licensees identified in subsections (a)-(h), (t)-(w), (y), (z), (bb), (cc), (dd), (ff), (gg), (hh), (ii), (mm), and (qq) of this section, shall pay an additional annual fee of $100. The Commissioner shall deposit said funds into a special account designated as the "Overservice Investigation Fund." Said fund shall be utilized by the Division of Alcohol and Tobacco Enforcement to pay overtime to its agents and/or to hire and equip additional agents for the purpose of investigating and prosecuting licensees that serve intoxicated individuals.

(*ll*) For a permit to sell alcoholic liquors on a patio, the biennial fee shall be $1,000. If the holder of a patio permit desires a variance to Rule 42.1 [4 DE Admin. Code § 704, formerly Rule 42.1], or a subsequently adopted rule, the biennial variance permit fee shall be $100 per variance.

(mm) For a license to sell alcoholic liquor in a concert hall the biennial fee shall be $1,500.

(nn) For a license as a "craft distillery" as provided in § 512E of this title the biennial license fee shall be $1,500.

(oo) For a "temporary large event" license as provided in § 512F of this title, the fee shall be $500 for each temporary large event and no application process fee as permitted under subsection (x) of this section shall be assessed.

(pp) For a growler filler permit as provided in § 516(a) of this title, the biennial license fee shall be $150.

(qq) For a license to sell alcoholic liquor in a movie theater the biennial fee shall be $1,500.

(rr) For a license to sell alcoholic liquor in a beer garden, the biennial fee shall be $2,000. The holder of a beer garden license is not required to have a patio permit, but if the beer garden license holder desires a variance to Rule 42.1 (4 DE Admin. Code § 704, formerly Rule 42.1), or a subsequently adopted rule, the biennial variance permit fee shall be $100 per variance.

(ss) For a license to provide third-party delivery services as provided in § 512 of this title, the biennial fee shall be $1,000.

(tt) For a common carrier license to transport wine from a wine direct shipper licensee to a household in this State, the biennial license fee shall be $500.

(38 Del. Laws, c. 18, § 30; 39 Del. Laws, c. 6; Code 1935, § 6159; 41 Del. Laws, c. 247, § 1; 41 Del. Laws, c. 248, §§ 1, 2; 42 Del. Laws, c. 191, § 4; 44 Del. Laws, c. 203, § 5; 4 Del. C. 1953, § 555; 49 Del. Laws, c. 341; 49 Del. Laws, c. 342, §§ 1-12; 50 Del. Laws, c. 424, §§ 1, 2; 54 Del. Laws, c. 377, § 3; 55 Del. Laws, c. 82, §§ 4, 5; 55 Del. Laws, c. 283, § 3; 55 Del. Laws, c. 416, §§ 1-3; 56 Del. Laws, c. 311, § 4; 56 Del. Laws, c. 335, §§ 6-8; 57 Del. Laws, c. 404, § 4; 57 Del. Laws, c. 448; 59 Del. Laws, c. 107, § 42; 60 Del. Laws, c. 466, §§ 4-6; 63 Del. Laws, c. 232, § 4; 64 Del. Laws, c. 436, § 1; 64 Del. Laws, c. 437, § 2; 65 Del. Laws, c. 152, § 1; 65 Del. Laws, c. 283, § 3; 67 Del. Laws, c. 109, § 16; 67 Del. Laws, c. 273, §§ 4-22; 68 Del. Laws, c. 107, § 2; 68 Del. Laws, c. 168, § 2; 68 Del. Laws, c. 205, § 2; 69 Del. Laws, c. 6, § 4; 70 Del. Laws, c. 353, § 3; 71 Del. Laws, c. 182, § 2; 71 Del. Laws, c. 211, § 4; 71 Del. Laws, c. 383, § 3; 72 Del. Laws, c. 486, § 9; 73 Del. Laws, c. 244, § 9; 73 Del. Laws, c. 393, § 3; 75 Del. Laws, c. 80, § 9; 75 Del. Laws, c. 253, §§ 1, 2; 77 Del. Laws, c. 72, § 1; 78 Del. Laws, c. 220, § 3; 78 Del. Laws, c. 251, § 2; 79 Del. Laws, c. 6, § 3; 79 Del. Laws, c. 23, § 2; 79 Del. Laws, c. 308, § 3; 80 Del. Laws, c. 62, § 1; 81 Del. Laws, c. 69, § 3; 81 Del. Laws, c. 79, § 1; 84 Del. Laws, c. 442, § 2; 85 Del. Laws, c. 139, § 3.)

§ 554 License fees [Effective Aug. 15, 2030].

(a) For a license to sell alcoholic liquor in a hotel or restaurant the biennial license fee shall be $1,000.

(b) For a license to sell alcoholic liquor on a boat the biennial license fee shall be $1,000.

(c) For a license to sell alcoholic liquor in the passenger cars of a railroad the biennial license fee shall be $600 for each railroad.

(d) For a license to sell alcoholic liquor in a club, to members of that club, the biennial license fee shall be $300 if the club has an active membership in good standing of less than 400 members; or $600 if the club has an active membership in good standing of 400 or more members.

(e) For a license to sell beer and/or wine only in a restaurant the biennial license fee shall be $500.

(f) For a license to sell beer only in a tavern the biennial license fee shall be $500.

(g) For a license to sell alcoholic liquors in a taproom the biennial license fee shall be $1,000.

(h) For a license to sell alcoholic liquor from a hotel, restaurant, taproom, or store, not for consumption on the premises, the biennial license fee shall be $1,000.

(i) For a license to sell alcoholic liquors at gatherings of persons, the license fee shall be as follows:

(1) For a group-type gathering license, the license fee shall be $5.00 for each such license granted, unless the said license shall be for a period of more than 2 days in which case the license fee shall be $5.00 plus the additional sum of $2.00 for each such additional day or unless the said license shall be for a Sunday, Thanksgiving, Christmas, or Easter, in which case the license fee shall be an additional $5.00 for each such day.

(2) *Biennial license.* — a. For a biennial premises type gathering license for a facility in which not more than 25 gatherings of persons at which alcoholic liquors are to be sold are to be held, the biennial license fee shall be $200.

b. For a biennial premises type gathering license for a facility in which more than 25 but not more than 75 such gatherings of persons are to be held, the biennial license fee shall be $400.

c. For a biennial premises type gathering license for a facility in which more than 75 such gatherings of persons are to be held, the biennial license fee shall be $1,000.

d. For the holder of a biennial premises type gathering license to sell alcoholic liquor on a Sunday, Thanksgiving, Christmas, or Easter, the biennial license fee shall be:

1. An additional $200 for a license issued pursuant to paragraph (i)(2)a. of this section;
2. An additional $300 for a license issued pursuant to paragraph (i)(2)b. of this section; and
3. An additional $400 for a license issued pursuant to paragraph (i)(2)c. of this section.

(j) For a license to "manufacture" and to "sell" beer and cider, the biennial license fee shall be based upon annual production and shall be computed as follows: $1,500 for a brewery or microbrewery manufacturing not more than 25,000 barrels of beer and cider per year; $3,000 for a microbrewery or brewery manufacturing more than 25,000 but not more than 50,000 barrels of beer and cider per year; $6,000 for a microbrewery or brewery manufacturing more than 50,000 but not more than 100,000 barrels of beer and cider per year; and $9,000 for a microbrewery or brewery manufacturing more than 100,000 barrels of beer and cider per year.

(k) For a license to operate a distillery for distillation or rectification, the biennial license fee shall be based upon annual production and shall be computed as follows: For the first 500 gallons, $100; for the next 5,000 gallons, or fraction thereof, at the rate of 6 cents per gallon; for the next 10,000 gallons, or fraction thereof, at the rate of 4.5 cents per gallon; for the next 50,000 gallons, or fraction thereof, at the rate of 3 cents per gallon; for the next 100,000 gallons, or fraction thereof, at the rate of 1.5 cents per gallon; for each gallon in excess of

165,500 gallons, at the rate of three quarters cent per gallon.

(*l*) For a license to bottle beer the biennial license fee shall be $100 for the first 500 barrels or less, and $100 for each additional 500 barrels, or fraction, bottled.

(m) For a license to operate a winery or to bottle and sell wine the biennial license fee shall be $1,500.

(n) For a license to import or to ship alcoholic liquor, other than beer and wine, into this State and to sell and deliver such alcoholic liquor as provided in this chapter the biennial license fee shall be $7,500; but a sale and delivery of alcoholic liquor to pharmacists, physicians, dentists, veterinarians, wholesale druggists, manufacturing plants where the alcohol is used in scientific work, or for the manufacture of pharmaceutical products shall not be subject to the license fee.

(o) For a license to import or to ship beer into this State and to sell and deliver such beer the biennial license fee shall be $3,000; and for a license to import or to ship unlimited amounts of wine into this State and to sell and deliver such wine the biennial license fee shall be $3,000. A license for a limited wine importer, an importer that imports, sells and delivers less than 1000 cases of wine per year, shall be $200. A limited wine importer need not pay the application fee required by subsection (x) of this section.

(p) For a license to sell alcoholic liquor as an off-site caterer the biennial license fee shall be $500.

(q) For a license to transport a stock of alcoholic liquor from the place where sale or storage of such stock has been authorized to another location, the license fee shall be fixed by the Commissioner.

(r) For a license to purchase sacramental wine, no license fee shall be charged.

(s) For a temporary license, the license fee shall be not less than $^1/_2$ nor more than double the amount of the annual license fee for a regular license for the same privilege, in the discretion of the Commissioner.

(t) For a license to sell alcoholic liquor at a horse racetrack the biennial license fee shall be $3,000.

(u) For a license to sell alcoholic liquor at a motorsports speedway the biennial license fee shall be $3,000.

(v) For license to sell alcoholic liquors as a ship's chandler the biennial license fee shall be $1,000.

(w) For a license for a multiple activity club to sell alcoholic beverages to any person who is a member of such club or a guest of a member of such club, the biennial license fee shall be $1,500.

(x) *Application process fee.* — If any application for a license under this title requires any investigation by the staff or a hearing by the Commissioner before the Commissioner reaches a decision on the application, the applicant shall pay an application process fee of $1,000 in addition to any other fees required by this title or the rules of the Commissioner. The application process fee is not refundable regardless of the decision of the Commissioner. This provision for an application process fee does not apply to a gathering of persons under § 514 of this title, a limited suppliers license issued pursuant to § 501 of this title, a license to sell on Sunday, and a tasting permit. This provision for an application process fee shall not apply to applications for change of officers, directors or stockholders of a corporate licensee if there is no change in the majority of stockholders or majority of directors. Six hundred dollars of the application process fee shall be retained by the Commissioner and deposited in a special fund for the sole purpose of providing for the implementation, administration and enforcement of the Delaware Responsible Alcoholic Beverage Server Training Program established pursuant to Chapter 12 of this title.

(y) For a license to sell alcoholic liquor in a dinner theater the biennial license fee shall be $1,000.

(z) For a license to sell alcoholic liquors as a caterer for consumption on the premises where sold the biennial license fee shall be $1,000.

(aa) For a license as a "bottle club" authorized by § 515A of this title the biennial license fee shall be $300.

(bb) For a license to sell alcoholic liquors in a cabaret the biennial license fee shall be $2,000.

(cc) For a license as an air passenger carrier, as defined in § 512(i) of this title, the biennial license fee shall be $1,000.

(dd) For a license to conduct wine auctions the biennial license fee shall be $1,500. For a gathering license to conduct a wine auction by a nonprofit organization the fee shall be $50 per event.

(ee) For a license to permit spirits, wine and beer tasting the biennial license fee shall be $150.

(ff) For a farm winery license the biennial license fee shall be $1,500.

(gg) For a brewery-pub license the biennial license fee shall be $2,000.

(hh) For a license to sell alcoholic liquors at a multi-purpose sports facility the biennial license fee shall be $3,000.

(ii) For a license to sell alcoholic liquors at a bowling alley the biennial license fee shall be $1,000.

(jj) For a license as a "direct shipper" as provided in § 526 of this title the biennial license fee shall be $100.

(kk) Each of the licensees identified in subsections (a)-(h), (t)-(w), (y), (z), (bb), (cc), (dd), (ff), (gg), (hh), (ii), (mm), and (qq) of this section, shall pay an additional annual fee of $100. The Commissioner shall deposit said funds into a special account designated as the "Overservice Investigation Fund." Said fund shall be utilized by the Division of Alcohol and Tobacco Enforcement to pay overtime to its agents and/or to hire and equip additional agents for the purpose of investigating and prosecuting licensees that serve intoxicated individuals.

(*ll*) For a permit to sell alcoholic liquors on a patio, the biennial fee shall be $1,000. If the holder of a patio permit desires a variance to Rule 42.1 [4 DE Admin. Code § 704, formerly Rule 42.1], or a subsequently adopted rule, the biennial variance permit fee shall be $100 per variance.

(mm) For a license to sell alcoholic liquor in a concert hall the biennial fee shall be $1,500.

(nn) For a license as a "craft distillery" as provided in § 512E of this title the biennial license fee shall be $1,500.

(oo) For a "temporary large event" license as provided in § 512F of this title, the fee shall be $500 for each temporary large event and no

application process fee as permitted under subsection (x) of this section shall be assessed.

(pp) For a growler filler permit as provided in § 516(a) of this title, the biennial license fee shall be $150.

(qq) For a license to sell alcoholic liquor in a movie theater the biennial fee shall be $1,500.

(rr) For a license to sell alcoholic liquor in a beer garden, the biennial fee shall be $2,000. The holder of a beer garden license is not required to have a patio permit, but if the beer garden license holder desires a variance to Rule 42.1 (4 DE Admin. Code § 704, formerly Rule 42.1), or a subsequently adopted rule, the biennial variance permit fee shall be $100 per variance.

(ss) For a license to provide third-party delivery services as provided in § 512 of this title, the biennial fee shall be $1,000.

(tt) [Repealed.]

(38 Del. Laws, c. 18, § 30; 39 Del. Laws, c. 6; Code 1935, § 6159; 41 Del. Laws, c. 247, § 1; 41 Del. Laws, c. 248, §§ 1, 2; 42 Del. Laws, c. 191, § 4; 44 Del. Laws, c. 203, § 5; 4 Del. C. 1953, § 555; 49 Del. Laws, c. 341; 49 Del. Laws, c. 342, §§ 1-12; 50 Del. Laws, c. 424, §§ 1, 2; 54 Del. Laws, c. 377, § 3; 55 Del. Laws, c. 82, §§ 4, 5; 55 Del. Laws, c. 283, § 3; 55 Del. Laws, c. 416, §§ 1-3; 56 Del. Laws, c. 311, § 4; 56 Del. Laws, c. 335, §§ 6-8; 57 Del. Laws, c. 404, § 4; 57 Del. Laws, c. 448; 59 Del. Laws, c. 107, § 42; 60 Del. Laws, c. 466, §§ 4-6; 63 Del. Laws, c. 232, § 4; 64 Del. Laws, c. 436, § 1; 64 Del. Laws, c. 437, § 2; 65 Del. Laws, c. 152, § 1; 65 Del. Laws, c. 283, § 3; 67 Del. Laws, c. 109, § 16; 67 Del. Laws, c. 273, §§ 4-22; 68 Del. Laws, c. 107, § 2; 68 Del. Laws, c. 168, § 2; 68 Del. Laws, c. 205, § 2; 69 Del. Laws, c. 6, § 4; 70 Del. Laws, c. 353, § 3; 71 Del. Laws, c. 182, § 2; 71 Del. Laws, c. 211, § 4; 71 Del. Laws, c. 383, § 3; 72 Del. Laws, c. 486, § 9; 73 Del. Laws, c. 244, § 9; 73 Del. Laws, c. 393, § 3; 75 Del. Laws, c. 80, § 9; 75 Del. Laws, c. 253, §§ 1, 2; 77 Del. Laws, c. 72, § 1; 78 Del. Laws, c. 220, § 3; 78 Del. Laws, c. 251, § 2; 79 Del. Laws, c. 6, § 3; 79 Del. Laws, c. 23, § 2; 79 Del. Laws, c. 308, § 3; 80 Del. Laws, c. 62, § 1; 81 Del. Laws, c. 69, § 3; 81 Del. Laws, c. 79, § 1; 84 Del. Laws, c. 442, § 2; 85 Del. Laws, c. 139, § 7.)

Subchapter V

Cancellation or Suspension of License

§ 561 Grounds for cancellation or suspension.

(a) The Commissioner may cancel every license made use of on behalf of any person other than the one to whom or on behalf of whom it has been issued.

(b) The Commissioner may suspend any license and/or fine any licensee for the sale of alcoholic liquors if it has reasonable grounds to believe that the licensee has committed any of the following violations, or may cancel any license for the sale of alcoholic liquors for the following violations, if repeated and continuous:

(1) The licensee has violated any provision of this title or any regulation of the Commissioner pursuant hereto;

(2) The licensee has made any false representation or statement to the Commissioner in order to induce or prevent action by the Commissioner;

(3) The licensee is not maintaining an acceptable bond, if said bond is required;

(4) The licensee is acting as an agent of a manufacturer of alcoholic liquor or has borrowed money or accepted gratuities from such a manufacturer or any agent thereof;

(5) The licensee maintains a noisy, lewd, disorderly, or unsanitary establishment or has been supplying impure or otherwise deleterious beverages or food;

(6) The licensee is in the habit of using dangerous or narcotic drugs, or is in the habit of using alcoholic beverages to excess;

(7) The licensee has sold alcoholic liquor in contravention of § 708 of this title;

(8) The licensee has in the licensee's possession on the licensee's licensed premises or has sold or offered for sale any alcoholic beverages not purchased or sold pursuant to this title;

(9) The licensee has misrepresented any alcoholic liquor sold by the licensee as purchased through the Commissioner or has in the licensee's possession, or has used any wrappers, labels, corks, caps, stamps or bottles not purchased from or through the Commissioner which are deceptively similar to those used by the Commissioner;

(10) The licensee has since the granting of the licensee's license been convicted of a felony or has been convicted of violating any of the liquor laws of this State, general or local, including the provisions of this title;

(11) The licensee has admitted guilt or has been adjudged guilty of violations of local, municipal, county or State regulations, ordinances or codes related to the operation of a licensed premises;

(12) There is any other reason which in the opinion of the Commissioner based on public convenience or necessity warrants cancelling or suspending the license;

(13) The licensee or a representative thereof has disciplined, threatened or otherwise penalized any person for refusing to violate or aiding the enforcement of the provisions of this title or the rules of the Commissioner.

(c) The Commissioner shall not cancel or suspend any license for the sale of alcoholic liquors or impose any fine for an alleged violation of § 708 or § 904 of this title where the licensee or its employee has made a reasonable effort to determine the age of a purchaser of alcoholic liquors. For purposes of this subsection, a licensee or its employee shall be deemed to have made a reasonable effort to determine the age of a purchaser if, prior to any sale of alcoholic liquors, the licensee or its employee requires the purchaser to display identification, with a photograph of the purchaser thereon affixed, which sets forth information that would lead a reasonable man to believe the purchaser

to be 21 years of age or older.

(d) Any of the grounds for refusal of a license as provided for in § 543 of this title shall also be adequate grounds for suspension of a license.

(e) The Commissioner may cancel any retail license if it has reasonable grounds to believe that the license was granted in violation of § 546(b) of this title, or any rule enacted pursuant to § 546(d) of this title.

(f) [Repealed.]

(g) The Commissioner may suspend any license for the sale of alcoholic liquors held by any taproom or restaurant or fine any licensee holding such a license if it has reasonable grounds to believe that the licensee has operated, caused the operation of or permitted the operation of any stationary source of sound in such a manner as to create an operative average sound level which is equal to or greater than 65 dBA, but less than 75 dBA, when measured at any location 100 feet or more from the licensed premises' real property boundary. The Commissioner shall suspend any license for the sale of alcoholic liquors held by any taproom or restaurant and fine any licensee holding such a license if it has reasonable grounds to believe that the licensee has operated, caused the operation of or permitted the operation of any stationary source of sound in such a manner as to create an operative average sound level which is equal to or greater than 75 dBA when measured at any location 100 feet or more from the real property boundary of the licensed premises. For the purpose of this section, "operative average sound level" means the energy average of the A-weighted sound pressure level during the business hours of operation of the licensed premises. The operative average sound level may be determined by an average of not less than 3 individual decibel readings taken not less than 10 minutes apart and taken from the same location. Provided however, that nothing in this subsection shall apply within the boundaries of any municipality.

(h) (1) [Repealed.]

(2) The temporary suspension shall be until the Commissioner no longer has reasonable grounds to believe that the public's safety is at risk, but can be no longer than 20 days unless otherwise provided herein.

(3) At the time of the temporary suspension, the Commissioner shall provide the licensee with notice of a hearing, which shall be held by electronic, telephonic or remote means, within 20 days of the issuance of the temporary suspension.

(4) If a licensee fails to attend such hearing, the Commissioner may continue the temporary suspension. If the temporary suspension is continued, a licensee may request the Commissioner to hold another hearing which shall be provided by electronic, telephone, or remote means within 20 days of the licensee's request.

(5) After a hearing, the Commissioner may do any of the following:

a. Continue the temporary suspension until a public hearing is scheduled in accordance with § 562 of this title if the Commissioner believes that the public safety will be at risk if the temporary suspension is lifted.

b. Lift the suspension if the Commissioner believes that lifting the temporary suspension will not result in a risk to public safety.

c. Impose appropriate conditions or fines on the licensee.

d. Take whatever action the Commissioner believes is necessary and appropriate in order to ensure that the public safety will not be at risk by the licensee. Except the Commissioner may not cancel or revoke a license unless pursuant to § 562 of this title.

(6) Notwithstanding any law, regulation, or rule to the contrary, the Commissioner may temporarily suspend any license if the Commissioner has reasonable grounds to believe that the public's safety is at risk and that the licensee has violated the provisions of Title 4.

(i) If the Commissioner receives notice from the appropriate political subdivision that any Certificate of Compliance issued to satisfy an applicant's duty under § 543(j) of this title has been suspended, then the Commissioner shall suspend any license or extension of an existing license granted in reliance on such Certificate of Compliance until such time as the Commissioner receives notice from the appropriate political subdivision that such Certificate has been reinstated. If the Commissioner receives notice from the appropriate political subdivision that any Certificate of Compliance issued to satisfy an applicant's duty under § 543(j) of this title has been canceled, then the Commissioner shall revoke any license or extension of an existing license granted in reliance on such Certificate of Compliance.

(38 Del. Laws, c. 18, § 29; Code 1935, § 6158; 41 Del. Laws, c. 246, § 1; 4 Del. C. 1953, § 561; 55 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 416; 59 Del. Laws, c. 107, §§ 43-48; 59 Del. Laws, c. 590, § 7; 61 Del. Laws, c. 493, § 1; 67 Del. Laws, c. 109, § 17; 68 Del. Laws, c. 130, § 1; 68 Del. Laws, c. 376, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 435, §§ 6, 7; 72 Del. Laws, c. 486, § 9; 74 Del. Laws, c. 154, § 1; 75 Del. Laws, c. 417, § 2; 82 Del. Laws, c. 247, §§ ? 4, 5; 83 Del. Laws, c. 9, § 4; 83 Del. Laws, c. 9, § 5; 83 Del. Laws, c. 284, § 4.)

§ 562 Public hearing and right of appeal.

(a) No license shall be cancelled or suspended, or any licensee fined:

(1) Until the licensee has been given a public hearing by the Commissioner at which time the licensee shall be entitled to legal representation and to present witnesses; and

(2) Unless the ground therefor shall be established by clear and convincing evidence.

A full and complete record shall be kept of all proceedings incident to such hearing. All testimony shall be recorded but need not be transcribed unless an order of the Commissioner is appealed to the Superior Court as set forth in subsection (c) of this section.

(b) Any order of the Commissioner relative to suspension or cancellation of a license, or a fine imposed against a licensee shall become final 10 days after the licensee receives notice thereof, unless within 10 days of the date of the postmark on the Commissioner's decision a written appeal is filed in the Superior Court. No bond shall be required for filing such appeal.

(c) The appeal shall state the grounds upon which a review is sought. After the appeal is filed, service shall be made by the Sheriff upon the Commissioner. The Commissioner shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter, together with the Commissioner's findings therein as soon as practicable but in no event later than 20 calendar days from the date of service of the appeal. The Superior Court's review of an appeal shall be on the record and the Superior Court shall take into account the experience and specialized competence of the agency and the purpose under which the agency acted. Further, the Superior Court's review, in the absence of fraud, shall be limited to whether the agency's decision is supported by substantial evidence on the record and is free from legal error.

(d) An appeal without bond may be taken from the decision of the Superior Court to the Supreme Court of this State in the same manner as is provided in civil cases. Upon the final determination of judicial proceedings, the Commissioner shall enter an order in accordance with such determination, or shall take such further or other action as the Court may order. A petition for judicial review shall act as a supersedeas.

(e) The public hearing required in subsection (a) of this section may be by electronic, telephone, or remote means.

(38 Del. Laws, c. 18, § 29; Code 1935, § 6158; 47 Del. Laws, c. 119, § 1; 4 Del. C. 1953, § 562; 55 Del. Laws, c. 296, § 2; 59 Del. Laws, c. 107, §§ 49, 50; 72 Del. Laws, c. 486, §§ 9, 19, 20; 78 Del. Laws, c. 384, § 3; 82 Del. Laws, c. 247, §§ ? 4, 5; 83 Del. Laws, c. 9, § 4; 83 Del. Laws, c. 284, § 4.)

§ 563 Effect of cancellation or surrender of license; notice.

(a) The cancellation or the acceptance of a surrender of any license shall entail the loss of the privilege conferred by the license and shall entail the acceptance of or the seizure by the Commissioner of any alcoholic liquor found in the possession of the holder of the license, except those which occur solely by reason of the death of the licensee.

(b) Notice of the order of the cancellation or the acceptance of the surrender of the license may be served by an officer designated by the Commissioner by affixing a duplicate thereof to the outside of the entrance door of the licensed premises, or by leaving a duplicate with the holder of the license, or with any member of the family of the holder over the age of 18 years at the residence of the holder, or otherwise, as in the judgment of the Commissioner will give notice of such cancellation or acceptance of the surrender. All cancellations or acceptances of surrender shall take effect as soon as the order is served.

(c) The cancellation or acceptance of surrender of a license shall not in any wise prevent the institution of any criminal proceedings for any offense under this title by the person who was the holder of such license while it was in force. No conviction obtained for any offense under this title shall prevent the Commissioner from cancelling the license of any offender or from making at the same time a seizure of alcoholic liquor as provided in this title.

(38 Del. Laws, c. 18, § 29; Code 1935, § 6158; 41 Del. Laws, c. 246, § 1; 4 Del. C. 1953, § 563; 59 Del. Laws, c. 107, § 51; 72 Del. Laws, c. 486, § 9.)

§ 564 Payments to former licensee.

The Department of Finance shall, within 30 days of the date of the cancellation or acceptance of surrender of a license, remit to the former licensee a part of the license fee which has been paid and pertains to the unexpired term of the license. In addition, the Commissioner shall remit to the former licensee the amount originally received by the Commissioner from the former licensee in payment for such alcoholic liquor accepted or seized as remains in packages sealed by the Commissioner, after paying or deducting therefrom all costs and expenses incurred by the Commissioner by reason of the acceptance or seizure of the alcoholic liquor of the former licensee. When other legally acquired alcoholic liquors have been accepted or seized under this section, the value thereof as determined by the Commissioner shall be remitted by the Commissioner to the former licensee, after paying or deducting therefrom all costs and expenses incurred by the Commissioner by reason of the acceptance or seizure of the alcoholic liquor of the former licensee. When illegally acquired alcoholic liquors have been seized under this section, no payment shall be made therefor.

(38 Del. Laws, c. 18, § 29; Code 1935, § 6158; 41 Del. Laws, c. 246, § 1; 44 Del. Laws, c. 205, § 1; 4 Del. C. 1953, § 564; 57 Del. Laws, c. 741, § 27A; 72 Del. Laws, c. 486, § 9.)

Subchapter VI

Transfer of License; Death of Licensee

§ 571 Transfer of license.

(a) The rights conferred by a license may be transferred by the Commissioner to any representative designated by the person to whom or on behalf of whom the license was originally granted, if such representative is a person approved by the Commissioner. In the case of death of an individual to whom a license has been granted, the Commissioner may transfer the license to a qualified person recommended by the executor or administrator of the estate of the deceased licensee.

(b) In instances where the Commissioner has approved the transfer of a license, all matters concerning alcoholic beverage inventories shall be handled directly between the transferor and the transferee and all payments shall be made directly and not through the Commissioner.

(38 Del. Laws, c. 18, § 29; Code 1935, § 6158; 41 Del. Laws, c. 246, § 1; 4 Del. C. 1953, § 571; 59 Del. Laws, c. 107, § 52; 72 Del. Laws, c. 486, § 9.)

§ 572 Death of licensee; payments to licensee's estate.

If any licensee dies and no application is made for transfer of the license, or the Commissioner refuses to permit the transfer of the license to another person, the Department of Finance shall return to the legal representative of such deceased person a share of the license fee received by the Department proportionate to the number of full calendar months of the unexpired term; and if the alcoholic liquors in possession of the licensee at the time of the licensee's death are delivered to the Commissioner and the Commissioner ascertains that such alcoholic liquors have been received by the deceased person according to law, the Commissioner shall pay to the representative the amount originally received by the Commissioner for such alcoholic liquors less 10 percent thereof, or the appraised value less 10 percent thereof.

(38 Del. Laws, c. 18, § 31; Code 1935, § 6160; 4 Del. C. 1953, § 572; 57 Del. Laws, c. 741, § 27B; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 9.)

Subchapter VII

Taxes

§ 581 Rates of tax [For application of this section, see 81 Del. Laws, c. 54, § 2].

(a) All persons required to be licensed under this title as an importer shall pay a tax upon the sale of alcoholic beverages to any person who purchases alcohol from an importer in this State at the rates set forth in subsection (d) of this section.

(b) All persons licensed under this title to manufacture alcoholic beverages shall pay a tax on all alcoholic beverages sold to customers in this State at the rates set forth in subsection (d) of this section. This subsection shall not apply to sales to customers who are:

(1) Importers of alcoholic beverages subject to licensing under this title;

(2) Distributors of alcoholic beverages licensed by a state other than Delaware where the alcoholic beverages are sold for resale in such other state; or

(3) In the case of sales of beer, an instrumentality of the United States Armed Forces.

(c) Except as provided in subsection (a) or (b) of this section, any person who imports alcoholic beverages for consumption in this State shall pay to the Department of Finance the tax on such imports at the rates set forth in subsection (d) of this section.

(d) The tax payable under this section shall be as follows:

(1) For each barrel of beer or fermented beverage, $8.15.

(2) For each gallon of cider, $.27.

(3) For each gallon of wine, $1.63.

(4) For each gallon of spirits containing 25 % or less of ethyl alcohol by volume, $3.00.

(5) For each gallon of spirits containing more than 25 % ethyl alcohol by volume, $4.50.

(6) For each gallon of alcohol per gallon of ethyl alcohol contained, $8.15, except that the tax of $8.15 shall not apply to the purchase of alcohol by pharmacists, physicians, dentists, veterinarians, wholesale druggists or manufacturing plants where the alcohol is used in scientific work, for the manufacture of pharmaceutical products, or for use in the manufacture or compounding of preparations unfit for beverage purposes.

(e) The Commissioner shall make and publish such rules and regulations with respect to the collection and payment of the taxes imposed by this section as it deems proper, and all such rules and regulations that are not inconsistent with the provisions of this title shall have the force and effect of law.

(f) For the months of August 2019 and July 2020, all persons required to be licensed under this title as an importer shall be entitled to a nonrefundable credit against the tax on alcoholic beverages imposed pursuant to subsection (a) of this section in an amount equal to 1/2 of the tax previously paid on such importer's alcoholic liquor floor stock or inventory resting in the State on July 31, 2019, as reported in accordance with commission rules. Any amounts of credit not used by virtue of the preceding sentence may be carried forward and used against future tax imposed by this section. A person required to be licensed under this title as an importer shall not be entitled to the credit permitted pursuant to this subsection if such person fails to report such person's alcoholic liquor floor stock or inventory resting in the State on July 31, 2019, on a timely-filed report.

(38 Del. Laws, c. 18, § 16; Code 1935, § 6145; 43 Del. Laws, c. 274, § 1; 4 Del. C. 1953, § 581; 49 Del. Laws, c. 342, § 13; 53 Del. Laws, c. 106; 57 Del. Laws, c. 136, § 30; 57 Del. Laws, c. 741, § 27C; 58 Del. Laws, c. 294, §§ 1, 2; 58 Del. Laws, c. 584, § 1; 62 Del. Laws, c. 113, § 1; 67 Del. Laws, c. 258, § 1; 68 Del. Laws, c. 107, §§ 3, 4; 70 Del. Laws, c. 488, §§ 1, 2, 5; 70 Del. Laws, c. 559, §§ 5, 6; 71 Del. Laws, c. 211, § 5; 72 Del. Laws, c. 486, § 9; 78 Del. Laws, c. 251, § 3; 81 Del. Laws, c. 54, § 1; 82 Del. Laws, c. 68, § 1; 83 Del. Laws, c. 36, § 4.)

§ 582 Refund of tax paid by importers or wholesalers on beer sold to instrumentalities of the armed forces of the United States.

(a) Any tax paid by an importer or wholesaler to the Department of Finance, pursuant to § 581 of this title, on alcoholic liquors that are sold by such importer or wholesaler to an instrumentality of the armed forces of the United States shall be refunded to such importer or wholesaler by the Department of Finance.

(b) Any importer or wholesaler entitled to a refund of tax under this section may, instead of filing a claim for refund, take credit therefor

against taxes imposed by § 581 of this title and due upon alcoholic liquor subsequently purchased by such importer or wholesaler.

(c) The Commissioner may make and publish rules and regulations with respect to refunds and credits allowed by this section, and such rules and regulations as are not inconsistent with this title shall have the force and effect of law.

(60 Del. Laws, c. 322, § 1; 72 Del. Laws, c. 374, § 1; 72 Del. Laws, c. 486, § 9.)

§ 583 Administration of taxes.

Except to the extent inconsistent with specific provisions of this title, the provisions of Chapter 5 of Title 30 shall govern the assessment, collection, review and appeal of deficiencies of tax imposed by this title, and any interest and penalties thereon, and claims for refund of overpayment of taxes imposed by this title.

(68 Del. Laws, c. 187, § 23.)

§ 584 State fees in lieu of county and municipal fees; preemption provision.

The fees, charges and taxes imposed by the State under this title shall be in lieu of all county and municipal license fees and taxes upon the business of manufacturing, supplying, distributing and selling alcoholic liquor as such. Provided, however, general occupational license fees and general taxes imposed uniformly on everyone within the class shall not be preempted.

For purposes of this section, “class” shall not be defined by general or specific reference to manufacturing, supplying, distributing, or selling alcoholic liquor.

(74 Del. Laws, c. 312, § 1.)

Chapter 7
REGULATORY PROVISIONS

§ 701 Persons authorized to make sale and delivery of alcoholic liquors.

(a) No sale and delivery of alcoholic liquor shall be made in this State unless by a manufacturer or other person who holds a license of the Commissioner to sell and deliver alcoholic liquor and unless the sale and delivery is made to a person who is authorized to receive alcoholic liquor under Chapter 5 of this title.

(b) No common carrier shall be held responsible for the delivery of alcoholic liquor forbidden by this section.

(c) The Commissioner shall permit the holders of a license under §§ 531-533 of this title to receive or pick up beer in the barrel or keg directly from a manufacturer, importer or any other person authorized by this title to sell and deliver alcoholic liquor, notwithstanding any provisions of this title to the contrary.

(d) The Commissioner may permit an off-site caterer to transport alcoholic liquor in accordance with the Commissioner's rules.

(38 Del. Laws, c. 18, § 16; Code 1935, § 6145; 4 Del. C. 1953, § 701; 57 Del. Laws, c. 419; 67 Del. Laws, c. 109, § 18; 72 Del. Laws, c. 486, § 11; 73 Del. Laws, c. 393, § 4.)

§ 702 Delivery of alcohol or spirits by manufacturer or importer.

The Commissioner may issue a written order signed by the Commissioner authorizing a manufacturer or importer to deliver alcohol or spirits in specified quantity to a person who holds a license to sell such alcohol or spirits, but not more than 1 delivery shall be specified or made on the same order.

(38 Del. Laws, c. 18, § 16; Code 1935, § 6145; 4 Del. C. 1953, § 707; 67 Del. Laws, c. 109, § 19; 72 Del. Laws, c. 486, § 11.)

§ 703 Sale and delivery of wine or beer by manufacturer or importer.

No manufacturer or importer shall sell, ship, transport or deliver wine or beer within this State to any person unless in accordance with the published regulations of the Commissioner and unless a statement of the date, amount and description of the transaction be mailed to the Commissioner.

(38 Del. Laws, c. 18, § 16; Code 1935, § 6145; 4 Del. C. 1953, § 708; 67 Del. Laws, c. 109, §§ 19, 20; 72 Del. Laws, c. 486, § 11.)

§ 704 Commissioner regulation of wine or beer sales.

The Commissioner may make a regulation authorizing a manufacturer or importer to sell, transport or deliver wine or beer within this State to any person or class of persons authorized under this title to receive wine or beer.

(38 Del. Laws, c. 18, § 16; Code 1935, § 6145; 4 Del. C. 1953, § 709; 67 Del. Laws, c. 109, § 19; 72 Del. Laws, c. 486, § 11.)

§ 705 Containers for sale and delivery of beer for consumption off premises.

No sale and delivery of beer, for consumption off the premises where sold, shall be made in open containers, but sales or delivery may be made in bottles, half bottles, barrels, half barrels or quarter barrels, if such containers are securely corked, capped, stopped or plugged at the time delivery thereof is made.

(38 Del. Laws, c. 18, § 16; Code 1935, § 6145; 4 Del. C. 1953, § 710; 67 Del. Laws, c. 109, § 19.)

§ 706 Sale or service of alcoholic liquors to intoxicated person.

Any licensee, or employee of a licensee, or person in charge of a licensed premises shall refuse to sell or serve alcoholic liquors to any individual if such individual is intoxicated or appears to be intoxicated. Such licensee, employee of a licensee or person in charge of the licensed premises shall not be liable to any individual for damages claimed to arise from the refusal to sell alcoholic liquors if such refusal is based upon this section.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 711; 52 Del. Laws, c. 181; 59 Del. Laws, c. 107, § 53; 67 Del. Laws, c. 109, § 19.)

§ 707 Home manufacture of beer or wine for personal consumption.

(a) No license or special permit shall be required for the manufacture within homes, or other premises used in connection therewith, of beer in quantities of 200 gallons or less during any calendar year, or wine in quantities of 200 gallons or less during any calendar year, for the personal consumption only of the homeowner(s), their families or their guests; provided however, that such beer or wine shall not be offered for sale.

(b) Such beer or wine, when manufactured and used as set forth above, shall not be subject to any taxes imposed by the Liquor Control Act.

(c) Beer and wine manufactured pursuant to this section may be removed from the home and transported for personal or family use, and in addition may be transported for the purposes of participating in club-sponsored events and tasting competitions.

(d) Notwithstanding any other provision in this chapter or title, concentrated alcoholic beverages are not "home-manufactured beer or wine" for purposes of this section, and all Commissioner regulations and tax requirements concerning home-manufactured beer or wine shall not apply to concentrated alcoholic beverages.

(4 Del. C. 1953, § 712; 59 Del. Laws, c. 107, § 54; 65 Del. Laws, c. 50, § 4; 67 Del. Laws, c. 109, § 19; 71 Del. Laws, c. 315, § 2; 72 Del. Laws, c. 486, § 11.)

§ 708 Prohibition of sales to certain persons.

(a) No person or licensee shall sell any alcoholic liquor to any:

(1) Individual who has not reached the age of 21 years, except that in any prosecution for an offense under this paragraph it shall be an affirmative defense that the individual, who has not reached the age of 21 years, presented to the accused identification, with a photograph of such individual affixed thereon, which identification sets forth information which would lead a reasonable person to believe such individual was 21 years of age or older;

(2) Person to whom such sale is prohibited;

(3) Individual who habitually drinks alcoholic liquor to excess, or to whom the Commissioner and/or Division has, after investigation, decided to prohibit the sale of such liquor because of an appeal to the Commissioner and/or Division by the husband, wife, father, mother, brother, sister, employer or other person depending upon, employing or in charge of such individual, or by the mayor or other competent representative of any city, town, or other incorporated place; the interdiction in such case shall last until removed by the Commissioner and/or Division.

(b) No sale made to any person mentioned in this section, other than an individual who has not reached the age of 21 years, shall constitute a misdemeanor unless the Commissioner and/or Division has informed the seller, by registered letter, that it is forbidden to sell to such person or unless the fact is otherwise known to the seller.

(38 Del. Laws, c. 18, § 34; Code 1935, § 6163; 41 Del. Laws, c. 249, § 1; 4 Del. C. 1953, § 715; 49 Del. Laws, c. 57, § 1; 58 Del. Laws, c. 511, § 1; 59 Del. Laws, c. 107, § 55; 61 Del. Laws, c. 493, § 2; 64 Del. Laws, c. 216, §§ 1, 2; 67 Del. Laws, c. 109, § 19; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 10; 75 Del. Laws, c. 255, § 1; 78 Del. Laws, c. 179, § 2; 80 Del. Laws, c. 61, § 1.)

§ 709 Prohibition of sales and delivery at certain times [Effective until meeting the contingency in 82 Del. Laws, c. 193, § 5].

(a) No entity licensed pursuant to § 501 of this title or importer shall sell or deliver alcoholic liquor on Sundays, Thanksgiving, Easter or Christmas or at hours other than those prescribed by the rules or regulations of the Commissioner, except as subsection (f) of this section may apply. An importer may receive and process orders on any day, including Sundays and holidays.

(b) No holder of a license for the sale of alcoholic liquors for off-premises consumption shall sell or deliver the same on Thanksgiving, Easter or Christmas or between the hours of 1:00 a.m. and 9:00 a.m. on Mondays through Saturdays, except as subsection (f) of this section may apply, and on Sundays before 10:00 a.m. or after 8:00 p.m. Any municipality with a population of 50,000 or more may limit sales within the boundaries of the municipality pursuant to this subsection to a maximum of 4 hours on Sundays as established by ordinance of the municipality. The closing hours for days of the week other than Sunday may be made earlier in any municipality having a population of 50,000 or more persons, by ordinance of the municipal corporation; provided however, that such ordinance be consistent with the Delaware state and federal constitutions as well as treat all businesses fairly. During the months of October through December a holder of a license for the sale of alcoholic liquor for off-premises consumption shall be permitted to have sales take place beginning at 8:00 a.m. on Fridays through Saturdays.

(c) No holder of a license for the sale of alcoholic liquor for on-premises consumption shall sell the same between the hours of 1:00 a.m. and 8:00 a.m. The closing hour may be made earlier in any municipality by ordinance of the municipal corporation. The sale of alcoholic liquors by a licensee for consumption on the premises where sold shall be permitted on every day of the year; provided, that no licensee shall be required to be open to sell alcoholic liquors on Sundays, Thanksgiving, Easter or Christmas.

(d) Any holder of a license to sell alcoholic liquor, for either on-premises consumption or off-premises consumption, who wishes to sell alcoholic liquors on Sundays, except a gathering license, shall pay a biennial license fee of $500 for the issuance of a special license to serve alcoholic liquors on Sundays, which shall be in addition to any other license fees which may be required of the licensee. If a licensee holds a license to sell for on-premises consumption and off-premises consumption it shall only be required to purchase 1 special license if it wishes to serve alcoholic liquors on Sunday.

(e) In the municipalities and other political subdivisions of this State where daylight saving time is observed, whether authorized by law or by custom, daylight saving time shall apply to the hours mentioned in this section for the period during which daylight saving time exists.

(f) Importers or holders of a license for the sale of spirits, wines or beer may deliver beer on Sundays in motor vehicles equipped with permanently-installed devices for the refrigeration and dispensing of beer to licensed gatherings only; provided, however, that such licensee shall have first given notice of such delivery to the Commissioner.

(g), (h) [Repealed.]

(38 Del. Laws, c. 18, § 33; Code 1935, § 6162; 42 Del. Laws, c. 194, § 1; 43 Del. Laws, c. 277, § 1; 45 Del. Laws, c. 260, § 1; 45 Del. Laws, c. 265, § 1; 4 Del. C. 1953, § 717; 55 Del. Laws, c. 311, § 1; 56 Del. Laws, c. 265, § 1; 57 Del. Laws, c. 352, §§ 1, 2; 58 Del. Laws, c. 146, § 1; 59 Del. Laws, c. 107, §§ 57, 58; 59 Del. Laws, c. 115, § 1; 60 Del. Laws, c. 466, §§ 7, 8; 62 Del. Laws, c. 381, §§ 1-3; 65 Del. Laws, c. 156, § 1; 67 Del. Laws, c. 109, §§ 19, 21; 68 Del. Laws, c. 107, § 5; 69 Del. Laws, c. 6, § 5; 69 Del. Laws, c. 384, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 248, § 1; 71 Del. Laws, c. 109, § 1; 72 Del. Laws, c. 486, § 11; 73 Del. Laws, c. 244, § 10; 74 Del. Laws, c. 29, § 1; 74 Del. Laws, c. 141, §§ 1-3; 74 Del. Laws, c. 146, § 1; 74 Del. Laws, c. 202, § 1; 74 Del. Laws, c. 259, §§ 1, 2; 76 Del. Laws, c. 237, §§ 1-3; 77 Del. Laws, c. 72, § 3; 80 Del. Laws, c. 62, § 1; 80 Del. Laws, c. 382, § 1; 81 Del. Laws, c. 62, § 1; 83 Del. Laws, c. 108, § 1; 84 Del. Laws, c. 241, § 1; 82 Del. Laws, c. 193, §§ 3, 5.)

§ 709 Prohibition of sales and delivery at certain times [Effective upon meeting the contingency in 82 Del. Laws, c. 193, § 5].

(a) No entity licensed pursuant to § 501 of this title or importer shall sell or deliver alcoholic liquor on Sundays, Thanksgiving, Easter or Christmas or at hours other than those prescribed by the rules or regulations of the Commissioner, except as subsection (f) of this section may apply. An importer may receive and process orders on any day, including Sundays and holidays.

(b) No holder of a license for the sale of alcoholic liquors for off-premises consumption shall sell or deliver the same on Thanksgiving, Easter or Christmas or between the hours of 1:00 a.m. and 9:00 a.m. on Mondays through Saturdays, except as subsection (f) of this section may apply, and on Sundays before 10:00 a.m. or after 8:00 p.m. Any municipality with a population of 50,000 or more may limit sales within the boundaries of the municipality pursuant to this subsection to a maximum of 4 hours on Sundays as established by ordinance of the municipality. The closing hours for days of the week other than Sunday may be made earlier in any municipality having a population of 50,000 or more persons, by ordinance of the municipal corporation; provided however, that such ordinance be consistent with the Delaware state and federal constitutions as well as treat all businesses fairly. During the months of October through December a holder of a license for the sale of alcoholic liquor for off-premises consumption shall be permitted to have sales take place beginning at 8:00 a.m. on Fridays through Saturdays.

(c) No holder of a license for the sale of alcoholic liquor for on-premises consumption shall sell the same between the hours of 1:00 a.m. and 8:00 a.m. The closing hour may be made earlier in any municipality by ordinance of the municipal corporation. The sale of alcoholic liquors by a licensee for consumption on the premises where sold shall be permitted on every day of the year; provided, that no licensee shall be required to be open to sell alcoholic liquors on Sundays, Thanksgiving, Easter or Christmas.

(d) Any holder of a license to sell alcoholic liquor, for either on-premises consumption or off-premises consumption, who wishes to sell alcoholic liquors on Sundays, except a gathering license, shall pay a biennial license fee of $500 for the issuance of a special license to serve alcoholic liquors on Sundays, which shall be in addition to any other license fees which may be required of the licensee. If a licensee holds a license to sell for on-premises consumption and off-premises consumption it shall only be required to purchase 1 special license if it wishes to serve alcoholic liquors on Sunday.

(e) [Repealed.]

(f) Importers or holders of a license for the sale of spirits, wines or beer may deliver beer on Sundays in motor vehicles equipped with permanently-installed devices for the refrigeration and dispensing of beer to licensed gatherings only; provided, however, that such licensee shall have first given notice of such delivery to the Commissioner.

(g), (h) [Repealed.]

(38 Del. Laws, c. 18, § 33; Code 1935, § 6162; 42 Del. Laws, c. 194, § 1; 43 Del. Laws, c. 277, § 1; 45 Del. Laws, c. 260, § 1; 45 Del. Laws, c. 265, § 1; 4 Del. C. 1953, § 717; 55 Del. Laws, c. 311, § 1; 56 Del. Laws, c. 265, § 1; 57 Del. Laws, c. 352, §§ 1, 2; 58 Del. Laws, c. 146, § 1; 59 Del. Laws, c. 107, §§ 57, 58; 59 Del. Laws, c. 115, § 1; 60 Del. Laws, c. 466, §§ 7, 8; 62 Del. Laws, c. 381, §§ 1-3; 65 Del. Laws, c. 156, § 1; 67 Del. Laws, c. 109, §§ 19, 21; 68 Del. Laws, c. 107, § 5; 69 Del. Laws, c. 6, § 5; 69 Del. Laws, c. 384, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 248, § 1; 71 Del. Laws, c. 109, § 1; 72 Del. Laws, c. 486, § 11; 73 Del. Laws, c. 244, § 10; 74 Del. Laws, c. 29, § 1; 74 Del. Laws, c. 141, §§ 1-3; 74 Del. Laws, c. 146, § 1; 74 Del. Laws, c. 202, § 1; 74 Del. Laws, c. 259, §§ 1, 2; 76 Del. Laws, c. 237, §§ 1-3; 77 Del. Laws, c. 72, § 3; 80 Del. Laws, c. 62, § 1; 80 Del. Laws, c. 382, § 1; 81 Del. Laws, c. 62, § 1; 83 Del. Laws, c. 108, § 1; 82 Del. Laws, c. 193, §§ 3, 5; 84 Del. Laws, c. 241, § 1.)

§ 710 Reports by importers.

The Commissioner shall require every importer to make a monthly report of the importer's manufacture, purchases, stocks and sales of alcoholic liquor to the Commissioner.

(38 Del. Laws, c. 18, § 28; Code 1935, § 6157; 4 Del. C. 1953, § 718; 57 Del. Laws, c. 680; 59 Del. Laws, c. 590, § 5; 67 Del. Laws, c. 109, § 19; 72 Del. Laws, c. 486, § 11; 84 Del. Laws, c. 42, § 45.)

§ 711 Refilling bottles.

Alcoholic liquor in bottles, procured by the holder of a license to resell for the purpose of delivering the same to consumers, shall be kept in the bottles in which it was procured. As long as any such bottle bears the mark or label which it bore when delivered, no other alcoholic liquor, substance or liquid shall be put therein, and no holder of a license, nor anyone on the licensee's behalf, after the alcoholic liquor bottled in 1 of the bottles has been poured out, may refill the bottle, either wholly or in part, with intent to supply alcoholic liquor or any other substance or liquid to any consumer.

(38 Del. Laws, c. 18, § 32; Code 1935, § 6161; 4 Del. C. 1953, § 719; 59 Del. Laws, c. 107, § 60; 67 Del. Laws, c. 109, § 19; 84 Del. Laws, c. 42, § 46.)

§ 712 Label on bottle.

No holder of a license shall use or allow the use of any mark or label on a bottle, in which alcoholic liquor is kept for sale, that does not precisely and clearly indicate the nature of the contents of the bottle, or which might in any way deceive any consumer as to the nature, composition or quality of the contents.

(38 Del. Laws, c. 18, § 32; Code 1935, § 6161; 4 Del. C. 1953, § 720; 59 Del. Laws, c. 107, § 61; 67 Del. Laws, c. 109, § 19.)

§ 713 Mixing unauthorized with authorized liquor.

No person shall, for any reason, mix or permit the mixing of or cause to be mixed any alcoholic liquor which is not authorized to be sold with any alcoholic liquor the sale of which is authorized to be sold.

(38 Del. Laws, c. 18, § 32; Code 1935, § 6161; 4 Del. C. 1953, § 721; 59 Del. Laws, c. 107, § 62; 67 Del. Laws, c. 109, § 19.)

§ 714 Places for keeping spirits, wines or beer.

No person shall keep spirits, wines or beer in the State except:

(1) In an establishment licensed by the Commissioner to sell alcoholic liquor;

(2) In an establishment where it is expressly permitted by the Commissioner to keep alcoholic liquor;

(3) In an establishment where, by exception, it is permitted by law to keep alcoholic liquors;

(4) In the residence of any person, provided the alcoholic liquor is not kept with intent to sell the same, but one sale shall suffice to establish such intent;

(5) In the office of a physician, pharmacist or veterinarian for medicinal purposes only, and in the office of a clergyman for sacramental purposes only;

(6) In the baggage of an individual who is transporting alcoholic liquor for such individual's use;

(7) In a church, chapel, or other place for religious worship or a dependence thereof where sacramental wine may be kept.

(38 Del. Laws, c. 18, § 36; Code 1935, § 6165; 41 Del. Laws, c. 251, § 1; 59 Del. Laws, c. 107, § 63; 67 Del. Laws, c. 109, §§ 19, 22; 72 Del. Laws, c. 486, § 11; 84 Del. Laws, c. 42, § 47.)

§ 715 Places for keeping alcohol.

No person shall keep alcohol in the State, except:

(1) In the establishment of a pharmacist, physician, dentist, veterinarian, wholesale druggist, university, college, school or manufacturing plant where the alcohol is used in industrial or scientific work or for the manufacture of pharmaceutical products where it is expressly permitted by the Commissioner to keep alcohol;

(2) In a distillery licensed by the Commissioner to manufacture alcohol.

(38 Del. Laws, c. 18, § 36; Code 1935, § 6165; 41 Del. Laws, c. 251, § 1; 4 Del. C. 1953, § 723; 67 Del. Laws, c. 109, §§ 19, 23; 72 Del. Laws, c. 486, § 11.)

§ 716 Transportation of spirits, wines or beer.

No person shall transport spirits, wines or beer in this State, except:

(1) Directly from one establishment in this State to another establishment belonging to or leased by the same person, provided he or she holds a license to transport alcoholic liquor; or

(2) Directly from the establishment of a holder of a license to sell and to deliver such alcoholic liquor to the establishment of a like holder of a license to sell; or

(3) Directly from the establishment of a person who is the holder of a license to transport alcoholic liquor to a place outside this State; or

(4) An individual who is transporting alcoholic liquor for his or her personal use or the use of his or her family or guests; or

(5) An individual importing alcoholic liquors into the State, the daily quantity of which does not exceed the amount permitted by federal statutes governing the importation of alcoholic liquors into the United States.

(38 Del. Laws, c. 18, § 36; Code 1935, § 6165; 41 Del. Laws, c. 251, § 1; 42 Del. Laws, c. 191, § 5; 44 Del. Laws, c. 203, § 6; 4 Del. C. 1953, § 724; 50 Del. Laws, c. 417, § 3; 55 Del. Laws, c. 82, §§ 8, 9; 59 Del. Laws, c. 107, § 64; 67 Del. Laws, c. 109, §§ 19, 24; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 407, § 1.)

§ 717 Transportation of alcohol.

No person shall transport alcohol in the State, except where it is expressly permitted by the Commissioner to transport such alcohol.

(38 Del. Laws, c. 18, § 36; Code 1935, § 6165; 41 Del. Laws, c. 251, § 1; 4 Del. C. 1953, § 725; 67 Del. Laws, c. 109, §§ 19, 25; 72 Del. Laws, c. 486, § 11.)

§ 718 Shipping and transporting alcoholic liquor.

(a) If alcoholic liquor is to be shipped to a point within the State by other than the manufacturer or importer thereof, the transportation thereof outside of the municipality in which the establishment of the seller is situated, shall be made only by a common carrier or, if not contrary to the rules of the Commissioner, by the purchaser on condition that it is transported in a vehicle owned or hired by the purchaser directly to the purchaser's residence or, if the purchaser is the holder of a license to sell, to the purchaser's establishment, but such transportation shall not be by the seller nor by any employee, agent or representative of the seller, nor by any other person interested in the sale.

(b) If alcoholic liquor is to be shipped to a point within or without this State by the manufacturer or importer thereof, the shipment shall only be made by common carrier, by vehicle owned or hired by the manufacturer or importer, or employee of the manufacturer or importer, under the rules of the Commissioner. "Shipped," as used in this subsection, shall mean any movement of alcoholic beverage to any location other than the manufacturer's or importer's storage location.

(c) If the transportation of alcoholic liquor be effected by a common carrier, the individual transporting or in charge of the transportation of such alcoholic liquor shall have in such individual's possession and produce upon request a waybill or other evidence of authorized

shipment containing the name and address of the shipper and the name and address of the consignee.

(38 Del. Laws, c. 18, § 37; Code 1935, § 6166; 4 Del. C. 1953, § 726; 67 Del. Laws, c. 109, § 19; 68 Del. Laws, c. 54, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 11; 84 Del. Laws, c. 42, § 48; 84 Del. Laws, c. 514, § 1.)

§ 719 Distillery and wine manufacturer.

(a) No provision of this title shall prevent any distillery or brewery, duly licensed by the United States or by this State to manufacture alcohol or spirits in this State, or any wine manufacturer in this State from having or keeping for sale in the manufacturer's establishment in this State the alcoholic liquor so licensed to be manufactured by the manufacturer or from selling or delivering the same in accordance with the provisions of this title.

(b) If alcoholic liquor is to be shipped by a distillery or manufacturer to a place within this State, the distillery or manufacturer may sell it only to the Commissioner or under the published rules of the Commissioner and the distillery or manufacturer shall in every case comply with every other applicable provision of this title.

(c) The Commissioner may, upon the conditions it determines, grant to any distillery, duly licensed by the United States or by this State to manufacture alcohol or spirits in this State, a special license authorizing the distillery to purchase and to import, from such persons as are entitled to sell the same, wines or spirits to be used for the sole purpose of blending with and flavoring such products.

(d) No provision of this title shall prevent the Commissioner from agreeing to the sale and delivery of potable and non-potable alcohol from a distillery direct to a manufacturer of articles requiring such alcohol, if such sale and delivery be made subject to such conditions as the Commissioner publishes.

(38 Del. Laws, c. 18, §§ 40, 42; Code 1935, §§ 6168, 6170; 42 Del. Laws, c. 190, § 1; 4 Del. C. 1953, § 727; 59 Del. Laws, c. 107, § 65; 67 Del. Laws, c. 109, § 19; 72 Del. Laws, c. 486, § 11; 84 Del. Laws, c. 42, § 49.)

§ 720 Storage of alcoholic liquors.

All holders of licenses for the sale of alcoholic liquor in a tavern, restaurant or taproom, and as to the public sale portions of the premises covered by holders of a hotel or club license, shall store all alcoholic liquor in adequate storage facilities and the premises, or the part of the premises where such alcoholic liquor is stored if a hotel or club, must be locked before the last person leaves the licensed premises.

(59 Del. Laws, c. 590, § 3; 67 Del. Laws, c. 109, § 19.)

§ 721 Brewery.

No provision of this title shall prevent the Commissioner from authorizing any brewery to sell and to deliver beer to any person in this State who holds a license to receive and resell beer, if a duplicate bill of each sale is filed with or mailed to the Commissioner, provided that the Commissioner shall not authorize the resale and delivery of beer to licensees within this State by any brewery whose total domestic sales, when including all affiliated licenses whether in or out of this State, exceeds 6 million barrels of beer in a single calendar year.

(38 Del. Laws, c. 18, § 41; Code 1935, § 6169; 4 Del. C. 1953, § 728; 67 Del. Laws, c. 109, § 19; 72 Del. Laws, c. 486, § 11; 82 Del. Laws, c. 22, § 2.)

§ 722 Physicians, dentists, veterinarians and pharmacists.

(a) No provision of this title shall prevent any individual who is licensed in this State to practice medicine, surgery or obstetrics, or dentistry, or veterinary medicine or surgery from purchasing alcoholic liquor in quantities larger than 1 bottle and keeping and using the same for purposes of solution or sterilization in the licensed individual's own practice, or in making a preparation for external application to be administered by the licensed individual, or from purchasing brandy, as defined in the United States Pharmacopoeia, or rum, for use in compounding the licensed individual's medicines.

(b) No owner, lessee or manager conducting a pharmacy or drugstore shall sell or dispense, on the premises conducted as a pharmacy or drugstore, alcoholic liquor for any other purpose than medicinal, scientific and industrial purposes. No provision of this title shall prevent any holder of a license for a pharmacy under § 517 of this title from:

(1) Purchasing alcoholic liquor in quantities larger than 1 bottle, for use in medicinal, official or pharmaceutical preparations, but no such person may sell such alcoholic liquor except when contained in such preparations or when filling a prescription, or an order of an individual holder of license under § 518 of this title; or

(2) Purchasing ethyl alcohol in quantities larger than 1 bottle, and selling the same for obstetrical or antiseptic purposes only, in quantities not exceeding 16 ounces, upon prescription of an individual practicing medicine, surgery or obstetrics and registered as such in this State, or upon the certificate of the latter if the sale be made to the pharmacy license holder personally.

(38 Del. Laws, c. 18, §§ 17, 39; Code 1935, §§ 6146, 6167; 42 Del. Laws, c. 187, § 1; 42 Del. Laws, c. 192, § 1; 4 Del. C. 1953, § 729; 67 Del. Laws, c. 109, §§ 19, 26; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, §§ 1, 50.)

§ 723 Disposition of stock of insolvent, deceased or former licensee.

(a) In the case of a seizure of alcoholic liquor under any judgment rendered against the holder of any license or in the case of insolvency of such person, the officer seizing such alcoholic liquor or the trustee in bankruptcy of such license holder shall provide the Commissioner an inventory of the alcoholic liquor found in the possession of the judgment debtor or bankrupt. The Commissioner shall cause notice to be delivered to all importers who sell product on the inventory. All importers shall pick up all saleable products (as determined by the Commissioner in the event of a dispute) that they sell at that time.

(b) The importer shall determine the value of the saleable inventory by determining the cost to a retail licensee on the same day as the

alcoholic liquor is picked up.

(c) The importer may retain up to 5% of the value of the saleable inventory as a handling or restocking fee.

(d) In the event the licensee from whom the alcoholic liquor was seized owes the Importer an amount equal to or greater than the net of subsections (b) and (c) of this section above, the importer shall advise the Commissioner, the debtor or bankrupt, and the seizing authority of its calculations and credit the debtor's or bankrupt's account appropriately.

(e) In the event the licensee from whom the alcoholic liquor was seized owes the importer less than the net of subsections (b) and (c) of this section above, the importer shall, within 10 days of seizure, pay the difference of the net of subsections (b) and (c) of this section above and the licensee's obligation to the importer to the officer or the trustee, and shall advise the Commissioner, the debtor or bankrupt, and the seizing authority of its calculations and credit the debtor's or bankrupt's account appropriately.

(f) No payment shall be made for illegally acquired alcoholic liquor so delivered.

(g) Any dispute as to the value or saleable condition of the alcohol shall be determined by the Commissioner. Any dispute as to the amount of the obligations of the parties to each other shall be determined by the court or its designee.

(38 Del. Laws, c. 18, § 29; Code 1935, § 6158; 41 Del. Laws, c. 246, § 1; 42 Del. Laws, c. 189, § 2; 4 Del. C. 1953, § 730; 67 Del. Laws, c. 109, § 19; 72 Del. Laws, c. 486, § 11; 77 Del. Laws, c. 137, § 1.)

§ 724 Retaliatory beer tax and regulations; violations by out-of-state manufacturers of beer; hearing, penalties and appeal.

(a) In addition to compliance with all other provisions of this title, the Commissioner shall require each person, not a licensee of this State, who desires to sell beer manufactured outside this State to licensees of this State, to pay to the Commissioner the same fee or fees as are required to be paid in the State, territory or country of origin of such beer by a person, not a licensee thereof, who desires to sell beer manufactured in this State to licensees of such state, territory or country of origin, and to observe and comply with the same regulations, prohibitions and restrictions as are required of or enforced against a person who desires to sell beer manufactured in this State to licensees in the said state, territory or country of origin. In all cases where the Commissioner has issued any reciprocal regulations or orders concerning beer manufactured in any state, territory or country other than this State no licensee of this State shall purchase any such beer if its importation has been prohibited or if not entirely prohibited, unless such regulations or orders have been observed and complied with by the licensee of this State and by the person from or through whom the licensee of this State desires to purchase. Any beer manufactured outside of this State which is sold, transported or possessed in this State contrary to any such regulations or orders of the Commissioner or without the payment of the fees required by this title shall be considered contraband and shall be confiscated by the Commissioner and disposed of in the same manner as any other illegal alcoholic liquors.

(b) Upon learning of the Commissioner by a manufacturer of beer whose principal place of business is outside this State or by any servant, agent, employee or representative of such manufacturer within or partly within and partly outside this State of any violation of this title or any laws of this State relating to alcoholic liquors, or of any regulation of the Commissioner adopted pursuant thereto, or of any violation of any laws of this State or of the United States of America relating to the tax payment of alcoholic liquors, the Commissioner shall cite such manufacturer to appear before it not less than 10 nor more than 15 days from the date of mailing to such manufacturer at such manufacturer's principal place of business wherever located by registered mail a notice to show cause why the further importation into this State of beer manufactured by such manufacturer should not be prohibited. Upon such hearing, whether or not an appearance was made by such outside manufacturer, if satisfied that any such violation has occurred, the Commissioner shall immediately issue an order prohibiting the importation of beer manufactured by such manufacturer into this State for a period of not less than 6 months nor more than 3 years. Notice of such action of the Commissioner shall be given immediately to such manufacturer and to all persons licensed to import beer within this State by mailing a copy of such order to such manufacturer at its principal place of business wherever located and to such licensees at their licensed premises. Thereafter no person licensed to import beer within this State shall purchase or sell any beer manufactured by such outside manufacturer during the term of the prohibition. Any violation of the prohibitory order is a misdemeanor and also constitutes grounds for revocation or suspension of a license to import beer. In all such cases the Commissioner shall file of record at least a brief statement in the form of an opinion of the reasons for the ruling or order. Any outside manufacturer aggrieved by the action of the Commissioner may appeal to the Superior Court in the same manner as provided in § 541 of this title for appeals from refusals to grant licenses.

(38 Del. Laws, c. 18, § 30; 39 Del. Laws, c. 6; Code 1935, § 6159; 43 Del. Laws, c. 276, § 1; 44 Del. Laws, c. 206, § 1; 4 Del. C. 1953, § 731; 50 Del. Laws, c. 350, § 1; 67 Del. Laws, c. 109, § 19; 72 Del. Laws, c. 486, § 11; 84 Del. Laws, c. 42, § 51.)

§ 725 Preparations containing alcoholic liquors but not intended for use as a beverage.

(a) No provision of this title shall, by reason only of the fact that the product contains alcoholic liquor, prevent any of the following:

(1) The sale of any perfume, lotion, tincture, varnish, dressing, fluid extract or essence, vinegar, cream, ointment, salve, distillate, cooking wine, or decoction.

(2) The sale of any preparation (official, medicinal, or pharmaceutical) or of any patent or proprietary medicine, intended solely for medicinal purposes, if the product does not contain alcohol in any greater quantity than the amount required as a solvent or preservative, or if the product be so compounded as to render it unsuitable for use as a beverage.

(b) If the Division of Alcohol and Tobacco Enforcement (DATE) is of the opinion that one of the products enumerated in this section contains alcoholic liquor and is used for beverage purposes, it may notify the manufacturer or seller to that effect and from and after the

date of such notice this title shall apply to such product unless the manufacturer or seller requests a hearing before the Commissioner within 20 days of receipt of the notice. If the manufacturer or seller does not request a hearing within 20 days of the notice, or the Commissioner determines after the hearing that the product is used for beverage purposes, the manufacturer or seller so notified commits an offense under this title if the manufacturer or seller sells the product after such notice or determination, and is liable to the penalties provided in § 902 of this title.

(c) (1) In order to determine whether any particular preparation, proprietary or patented, contains alcohol in excess of the amount required as a solvent or preservative, or whether it is so compounded as to render it unsuitable for use as a beverage, DATE may purchase a sample of such preparation from any person and may have it analyzed by any individual DATE selects.

(2) If it appears from the analysis of the sample that the preparation contains alcohol in excess of the amount required as a solvent or preservative, or that it is not so compounded as to render it unsuitable for use as a beverage, DATE may notify the manufacturer or the agent in this State of the manufacturer of the preparation or the person who has acquired the preparation for purpose of resale, that the preparation is not an exempt product within the meaning of this section, but is an alcoholic liquor to which this title applies. After the service of such notice, this title shall apply to such preparation and the manufacturer or the agent in this State of the manufacturer or the person who has acquired same to resell, who has been so notified, commits an offense under this title unless a hearing is requested before the Commissioner within 20 days of receipt of the notice. If a hearing is not requested within 20 days of the notice, or the Commissioner determines after the hearing that the preparation is used for beverage purposes, the manufacturer or the agent in this State of the manufacturer of the preparation or the person who has acquired the preparation for purpose of resale commits an offense under this title if that person sells the preparation after the date of the service upon that person of the notice or determination.

(3) The notice required by this section shall consist of a letter from the Director of DATE stating that the preparation specified in the letter is not an exempt product in the sense of this section, but is an alcoholic liquor to which this title applies. The notice must be served by hand delivery or by sending a copy by certified mail to the manufacturer, or to the agent in this State of the manufacturer, or to the person who has acquired the preparation to resell.

(d) This section applies to every product which is included within the definition of the word “preparation” set forth in § 101 of this title and to every product which is defined or described in subsection (a) of this section, other than one which is prepared by a druggist at the time of the prescription of a physician and in accordance with its tenor or which is prepared by a physician for the use only of a patient actually under the physician’s care.

(38 Del. Laws, c. 18, § 43; Code 1935, § 6171; 4 Del. C. 1953, § 732; 67 Del. Laws, c. 109, § 19; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 11; 81 Del. Laws, c. 100, § 2; 84 Del. Laws, c. 42, § 1.)

§ 726 Liability for price of illegal sale of alcoholic liquors.

No action to recover the price of any alcoholic liquor sold in contravention of this title may be maintained.

(38 Del. Laws, c. 18, § 53; Code 1935, § 6181; 4 Del. C. 1953, § 733; 67 Del. Laws, c. 109, § 19.)

§ 727 Sale at last call/closing hour of an establishment.

No more than 1 alcoholic beverage may be sold to a person less than 15 minutes prior to closing each day that a license is open pursuant to this title. Any server who violates this section shall be guilty of a violation, and shall be fined $100 for a first offense, and $250 for a second or subsequent offense accruing within 1 year and shall be further required to take a course of instruction pursuant to Chapter 12 of this title (Delaware Responsible Alcoholic Beverage Server Training Program) within 90 days.

(71 Del. Laws, c. 438, § 1.)

§§ 728-730 [Reserved.]

Chapter 9
CRIMINAL OFFENSES AND PENALTIES

§ 901 Offenses carrying penalty of imprisonment for 3 to 6 months.

Whoever:

(1) Peddles any alcoholic liquor; or

(2) Keeps, sells or dispenses alcoholic liquor in a disorderly house; or

(3) Being an employee of the Commissioner and/or Division, infringes any of the provisions of this title; or

(4) Not being the holder of a proper and valid license, or not being so authorized by this title, sells any alcoholic liquor in this State; or

(5) Not being the holder of a license under this title, claims or represents to be the holder of a license or exhibits a document purporting to be a license under this title; or

(6) Sells, offers for sale, or keeps with the intent to sell for beverage purposes, denatured alcohol, perfume, lotion, tincture, fluid extract or essence, or other liquid or solid not originally manufactured or intended for use as a beverage, containing more than one half of 1 percent of ethyl alcohol by volume,

shall, in addition to the payment of costs, be imprisoned not less than 3 nor more than 6 months. Justices of the peace shall have original jurisdiction to hear, try, and finally determine alleged violations of this section.

(38 Del. Laws, c. 18, §§ 44, 45; Code 1935, §§ 6172, 6173; 41 Del. Laws, c. 250, § 1; 4 Del. C. 1953, § 901; 58 Del. Laws, c. 239, § 43; 67 Del. Laws, c. 109, § 27; 72 Del. Laws, c. 486, § 10; 84 Del. Laws, c. 42, § 52.)

§ 902 Offenses carrying penalty of fine of $500 to $1,000 or imprisonment for 3 to 6 months on failure to pay fine.

Whoever:

(1) Being the holder of a license, sells any alcoholic liquor of a kind other than that authorized to be sold by his or her license or by this title; or

(2) Being the holder of a license, sells alcoholic liquor to any person to whom neither his license nor this title authorizes him or her to sell; or

(3) Being the holder of a license, keeps or allows the keeping in his or her establishment of any alcoholic liquor other than that which he or she is authorized to sell by virtue of his or her license; or

(4) Being the manufacturer or the agent in this State for the manufacturer of any liquid or solid containing alcoholic liquor, sells such liquid or solid as a medicine or preparation after the Commissioner and/or Division has notified him or her in accordance with § 725 of this title; or

(5) Keeps or allows the keeping of any alcoholic liquor in his or her residence, either for himself or herself or for other persons on deposit or otherwise, with intent to sell the same; or

(6) Not being the holder of a license under Chapter 5 of this title, keeps or allows alcoholic liquor to be kept in a club for himself or herself or for members of the club or for other persons in storage or otherwise; or

(7) Not being the holder of a license authorized by § 515A of this title, operates or maintains an establishment commonly known as a "bottle club,"

shall, in addition to payment of costs, be fined not less than $500 nor more than $1,000, and, on failure to pay such fine and costs, shall be imprisoned not less than 3 nor more than 6 months. Justices of the peace shall have original jurisdiction to hear, try, and finally determine alleged violations of this section.

(38 Del. Laws, c. 18, § 45; Code 1935, § 6173; 4 Del. C. 1953, § 902; 58 Del. Laws, c. 239, § 44; 63 Del. Laws, c. 232, § 3; 67 Del. Laws, c. 109, § 28; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 10.)

§ 903 Offenses carrying penalty of fine of not more than $100 or imprisonment for 1 month on failure to pay fine.

Whoever:

(1) Being the holder of a license, sells beer to which wine, spirits or alcohol has been added; or sells wine to which spirits or alcohol has been added, other than an addition of spirits or alcohol to render possible transportation or to secure the customary fortifying thereof; or sells any alcoholic liquor to which has been added any adulterating or deleterious substances or liquid; or

(2) Being the holder of a license, sells any alcoholic liquor in any place, or in any manner, or in any quantity other than as authorized by the license; or

(3) Being the holder of a license to sell spirits, wine or beer in a dining room or bedroom, has not furnished, fitted, or equipped such dining room or bedroom in the manner or to the extent indicated by the Commissioner and/or Division; or

(4) Being the holder of a license to sell spirits, wine or beer, as the case may be, does not comply with any requirement or provision of §§ 512-520 or 706 of this title; or

(5) Being the holder of a license, sells any alcoholic liquor which the holder is authorized by the license to sell, at any time forbidden

by § 709 of this title; or

(6) Being the holder of a license, knowingly sells to any of the persons mentioned in § 708 of this title after notice sent to such person by the Commission in compliance with the provisions of said section, any alcoholic liquor, the sale of which is authorized by the license; or

(7) Being the holder of a license to sell alcoholic liquor in a store, allows any alcoholic liquor sold therein to be drunk in such store or its dependencies, either by the purchaser or by any other person; or

(8) Being the holder of a license to sell alcoholic liquor in the dining room of any hotel, restaurant, club or steamboat, or in a dining car, does not keep the license constantly posted conspicuously in view of the public in such dining room or dining car; or

(9) Being the holder of a license, keeps or transports any alcoholic liquor in contravention of this title; or

(10) Having acquired for the purpose of resale any liquid or solid containing alcoholic liquor, sells it as a medicine or preparation after having been notified by the Commissioner and/or Division in accordance with § 725 of this title; or

(11) Not being the holder of a license, leads the public or travellers to believe, by means of signs, inscriptions, advertisements, or circulars that license holder is authorized to sell alcoholic liquor; or

(12) Buys or receives any alcoholic liquor from any person not authorized to sell such variety of alcoholic liquor or keeps such alcoholic liquor in the person's possession; or

(13) Obtains, even gratuitously, during the time when the sale thereof is forbidden, any alcoholic liquor from any holder of a license for the sale thereof; or

(14) Causes any disturbance in any place or brings thereinto or drinks therein any alcoholic liquor prohibited therein; or

(15) Buys, for any remuneration whatsoever, any alcoholic liquors for another person; or

(16) Being the holder of a license to sell alcoholic liquor, fails to post in a conspicuous place a sign which clearly reads, "According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects;" or

(17) Manufactures, distributes, sells, offers for sale, possesses, purchases, or uses a powdered alcoholic beverage,

shall, in addition to the payment of costs, be fined not more than $100, and, on failure to pay such fine and costs, shall be imprisoned for 30 days. Justices of the peace shall have original jurisdiction to hear, try, and finally determine alleged violations of this section.

(38 Del. Laws, c. 18, § 46; Code 1935, § 6174; 41 Del. Laws, c. 254, § 2; 45 Del. Laws, c. 263, § 1; 4 Del. C. 1953, § 903; 58 Del. Laws, c. 239, § 45; 67 Del. Laws, c. 23, §§ 1, 2; 67 Del. Laws, c. 109, § 29; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 10; 81 Del. Laws, c. 372, § 2; 84 Del. Laws, c. 42, § 1.)

§ 904 Offenses concerning certain persons [Effective until Aug. 15, 2026].

(a) (1) Whoever sells any alcoholic liquor to any person who has not reached the age of 21 years, or sells to any person of more than such age any alcoholic liquor knowing that such alcoholic liquor is bought for a person who is less than 21 years of age and is to be drunk by the latter, shall, in addition to the payment of costs, be fined not less than $250 nor more than $500 and, on failure to pay such fine and costs, shall be imprisoned for 30 days.

(2) In any prosecution for an offense under this subsection, it shall be an affirmative defense that the individual, who has not reached the age of 21 years, presented to the accused identification, with a photograph of such individual affixed thereon, which identification sets forth information which would lead a reasonable person to believe such individual was 21 years of age or older.

(b) Any person under the age of 21 years who knowingly makes false statement to any person engaged in the sale of alcoholic liquor for the purpose of obtaining the same and to the effect that the person is 21 years of age or older, shall, in addition to the payment of costs, be fined for the first offense, not less than $100 nor more than $500, and on failure to pay such fine and costs, shall be imprisoned for 30 days, and for each subsequent like offense, shall be fined not less than $500 nor more than $1,000, and on failure to pay such fine and costs shall be imprisoned for 60 days.

(c) Whoever purchases, buys or gives alcoholic liquor for or to a person under the age of 21 years or knowingly allows a person under such purchaser's, buyer's or provider's supervision and under the age of 21 years to consume alcoholic liquor shall, in addition to the payment of costs, be fined for the first offense, not less than $100 nor more than $500, and may be ordered by the court to perform community service for a period of 40 hours in such form and on such terms as the court shall deem appropriate under the circumstances and may be imprisoned for not more than 30 days; and for each subsequent like offense, shall be fined not less than $500 nor more than $1,000 and may be ordered by the court to perform community service for a period of 80 hours in such form and on such terms as the court shall deem appropriate under the circumstances and may be imprisoned for not more than 60 days. This subsection shall not apply to religious services or members of the same family within the private home of any of said members.

(d) Except as provided in subsections (h) and (n) of this section, whoever, being the holder of a license to operate a tavern or taproom, admits or permits to remain in such tavern or taproom any individual under the age of 21 years, shall be fined not more than $100.

(e) Except as provided in subsections (h) and (n) of this section, whoever, being under the age of 21 years, enters or remains in a tavern, taproom or package store, or while therein possesses at any time alcoholic liquors, shall be fined $50.

(f) (1) Whoever, being under the age of 21 years, has alcoholic liquor in such under-aged person's possession at any time, or consumes or is found to have consumed alcoholic liquor, shall be fined $100 for the first violation and not less than $200 nor more than $500 for each subsequent violation.

(2) Notwithstanding paragraph (f)(1) of this section, whoever commits a violation of this subsection must be assessed a civil penalty

for a first violation or a second violation. Information concerning this civil offense may not appear on an individual's certified criminal record.

(3) Whoever commits a third or subsequent violation of this subsection is guilty of an unclassified misdemeanor.

(4) This section does not apply to the possession or consumption of alcoholic liquor in connection with any religious service or by members of the same family within the private home of any of said members.

(5) A peace officer having reasonable grounds to believe that a juvenile has committed an offense under this subsection may issue the juvenile a civil citation in lieu of a civil penalty.

(g) Nothing in this section shall prevent the employment of a person, 14 years of age or older, in clubs with authorized dining facilities, hotels, racetracks and restaurants licensed under this title, provided that such a person shall not be involved in the sale or service of alcoholic liquor.

(h) Nothing in this section prevents any of the following:

(1) The employment of a person 18 years of age or older to serve alcoholic liquor to patrons of establishments licensed under this title for the on-premises sale and consumption of alcoholic liquor.

(2) The employment of a person 18 years or older to work in any capacity in a tavern or taproom, except a person less than 21 years old may not prepare alcoholic liquor for patrons of a tavern or taproom. A person 18 years or older may sell or serve alcoholic liquor for patrons of a tavern or taproom.

(3) A person 18 years of age or older to enter a tavern or taproom to pick up a food order for delivery through a third-party delivery service.

(i) Nothing in this section shall prevent the employment of a person, 16 years of age or older, in a catering business serving liquors, provided that such person shall not be engaged in the sale or service of alcoholic liquor.

(j) Nothing in this section shall prevent the employment of a person, 16 years of age or older, in a bowling alley licensed to serve alcoholic beverages, provided that such person shall not be engaged in the sale or service of alcoholic liquor.

(k) Justices of the peace shall have original jurisdiction to hear, try, and finally determine alleged violations of this section.

(*l*) Nothing in this section shall prevent a licensed importer from employing a person who is 18, 19 or 20 years of age to:

(1) Work in an office, warehouse or other facility used by the importer in the operation of its business;

(2) Make or assist in deliveries of alcoholic liquors to licensed establishments in this State;

(3) Transport or assist in the transporting of alcoholic liquors to or from the importer's warehouse.

Such person may enter any licensed establishment in this State for the purpose of making or assisting the delivery of alcoholic liquors thereto or for any purpose related to such delivery.

No such person shall be employed by a licensed importer as a salesperson or sales representative.

(m) Nothing in this section shall prevent the employment in a store by a retailer of anyone who has reached the age of 18 years, under such conditions as the Commission may by rule prescribe; provided, however, that no such minor shall sell or serve alcoholic liquors.

(n) Nothing in this section shall prohibit or prevent persons under the age of 21 years from entering or remaining in a premises licensed as a tavern or taproom for the purpose of a social event, including, but not limited to, events exclusively for persons under the age of 21 years, provided that the premises licensed as a taproom or tavern is closed for business (including any Sunday); and provided further, that during any such social event, no alcoholic liquor shall be sold, furnished or given to any person at any time before, during or after the social event. All alcoholic liquor must be either removed from the licensed premises or placed under lock and key at all times during the social event and any time before or after the social event when persons under the age of 21 years are present on the licensed premises.

(o) Any person who was convicted of a first offense under subsections (e) and (f) of this section or the same offense under any county or municipal code, ordinance, or regulation and who was under the age of 21 at the time of the offense may, upon reaching the age of 21, apply for an expungement of the record of the conviction and any indicia of arrest to the court in which the person was convicted. For violations of subsection (e) or (f) of this section, an order granting such expungement shall issue upon proof that the person has reached the age of 21, unless the person has failed to comply with the sentencing order or the person has another charge under this section, or under the same offense under any county or municipal code, ordinance, or regulation, which remains outstanding. Upon issuance of the order of expungement, the records of the conviction and any indicia of arrest shall be dealt with in accordance with the procedures specified in subchapter VII of Chapter 43 of Title 11. Nothing in this section prohibits the Family Court from expunging a record of conviction as otherwise provided by law. The application for or granting of a pardon under §§ 4361 through 4364 of Title 11 does not prohibit an expungement under this section. All sentencing orders for violations of this section by persons under the age of 21 at the time of the offense shall state that the record of the conviction may be expunged upon reaching the age of 21 and thereafter. The civil filing fee shall apply to applications for expungement plus a $100 fee payable to the State Bureau of Identification for administrative costs.

(p) [Expired.]

(38 Del. Laws, c. 18, §§ 46, 50; Code 1935, §§ 6174, 6178; 41 Del. Laws, c. 253, §§ 1, 2; 45 Del. Laws, c. 263, § 1; 47 Del. Laws, c. 150, § 1; 4 Del. C. 1953, § 904; 53 Del. Laws, c. 390, §§ 1, 2; 54 Del. Laws, c. 295; 55 Del. Laws, c. 300; 55 Del. Laws, c. 335; 58 Del. Laws, c. 201; 58 Del. Laws, c. 239, § 46; 58 Del. Laws, c. 511, §§ 2-7; 59 Del. Laws, c. 234, § 1; 59 Del. Laws, c. 297, §§ 1-3; 61 Del. Laws, c. 448, § 1; 61 Del. Laws, c. 493, § 3; 61 Del. Laws, c. 511, §§ 1-3; 63 Del. Laws, c. 95, § 1; 64 Del. Laws, c. 216, §§ 3, 4; 64 Del. Laws, c. 435, § 1; 67 Del. Laws, c. 425, § 1; 68 Del. Laws, c. 242, § 1; 70 Del. Laws, c. 123, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 558, §§ 1-3; 72 Del. Laws, c. 134, § 1; 72 Del. Laws, c. 348, § 1; 72 Del. Laws, c. 349, § 1; 72 Del. Laws, c. 350, § 1; 74 Del. Laws, c. 237, §§ 1, 2; 75 Del. Laws, c. 255, § 2; 75 Del. Laws, c. 265, § 1; 81 Del. Laws, c. 338, § 1; 82 Del. Laws, c. 83, § 11; 82 Del.

Laws, c. 143, § 1; 83 Del. Laws, c. 37, § 2; 83 Del. Laws, c. 198, § 1; 83 Del. Laws, c. 291, § 1; 83 Del. Laws, c. 339, § 39; 83 Del. Laws, c. 438, § 2; 83 Del. Laws, c. 514, § 1; 84 Del. Laws, c. 42, §§ 1, 53.)

§ 904 Offenses concerning certain persons [Effective Aug. 15, 2026; Effective until Aug. 15, 2030].

(a) (1) Whoever sells any alcoholic liquor to any person who has not reached the age of 21 years, or sells to any person of more than such age any alcoholic liquor knowing that such alcoholic liquor is bought for a person who is less than 21 years of age and is to be drunk by the latter, shall, in addition to the payment of costs, be fined not less than $250 nor more than $500 and, on failure to pay such fine and costs, shall be imprisoned for 30 days.

(2) In any prosecution for an offense under this subsection, it shall be an affirmative defense that the individual, who has not reached the age of 21 years, presented to the accused identification, with a photograph of such individual affixed thereon, which identification sets forth information which would lead a reasonable person to believe such individual was 21 years of age or older.

(b) Any person under the age of 21 years who knowingly makes false statement to any person engaged in the sale of alcoholic liquor for the purpose of obtaining the same and to the effect that the person is 21 years of age or older, shall, in addition to the payment of costs, be fined for the first offense, not less than $100 nor more than $500, and on failure to pay such fine and costs, shall be imprisoned for 30 days, and for each subsequent like offense, shall be fined not less than $500 nor more than $1,000, and on failure to pay such fine and costs shall be imprisoned for 60 days.

(c) Whoever purchases, buys or gives alcoholic liquor for or to a person under the age of 21 years or knowingly allows a person under such purchaser's, buyer's or provider's supervision and under the age of 21 years to consume alcoholic liquor shall, in addition to the payment of costs, be fined for the first offense, not less than $100 nor more than $500, and may be ordered by the court to perform community service for a period of 40 hours in such form and on such terms as the court shall deem appropriate under the circumstances and may be imprisoned for not more than 30 days; and for each subsequent like offense, shall be fined not less than $500 nor more than $1,000 and may be ordered by the court to perform community service for a period of 80 hours in such form and on such terms as the court shall deem appropriate under the circumstances and may be imprisoned for not more than 60 days. This subsection shall not apply to religious services or members of the same family within the private home of any of said members.

(d) Except as provided in subsections (h) and (n) of this section, whoever, being the holder of a license to operate a tavern or taproom, admits or permits to remain in such tavern or taproom any individual under the age of 21 years, shall be fined not more than $100.

(e) Except as provided in subsections (h) and (n) of this section, whoever, being under the age of 21 years, enters or remains in a tavern, taproom or package store, or while therein possesses at any time alcoholic liquors, shall be fined $50.

(f) (1) Whoever, being under the age of 21 years, has alcoholic liquor in such under-aged person's possession at any time, or consumes or is found to have consumed alcoholic liquor, shall be fined $100 for the first violation and not less than $200 nor more than $500 for each subsequent violation.

(2) Notwithstanding paragraph (f)(1) of this section, whoever commits a violation of this subsection must be assessed a civil penalty for a first violation or a second violation. Information concerning this civil offense may not appear on an individual's certified criminal record.

(3) Whoever commits a third or subsequent violation of this subsection is guilty of an unclassified misdemeanor.

(4) This section does not apply to the possession or consumption of alcoholic liquor in connection with any religious service or by members of the same family within the private home of any of said members.

(5) A peace officer having reasonable grounds to believe that a juvenile has committed an offense under this subsection may issue the juvenile a civil citation in lieu of a civil penalty.

(g) Nothing in this section shall prevent the employment of a person, 14 years of age or older, in clubs with authorized dining facilities, hotels, racetracks and restaurants licensed under this title, provided that such a person shall not be involved in the sale or service of alcoholic liquor.

(h) Nothing in this section prevents any of the following:

(1) The employment of a person 18 years of age or older to serve alcoholic liquor to patrons of establishments licensed under this title for the on-premises sale and consumption of alcoholic liquor.

(2) The employment of a person 18 years or older to work in any capacity in a tavern or taproom, except a person less than 21 years old may not prepare alcoholic liquor for patrons of a tavern or taproom. A person 18 years or older may sell or serve alcoholic liquor for patrons of a tavern or taproom.

(3) A person 18 years of age or older to enter a tavern or taproom to pick up a food order for delivery through a third-party delivery service.

(i) Nothing in this section shall prevent the employment of a person, 16 years of age or older, in a catering business serving liquors, provided that such person shall not be engaged in the sale or service of alcoholic liquor.

(j) Nothing in this section shall prevent the employment of a person, 16 years of age or older, in a bowling alley licensed to serve alcoholic beverages, provided that such person shall not be engaged in the sale or service of alcoholic liquor.

(k) Justices of the peace shall have original jurisdiction to hear, try, and finally determine alleged violations of this section.

(*l*) Nothing in this section shall prevent a licensed importer from employing a person who is 18, 19 or 20 years of age to:

(1) Work in an office, warehouse or other facility used by the importer in the operation of its business;

(2) Make or assist in deliveries of alcoholic liquors to licensed establishments in this State;

(3) Transport or assist in the transporting of alcoholic liquors to or from the importer's warehouse.

Such person may enter any licensed establishment in this State for the purpose of making or assisting the delivery of alcoholic liquors thereto or for any purpose related to such delivery.

No such person shall be employed by a licensed importer as a salesperson or sales representative.

(m) Nothing in this section shall prevent the employment in a store by a retailer of anyone who has reached the age of 18 years, under such conditions as the Commission may by rule prescribe; provided, however, that no such minor shall sell or serve alcoholic liquors.

(n) Nothing in this section shall prohibit or prevent persons under the age of 21 years from entering or remaining in a premises licensed as a tavern or taproom for the purpose of a social event, including, but not limited to, events exclusively for persons under the age of 21 years, provided that the premises licensed as a taproom or tavern is closed for business (including any Sunday); and provided further, that during any such social event, no alcoholic liquor shall be sold, furnished or given to any person at any time before, during or after the social event. All alcoholic liquor must be either removed from the licensed premises or placed under lock and key at all times during the social event and any time before or after the social event when persons under the age of 21 years are present on the licensed premises.

(o) Any person who was convicted of a first offense under subsections (e) and (f) of this section or the same offense under any county or municipal code, ordinance, or regulation and who was under the age of 21 at the time of the offense may, upon reaching the age of 21, apply for an expungement of the record of the conviction and any indicia of arrest to the court in which the person was convicted. For violations of subsection (e) or (f) of this section, an order granting such expungement shall issue upon proof that the person has reached the age of 21, unless the person has failed to comply with the sentencing order or the person has another charge under this section, or under the same offense under any county or municipal code, ordinance, or regulation, which remains outstanding. Upon issuance of the order of expungement, the records of the conviction and any indicia of arrest shall be dealt with in accordance with the procedures specified in subchapter VII of Chapter 43 of Title 11. Nothing in this section prohibits the Family Court from expunging a record of conviction as otherwise provided by law. The application for or granting of a pardon under §§ 4361 through 4364 of Title 11 does not prohibit an expungement under this section. All sentencing orders for violations of this section by persons under the age of 21 at the time of the offense shall state that the record of the conviction may be expunged upon reaching the age of 21 and thereafter. The civil filing fee shall apply to applications for expungement plus a $100 fee payable to the State Bureau of Identification for administrative costs.

(p) Whoever fails to request identification for age verification, pursuant to § 527(c)(2) of this title shall, in addition to the payment of costs, be fined not less than $250 nor more than $500 for the first offense. Failure to pay such fines and costs may result in imprisonment for no more than 10 days.

(38 Del. Laws, c. 18, §§ 46, 50; Code 1935, §§ 6174, 6178; 41 Del. Laws, c. 253, §§ 1, 2; 45 Del. Laws, c. 263, § 1; 47 Del. Laws, c. 150, § 1; 4 Del. C. 1953, § 904; 53 Del. Laws, c. 390, §§ 1, 2; 54 Del. Laws, c. 295; 55 Del. Laws, c. 300; 55 Del. Laws, c. 335; 58 Del. Laws, c. 201; 58 Del. Laws, c. 239, § 46; 58 Del. Laws, c. 511, §§ 2-7; 59 Del. Laws, c. 234, § 1; 59 Del. Laws, c. 297, §§ 1-3; 61 Del. Laws, c. 448, § 1; 61 Del. Laws, c. 493, § 3; 61 Del. Laws, c. 511, §§ 1-3; 63 Del. Laws, c. 95, § 1; 64 Del. Laws, c. 216, §§ 3, 4; 64 Del. Laws, c. 435, § 1; 67 Del. Laws, c. 425, § 1; 68 Del. Laws, c. 242, § 1; 70 Del. Laws, c. 123, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 558, §§ 1-3; 72 Del. Laws, c. 134, § 1; 72 Del. Laws, c. 348, § 1; 72 Del. Laws, c. 349, § 1; 72 Del. Laws, c. 350, § 1; 74 Del. Laws, c. 237, §§ 1, 2; 75 Del. Laws, c. 255, § 2; 75 Del. Laws, c. 265, § 1; 81 Del. Laws, c. 338, § 1; 82 Del. Laws, c. 83, § 11; 82 Del. Laws, c. 143, § 1; 83 Del. Laws, c. 37, § 2; 83 Del. Laws, c. 198, § 1; 83 Del. Laws, c. 291, § 1; 83 Del. Laws, c. 339, § 39; 83 Del. Laws, c. 438, § 2; 83 Del. Laws, c. 514, § 1; 84 Del. Laws, c. 42, §§ 1, 53; 85 Del. Laws, c. 139, § 4.)

§ 904 Offenses concerning certain persons [Effective Aug. 15, 2030].

(a) (1) Whoever sells any alcoholic liquor to any person who has not reached the age of 21 years, or sells to any person of more than such age any alcoholic liquor knowing that such alcoholic liquor is bought for a person who is less than 21 years of age and is to be drunk by the latter, shall, in addition to the payment of costs, be fined not less than $250 nor more than $500 and, on failure to pay such fine and costs, shall be imprisoned for 30 days.

(2) In any prosecution for an offense under this subsection, it shall be an affirmative defense that the individual, who has not reached the age of 21 years, presented to the accused identification, with a photograph of such individual affixed thereon, which identification sets forth information which would lead a reasonable person to believe such individual was 21 years of age or older.

(b) Any person under the age of 21 years who knowingly makes false statement to any person engaged in the sale of alcoholic liquor for the purpose of obtaining the same and to the effect that the person is 21 years of age or older, shall, in addition to the payment of costs, be fined for the first offense, not less than $100 nor more than $500, and on failure to pay such fine and costs, shall be imprisoned for 30 days, and for each subsequent like offense, shall be fined not less than $500 nor more than $1,000, and on failure to pay such fine and costs shall be imprisoned for 60 days.

(c) Whoever purchases, buys or gives alcoholic liquor for or to a person under the age of 21 years or knowingly allows a person under such purchaser's, buyer's or provider's supervision and under the age of 21 years to consume alcoholic liquor shall, in addition to the payment of costs, be fined for the first offense, not less than $100 nor more than $500, and may be ordered by the court to perform community service for a period of 40 hours in such form and on such terms as the court shall deem appropriate under the circumstances and may be imprisoned for not more than 30 days; and for each subsequent like offense, shall be fined not less than $500 nor more than $1,000 and may be ordered by the court to perform community service for a period of 80 hours in such form and on such terms as the court shall deem appropriate under the circumstances and may be imprisoned for not more than 60 days. This subsection shall not apply to religious services or members of the same family within the private home of any of said members.

(d) Except as provided in subsections (h) and (n) of this section, whoever, being the holder of a license to operate a tavern or taproom, admits or permits to remain in such tavern or taproom any individual under the age of 21 years, shall be fined not more than $100.

(e) Except as provided in subsections (h) and (n) of this section, whoever, being under the age of 21 years, enters or remains in a tavern, taproom or package store, or while therein possesses at any time alcoholic liquors, shall be fined $50.

(f) (1) Whoever, being under the age of 21 years, has alcoholic liquor in such under-aged person's possession at any time, or consumes or is found to have consumed alcoholic liquor, shall be fined $100 for the first violation and not less than $200 nor more than $500 for each subsequent violation.

(2) Notwithstanding paragraph (f)(1) of this section, whoever commits a violation of this subsection must be assessed a civil penalty for a first violation or a second violation. Information concerning this civil offense may not appear on an individual's certified criminal record.

(3) Whoever commits a third or subsequent violation of this subsection is guilty of an unclassified misdemeanor.

(4) This section does not apply to the possession or consumption of alcoholic liquor in connection with any religious service or by members of the same family within the private home of any of said members.

(5) A peace officer having reasonable grounds to believe that a juvenile has committed an offense under this subsection may issue the juvenile a civil citation in lieu of a civil penalty.

(g) Nothing in this section shall prevent the employment of a person, 14 years of age or older, in clubs with authorized dining facilities, hotels, racetracks and restaurants licensed under this title, provided that such a person shall not be involved in the sale or service of alcoholic liquor.

(h) Nothing in this section prevents any of the following:

(1) The employment of a person 18 years of age or older to serve alcoholic liquor to patrons of establishments licensed under this title for the on-premises sale and consumption of alcoholic liquor.

(2) The employment of a person 18 years or older to work in any capacity in a tavern or taproom, except a person less than 21 years old may not prepare alcoholic liquor for patrons of a tavern or taproom. A person 18 years or older may sell or serve alcoholic liquor for patrons of a tavern or taproom.

(3) A person 18 years of age or older to enter a tavern or taproom to pick up a food order for delivery through a third-party delivery service.

(i) Nothing in this section shall prevent the employment of a person, 16 years of age or older, in a catering business serving liquors, provided that such person shall not be engaged in the sale or service of alcoholic liquor.

(j) Nothing in this section shall prevent the employment of a person, 16 years of age or older, in a bowling alley licensed to serve alcoholic beverages, provided that such person shall not be engaged in the sale or service of alcoholic liquor.

(k) Justices of the peace shall have original jurisdiction to hear, try, and finally determine alleged violations of this section.

(*l*) Nothing in this section shall prevent a licensed importer from employing a person who is 18, 19 or 20 years of age to:

(1) Work in an office, warehouse or other facility used by the importer in the operation of its business;

(2) Make or assist in deliveries of alcoholic liquors to licensed establishments in this State;

(3) Transport or assist in the transporting of alcoholic liquors to or from the importer's warehouse.

Such person may enter any licensed establishment in this State for the purpose of making or assisting the delivery of alcoholic liquors thereto or for any purpose related to such delivery.

No such person shall be employed by a licensed importer as a salesperson or sales representative.

(m) Nothing in this section shall prevent the employment in a store by a retailer of anyone who has reached the age of 18 years, under such conditions as the Commission may by rule prescribe; provided, however, that no such minor shall sell or serve alcoholic liquors.

(n) Nothing in this section shall prohibit or prevent persons under the age of 21 years from entering or remaining in a premises licensed as a tavern or taproom for the purpose of a social event, including, but not limited to, events exclusively for persons under the age of 21 years, provided that the premises licensed as a taproom or tavern is closed for business (including any Sunday); and provided further, that during any such social event, no alcoholic liquor shall be sold, furnished or given to any person at any time before, during or after the social event. All alcoholic liquor must be either removed from the licensed premises or placed under lock and key at all times during the social event and any time before or after the social event when persons under the age of 21 years are present on the licensed premises.

(o) Any person who was convicted of a first offense under subsections (e) and (f) of this section or the same offense under any county or municipal code, ordinance, or regulation and who was under the age of 21 at the time of the offense may, upon reaching the age of 21, apply for an expungement of the record of the conviction and any indicia of arrest to the court in which the person was convicted. For violations of subsection (e) or (f) of this section, an order granting such expungement shall issue upon proof that the person has reached the age of 21, unless the person has failed to comply with the sentencing order or the person has another charge under this section, or under the same offense under any county or municipal code, ordinance, or regulation, which remains outstanding. Upon issuance of the order of expungement, the records of the conviction and any indicia of arrest shall be dealt with in accordance with the procedures specified in subchapter VII of Chapter 43 of Title 11. Nothing in this section prohibits the Family Court from expunging a record of conviction as otherwise provided by law. The application for or granting of a pardon under §§ 4361 through 4364 of Title 11 does not prohibit an expungement under this section. All sentencing orders for violations of this section by persons under the age of 21 at the time of the

offense shall state that the record of the conviction may be expunged upon reaching the age of 21 and thereafter. The civil filing fee shall apply to applications for expungement plus a $100 fee payable to the State Bureau of Identification for administrative costs.

(p) [Repealed.]

(38 Del. Laws, c. 18, §§ 46, 50; Code 1935, §§ 6174, 6178; 41 Del. Laws, c. 253, §§ 1, 2; 45 Del. Laws, c. 263, § 1; 47 Del. Laws, c. 150, § 1; 4 Del. C. 1953, § 904; 53 Del. Laws, c. 390, §§ 1, 2; 54 Del. Laws, c. 295; 55 Del. Laws, c. 300; 55 Del. Laws, c. 335; 58 Del. Laws, c. 201; 58 Del. Laws, c. 239, § 46; 58 Del. Laws, c. 511, §§ 2-7; 59 Del. Laws, c. 234, § 1; 59 Del. Laws, c. 297, §§ 1-3; 61 Del. Laws, c. 448, § 1; 61 Del. Laws, c. 493, § 3; 61 Del. Laws, c. 511, §§ 1-3; 63 Del. Laws, c. 95, § 1; 64 Del. Laws, c. 216, §§ 3, 4; 64 Del. Laws, c. 435, § 1; 67 Del. Laws, c. 425, § 1; 68 Del. Laws, c. 242, § 1; 70 Del. Laws, c. 123, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 558, §§ 1-3; 72 Del. Laws, c. 134, § 1; 72 Del. Laws, c. 348, § 1; 72 Del. Laws, c. 349, § 1; 72 Del. Laws, c. 350, § 1; 74 Del. Laws, c. 237, §§ 1, 2; 75 Del. Laws, c. 255, § 2; 75 Del. Laws, c. 265, § 1; 81 Del. Laws, c. 338, § 1; 82 Del. Laws, c. 83, § 11; 82 Del. Laws, c. 143, § 1; 83 Del. Laws, c. 37, § 2; 83 Del. Laws, c. 198, § 1; 83 Del. Laws, c. 291, § 1; 83 Del. Laws, c. 339, § 39; 83 Del. Laws, c. 438, § 2; 83 Del. Laws, c. 514, § 1; 84 Del. Laws, c. 42, §§ 1, 53; 85 Del. Laws, c. 139, § 7.)

§ 905 Unlicensed manufacture of alcoholic liquor; possession of still, apparatus, mash, etc., by unlicensed person.

(a) Whoever manufactures any alcoholic liquor without having first obtained from the Commissioner a license authorizing such manufacture, or, not being the holder of a license to manufacture alcoholic liquor, has at any time possession of any still, receptacle, paraphernalia, apparatus, mash, wort or wash, adapted for use in connection with the manufacture of alcoholic liquor, shall, in addition to the payment of costs, be fined not less than $500 nor more than $5,000, or imprisoned not less than 6 months nor more than 2 years, or both.

(b) Nothing in this section shall apply to the making of beer, cider or wine for personal consumption and not for the purpose of sale, nor to fermented liquids used in the manufacture of vinegar exclusively; however, no pipe, conductor or contrivance of any description whatsoever whereby vapor might in any manner be conveyed away and converted into distilled spirits, shall be used or employed or be fastened to or connected with any apparatus used for the manufacture of beer, cider, wine or vinegar except in the case of a duly licensed manufacturer. Any violation of this subsection shall carry the same penalties as provided in subsection (a) of this section.

(Code 1935, § 6174A; 45 Del. Laws, c. 261, § 1; 4 Del. C. 1953, § 905; 71 Del. Laws, c. 315, § 1; 72 Del. Laws, c. 486, § 11.)

§ 906 Transportation and shipment.

(a) Whoever transports or ships alcoholic liquor in violation of the requirements of § 718 of this title, or, in connection with such transportation or shipment, knowingly has in his or her possession a waybill giving a false name or a false address, or transports by any vehicle any alcoholic liquor upon which the taxes provided by § 581 of this title have not been paid, shall, in addition to the payment of costs, be fined not less than $100 nor more than $1,000, or imprisoned not less than 30 days nor more than 6 months, or both.

(b) In any trial for an offense under this section, the burden shall be upon the defendant to prove that the taxes provided by § 581 of this title have been paid. Nothing in this section shall apply to any alcoholic liquor purchased from a legal source and being transported by the purchaser.

(c) In addition to the penalties provided by this section, any vehicle used to transport alcoholic liquor manufactured in violation of § 905 of this title shall be deemed confiscated and shall be delivered to, retained by and disposed of by the Commissioner and/or Division as provided in Chapter 11 of this title. A vehicle used to transport alcoholic liquor in violation of other sections of this title shall be seized or confiscated under this section only if it can be proved beyond a reasonable doubt that the transported alcoholic liquor was for some use other than personal consumption by the person or his or her passengers transporting it. This section shall not apply to vehicles operated by common carriers over scheduled routes, or to vehicles in which the sale of alcoholic liquor is licensed.

(d) Justices of the peace shall have original jurisdiction to hear, try, and finally determine alleged violations of this section.

(Code 1935, § 6172A; 45 Del. Laws, c. 263, § 2; 4 Del. C. 1953, § 906; 55 Del. Laws, c. 82, § 10; 58 Del. Laws, c. 108; 58 Del. Laws, c. 208; 58 Del. Laws, c. 239, § 47; 67 Del. Laws, c. 109, § 30; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 10.)

§ 907 Interference with officer or inspector.

Whoever interferes with or hinders any officer or inspector authorized by the Director to investigate any infringements of this title or to make any search, examination or seizure, in the performance of the officer's or inspector's duties to that end, shall, in addition to any other penalty which may be imposed upon him or her under this title, and in addition to payment of costs, be fined $100 for each offense, and on failure to pay such fine and costs, shall be imprisoned for a term of 1 month. Justices of the peace shall have original jurisdiction to hear, try, and finally determine alleged violations of this section.

(38 Del. Laws, c. 18, § 48; Code 1935, § 6176; 4 Del. C. 1953, § 907; 58 Del. Laws, c. 239, § 48; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 12.)

§ 908 Failure of licensee to file report.

Whoever, being the holder of a license for the sale of alcoholic liquor, neglects or refuses to make a return to the Commissioner, within 10 days immediately following the date indicated by the Commissioner, of his or her purchases and sales of alcoholic liquor as provided in this title, shall be fined $10 per day for each day's delay, to run from the expiration of such 10 days. Justices of the peace shall have original jurisdiction to hear, try, and finally determine alleged violations of this section.

(38 Del. Laws, c. 18, § 49; Code 1935, § 6177; 4 Del. C. 1953, § 908; 58 Del. Laws, c. 239, § 49; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 11.)

§ 909 Violation of rules respecting liquor taxes.

Whoever violates any rule or regulation made and published by the Commissioner respecting the collection and payment of taxes, as provided in § 581(d) of this title, shall be fined not more than $1,000 and the costs of prosecution.

(38 Del. Laws, c. 18, § 16; Code 1935, § 6145; 43 Del. Laws, c. 274, § 1; 4 Del. C. 1953, § 909; 72 Del. Laws, c. 486, § 11.)

§ 910 Offenses without specific penalty.

Whoever violates any provision of this title or any regulation of the Commissioner adopted and published under the authority of this title, for which no penalty is provided in this chapter, shall, in addition to the payment of costs, be fined or imprisoned, or both.

(38 Del. Laws, c. 18, § 46; Code 1935, § 6174; 41 Del. Laws, c. 254, § 1; 4 Del. C. 1953, § 910; 72 Del. Laws, c. 486, § 11.)

§ 911 Penalty for partnerships and associations.

Wherever the penalty for an offense committed consists of imprisonment in whole or in part and the accused is a corporation, partnership or other association of persons, the penalty shall be a fine of $2,000 in addition to the costs.

(38 Del. Laws, c. 18, § 47; Code 1935, § 6175; 4 Del. C. 1953, § 911.)

§ 912 Exemption of employees of Commissioner and/or Division.

No officer or inspector employed by the Commissioner and/or Division for the enforcement of this title, when acting in the officer's or inspector's official capacity, shall incur any of the penalties exacted by this chapter for the punishment of those who obtain alcoholic liquor either from a holder of a license granted under this title or from a person who is not the holder of a license.

(38 Del. Laws, c. 18, § 52; Code 1935, § 6180; 4 Del. C. 1953, § 912; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 10.)

§ 913 Licensees convicted of violations by the Commissioner may be assessed costs.

Any licensee found guilty by the Commissioner of a violation of the rules of the Commissioner or the provisions of the Liquor Control Act of this State, as amended, may be required by the Commissioner to pay costs incurred by the Commissioner for the hearing, whether there is a plea of guilty or not guilty entered by the licensee. If a licensee fails to pay the costs assessed under the provisions of this section, the Commissioner may suspend or revoke the license or licenses issued by the Commissioner to the licensee.

(4 Del. C. 1953, § 913; 57 Del. Laws, c. 404, § 5; 72 Del. Laws, c. 486, § 11.)

§ 914 Authority to suspend licenses and/or impose fines.

Whenever the Commissioner has found a licensee to be guilty of a violation of the rules of the Commissioner or the Delaware Liquor Control Act, in addition to the power and authority granted to the Commissioner by this title, the Commissioner shall have the power and authority to suspend a license and/or to impose a fine on the licensee and to require the licensee to pay a fine with regard to such violation. Prior to a license suspension and/or the imposition of any fine, the Commissioner may cause such investigation to be made as the Commissioner deems desirable and the suspension and/or fine shall only be imposed and required to be paid if the Commissioner is satisfied:

(1) That the public welfare and morals would not be impaired by the suspension and/or imposition of the fine and that the payment of the sum of money will achieve the desired disciplinary purposes; and

(2) That the books and records of the licensee are kept in such a manner that the average monthly gross sales of alcoholic beverages can be determined with reasonable accuracy therefrom.

Any fine imposed by the Commissioner, pursuant to this section, shall not exceed 10% of the estimated average gross monthly sales of alcoholic liquor for the operations of the licensee within the 12 months immediately preceding the date of the finding of guilt provided that such amount exceeds $250. In no case shall the fine imposed by the Commissioner upon a finding of guilt be less than $250. Each licensee shall maintain financial records that clearly demonstrate the licensee's estimated average gross monthly sale of alcoholic liquor for the operations of the business within the 12 months immediately preceding the date of the licensee's hearing before the Commissioner and, upon a finding of guilt, shall submit such documentation to the Commissioner.

(4 Del. C. 1953, § 914; 57 Del. Laws, c. 453, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 351, § 1; 72 Del. Laws, c. 486, § 11; 75 Del. Laws, c. 417, § 1.)

§ 915 Licensees pleading guilty; voluntary fines; limitation.

The Commissioner is authorized to create a "voluntary fine assessment plan," with fines not to exceed $5,000, available to any licensee who pleads guilty to any violation of the Commissioner rules. Where a licensee chooses to pay a voluntary fine under the plan, such licensee shall have waived the licensee's right to and shall forego a formal hearing before the Commissioner, and shall be deemed to have waived any right to appeal relating to the offense(s). The plan shall be administered by the Executive Secretary or by such other persons as shall be designated by the Commissioner. The plan shall be published as a Commissioner rule.

(67 Del. Laws, c. 91, § 1; 70 Del. Laws, c. 93, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 378, § 1; 72 Del. Laws, c. 486, § 11.)

§ 916 Penalties imposed against licensees who threaten employees.

No licensee or representative thereof may discipline, threaten or otherwise penalize an employee for refusing to violate rules of the Commissioner and/or Division or statutes of the State. Any licensee violating the provisions of this section shall be subject to the penalties

described in § 561(b)(10), § 910 and § 913 of this title.

(70 Del. Laws, c. 132, § 1; 72 Del. Laws, c. 486, § 10.)

Chapter 11
SEIZURE AND CONFISCATION

§ 1101 Peddled or illegally transported liquor.

(a) Wherever alcoholic liquor is being peddled in this State, or whenever any alcoholic liquor is transported in this State, unaccompanied by a license to transport such alcoholic liquor, or unaccompanied by a waybill as provided in § 718(c) of this title, any police officer of the State or subdivision thereof or any inspector of the Division may seize such alcoholic liquor, as well as the receptacle or receptacles containing the same, and hand them over to the Division.

(b) This section shall not at any time or in any instance apply to an individual who is the holder of a license to purchase a stock of draft beer in half barrel or quarter barrel containers for personal use and is transporting for the individual's own personal use from the individual's home after delivery has been made thereto by an importer.

(c) This section does not apply to persons transporting alcoholic liquor under §§ 501 and 716 of this title.

(38 Del. Laws, c. 18, § 55; Code 1935, § 6182; 41 Del. Laws, c. 256, § 1; 42 Del. Laws, c. 191, § 6; 4 Del. C. 1953, § 1101; 55 Del. Laws, c. 82, § 11; 58 Del. Laws, c. 248, §§ 1, 2; 67 Del. Laws, c. 109, § 31; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 13.)

§ 1102 Shipments to unauthorized portions of State; other illegal sales or shipments.

(a) Any officer or inspector of the Division so authorized, may seize, without a warrant, any alcoholic liquor, as well as any receptacle containing it, shipped into a municipality or part of this State in which a prohibitory law is in force, or whose competent authority has decided, in the manner set forth in § 102 of this title, that any license or any certain kind of license shall not be granted, unless each parcel containing such alcoholic liquor is clearly and visibly addressed to the bona fide purchaser. The fact that such parcel is so addressed shall not, however, prevent the seizure of the alcoholic liquor and of the receptacle containing it if such alcoholic liquor is shipped or sold contrary to any provision of this title.

(b) The alcoholic liquor seized as well as the receptacles containing it shall be handed over to the Division.

(c) This section shall not apply to an individual, the holder of a license to purchase a stock of draft beer in half barrel or quarter barrel containers for personal use, who having said license then with him or her, is personally transporting for his or her own personal use such draft beer.

(38 Del. Laws, c. 18, § 56; Code 1935, § 6183; 42 Del. Laws, c. 191, § 7; 4 Del. C. 1953, § 1102; 55 Del. Laws, c. 82, § 12; 58 Del. Laws, c. 248, § 3; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 13.)

§ 1103 Manufacture on unauthorized premises; seizure or destruction of liquor, apparatus and materials.

All alcoholic liquor, stills and other apparatus, tubs, barrels, containers and paraphernalia of any character, and all mash, wort or wash, used or useful in connection with the manufacture of alcoholic liquor which are upon the premises wherein or whereon are committed any offense defined in § 905 of this title, shall be seized by the officers apprehending the same and disposed of as provided in this section. The officers finding the same may forthwith destroy any or all mash, wort or wash upon the premises, and any or all stills or other apparatus, tubs, barrels, containers and paraphernalia so found. The officer or officers destroying any property shall forthwith report the same to the Commissioner and in such report shall itemize all property destroyed and the estimated value thereof and shall state the names of the persons in whose presence such act or acts of destruction were performed. The report shall be witnessed by at least 2 responsible persons other than the officer or officers performing such act or acts of destruction. The Commissioner may sell any property of value so seized to any person or persons desiring to purchase same, who in the opinion of the Commissioner will not utilize same in connection with any violation of this chapter. The proceeds from such sale shall be deposited in the General Fund of the State.

(Code 1935, § 6174A; 45 Del. Laws, c. 261, § 1; 4 Del. C. 1953, § 1103; 50 Del. Laws, c. 427, § 1; 72 Del. Laws, c. 486, § 11.)

§ 1104 Property found in disorderly house or used in connection with offenses.

Every officer and inspector of the Commissioner and all other peace officers of this State, may, without a warrant, seize property, as hereinafter defined, kept, transported, possessed or sold in contravention of this title, when found in any disorderly house; and may also seize such property in like manner and for like violations when the said property is used in connection with any offense under this title to the knowledge of the Commissioner or any of its officers or inspectors or to the knowledge of any other peace officer of this State. Immediately upon seizure, such property shall be deemed to be confiscated and the Commissioner shall be vested with a special property therein, subject to this chapter. The word "property" as used in this chapter includes alcoholic liquor, stills and other apparatus designed for the manufacture of alcoholic liquor, receptacles and other paraphernalia used in connection with any violation of this title, and all vehicles used in connection with the unlawful transportation of alcoholic liquor. This chapter shall not apply to vehicles operated by common carriers over scheduled routes, or to such vehicles in which the sale of alcoholic liquor is licensed. Forthwith upon seizure, all property seized shall be delivered to and shall be retained and disposed of by the Commissioner under the provisions of this chapter, subject, however, to any right or power of immediate destruction otherwise conferred by this chapter. The word "Commissioner" as used in the immediately preceding sentence includes any officer or inspector thereof with respect to delivery to the Commissioner of seized property as defined in this section.

(38 Del. Laws, c. 18, § 57; Code 1935, § 6184; 45 Del. Laws, c. 264, § 1; 4 Del. C. 1953, § 1104; 72 Del. Laws, c. 486, § 11.)

§ 1105 Retention of seized property; return to owner; disposition of alcoholic liquor.

All property seized and delivered into the possession of the Division shall be disposed of in the following manner:

(1) The enforcement officers of the Division or the peace officers who seized the property shall give written notice to the person whom they reasonably believe to be the owner of the property, and to the person from whom the property was seized, if they reasonably believe such person is not the owner, that such person may within 10 days of the date of notice and upon proof, satisfactory to the Commissioner that such property had not been used in connection with any violation of any of the provisions of this title, or of the rules of the Commissioner or both, if so used, that the use was without the knowledge, acquiescence or consent of the rightful owner, the owner's agent, employee or servant, return said property to the rightful owner. Any dispute between the enforcement personnel of the Division and the person believed to be the rightful owner or the person from whom the property was seized, shall be resolved by a hearing before the Commissioner. The Commissioner's decision shall be final and conclusive unless any party, having appeared before the Commissioner, appeals to the Superior Court of the State within 10 days of the date of the written decision.

(2) Any property seized pursuant to this chapter which consists of alcoholic liquor and its container may, after the provisions of paragraph (1) of this section have been complied with, be offered for sale to the licensed Delaware importers of alcoholic liquor at the prevailing price paid by the importers for like brands and quality. If the alcoholic liquor is distributed in this State by more than 1 licensed importer, then the Commissioner shall offer said seized alcoholic liquor to all importers who engage in the sale of such brand of alcoholic liquor. If the seized alcoholic liquor is purchased by a licensed Delaware importer, the importer shall issue to the Commissioner a voucher showing at least the following facts:

(a) The date of the purchase;

(b) The purchase price of each item purchased; and

(c) The quantity and nature of the item purchased.

At the subsequent direction of the Commissioner, the licensed Delaware importer which purchased the liquor shall:

1. If the owner of the alcoholic liquor or the person from whom the liquor was seized, if different from the person reasonably believed to be the owner, shall be found guilty of the offenses in violation of the Liquor Control Act or the rules of the Office of the Commissioner or both, issue its check payable to the Office of the Commissioner in the amount of the total purchase price shown on the voucher, which amount shall be applied by the Commissioner as provided in § 1110 of this title as proceeds of a sale authorized by order of court; or

2. If the owner of the alcoholic liquor and the person from whom the liquor was seized, if different from the person reasonably believed to be the owner, shall be acquitted of the offenses alleged to have been in violation of the Liquor Control Act or the rules of the Commissioner, or both, issue its check payable to such person, or, at such person's election, deliver alcoholic liquor of the same or similar nature and quantity described in the voucher to such person.

3. The enforcement officers of the Division with the advice of other peace officers of this State and/or the Department of Justice may retain all or part of the alcoholic liquor and its containers seized for use as evidence for as long a period as they deem necessary. Thereafter it may be disposed of pursuant to this chapter.

4. All other such seized property shall be disposed of as is provided in this chapter.

(38 Del. Laws, c. 18, § 57; Code 1935, § 6184; 45 Del. Laws, c. 264, § 1; 4 Del. C. 1953, § 1105; 58 Del. Laws, c. 248, § 4; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 14.)

§ 1106 Ascertainment of ownership and liens upon seized vehicles.

Before filing the report and petition required by § 1107 of this title, the Division shall examine or cause to be examined records of liens on motor vehicles at the titling department in Dover and records of conditional sales contracts recorded in the offices of the recorders of the counties to ascertain what liens, if any, had been entered against any motor vehicles seized under this chapter and all available information as to ownership of such vehicles and liens, if any, upon the same shall be incorporated in such report and petition.

(38 Del. Laws, c. 18, § 57; Code 1935, § 6184; 45 Del. Laws, c. 264, § 1; 4 Del. C. 1953, § 1106; 72 Del. Laws, c. 486, § 13.)

§ 1107 Commission's report and petition to Court.

The Division shall, from time to time in its discretion, file a report and petition in the Superior Court in any county of the State. The report and petition shall set forth (1) the date of the filing of the last preceding report, with term number thereof, (2) an itemized list of all property seized and delivered to the Division under this chapter with the date of seizure of each item, but the report may not include property previously disposed of under this chapter or involved in pending offenses either before the courts of the State or the Division, (3) a statement of the circumstances of each seizure with the names and addresses, so far as known, of any persons in possession of the property at the time of the seizure thereof, and the names and addresses of any persons believed by the enforcement officers of the Division or the peace officers who made the seizure to be the rightful owners of said property (and as to motor vehicles, the lienholders thereon), (4) whether or not any portion or part of the property listed in the report and petition was returned to others or other claimants, (5) a list of requests, if any, of state departments, agencies, institutions, hospitals or other institutions supported in whole or in part by state appropriations, for any property seized and herein described, (6) the disposition of any prosecutions in any court of any cases involving offenses under this title or against the rules of the Division and arising out of arrests made in connection with the seizure of any such property, and (7) a statement of the estimated value of each item of property listed in the report and petition, so far as may be ascertained, with the names and addresses, so far as known, of all persons claiming ownership of such property or any lien thereon. The report and

petition shall request an order of the Court as to the disposal of the property.

(38 Del. Laws, c. 18, § 57; Code 1935, § 6184; 45 Del. Laws, c. 264, § 1; 4 Del. C. 1953, § 1107; 58 Del. Laws, c. 248, § 5; 72 Del. Laws, c. 486, § 13.)

§ 1108 Rule to show cause and service thereof; hearing and order of disposal.

(a) Upon the filing with the Court of the Division's report and petition in accordance with § 1107 of this title, the Court shall direct the issuance of a rule returnable on a day certain at the next succeeding term of the Court, directed to all known claimants, owners and lienors, and such rule shall be issued to and served by the sheriff of the county in which such claimant, owner or lienor shall reside or, if the Court shall so direct, may be mailed by the clerk of the peace to such claimants, owners or lienors at the addresses disclosed by the report and petition. In addition, the Court shall direct publication of a notice, in a form approved by the Court, in a newspaper of general circulation in the county or counties where the property or any part thereof was located at the time of seizure. The publication shall be made at least 1 time weekly during 2 successive weeks preceding the week during which the rule is returnable.

(b) Upon the return of the rule, the Court may order:

(1) The destruction of any of such property except legally distilled spirits with seals and containers so preserved and with labels and seals unbroken as to permit or be eligible for resale;

(2) The delivery of any thereof to any state department, agency or institution or to any hospital or other institution supported in whole or in part by state appropriations, for which such institution shall have use in the conduct of its authorized activities, which order and subsequent delivery shall vest title in and to all such property in the agency, department or institution receiving same;

(3) The sale of any thereof by the Division at public sale, except that such order may direct the Division in its discretion to offer privately for sale in regular trade channels to the licensed importers of alcoholic liquor such of the alcoholic liquor as are bottled for the trade and with labels and seals unbroken at the prevailing price paid by the importers for like brands and quality, and upon any other terms the Court decides should be imposed;

(4) In the case of order for sale of any motor vehicle seized in accordance with this chapter, the order shall also direct that after advertisement and public sale, the proceeds of such sale shall first be applied to the costs of the proceedings including storage, then to bona fide liens placed upon the vehicles prior to seizure, and then to the Division to be disposed of as otherwise provided in this chapter.

(c) The Division shall make return to the Court of its proceedings under the Court's order.

(38 Del. Laws, c. 18, § 57; Code 1935, § 6184; 45 Del. Laws, c. 264, § 1; 4 Del. C. 1953, § 1108; 72 Del. Laws, c. 486, § 13.)

§ 1109 Procedural provisions.

(a) The Superior Court may adopt rules to govern proceedings under this chapter.

(b) All proceedings under this chapter shall be in the nature of proceedings in rem for the forfeiture and disposition of property seized and not otherwise disposed of under this chapter.

(c) Nothing contained in this chapter shall be construed as depriving any owner or person holding a lien upon or conditional title to any property seized from pursuing any remedy otherwise available in any court for the recovery of said property, but no such other remedy shall be available and no other proceeding for the recovery of said property shall be brought after a petition, involving said property, has been filed in the Superior Court under the authority of § 1107 of this title, and in such case all remedies of persons claiming title to or liens upon such seized property shall be asserted and adjudicated in the cause presented by such petition in the Superior Court.

(d) In any action or proceeding brought by an alleged owner, lienor or claimant of the seized property, this State, acting on behalf of the Division, shall be permitted to intervene as a party defendant and justify the seizure under the authority of this chapter, and in such case, as well as in any case arising under this chapter, the Court may by order, judgment or decree require the payment to the Division of all proper costs and expenses of seizure, holding, storage or other acts or proceedings under the authority of this chapter.

(e) It shall be no objection to any report and petition filed by the Division under § 1107 of this title that it relates to and deals with the property of more than one person or property seized on more than one occasion, nor shall the Superior Court refuse to act upon any such petition because any criminal proceeding arising out of the seizure of such property remains undisposed of, has resulted in an acquittal or has been retired or nolle prossed by the Attorney General.

(38 Del. Laws, c. 18, § 57; Code 1935, § 6184; 45 Del. Laws, c. 264, § 1; 4 Del. C. 1953, § 1109; 72 Del. Laws, c. 486, § 13.)

§ 1110 Proceeds of sale; payment of costs.

(a) Where a sale of property has been authorized by order of court under this chapter, and consummated, the proceeds to the extent of an aggregate of $15,000 during any one fiscal year, shall be retained by the Division as a special fund for enforcement of this title, any sum so received in excess of $15,000, during any 1 fiscal year, shall be paid into the General Fund of the State. If at the end of any fiscal year there is in the fund more than $15,000, the excess shall be paid into the General Fund of the State.

(b) All taxable costs in any proceeding under this chapter in the Superior Court, including the costs of publication and sale, shall be paid by the Division from any of its available funds, but first out of the proceeds of sale to the extent such proceeds may be adequate for the purpose.

(38 Del. Laws, c. 18, § 57; Code 1935, § 6184; 45 Del. Laws, c. 264, § 1; 4 Del. C. 1953, § 1110; 72 Del. Laws, c. 486, § 13; 79 Del. Laws, c. 118, § 1.)

§ 1111 Procedure governing searches and seizures.

The provisions of this chapter pertaining to searches and seizures shall be subject to Chapter 23 of Title 11. In the event of any conflict or inconsistency between this chapter and Chapter 23 of Title 11, the latter shall prevail.

(4 Del. C. 1953, § 1111.)

Chapter 12
DELAWARE RESPONSIBLE ALCOHOLIC BEVERAGE SERVER TRAINING PROGRAM

§ 1201 Findings and declaration of policy.

It is determined and declared as a matter of legislative findings that:

(1) The irresponsible service and consumption of alcoholic beverages has had a significant adverse impact on highway safety, personal health and individual welfare and is not in the best interests of the citizens of this State;

(2) Commercial servers of alcoholic beverages who are licensed by the State have a responsibility to ensure that their customers are served alcoholic beverages in a responsible and appropriate manner;

(3) Responsible server training programs have proven to be an effective means of addressing, in a positive and constructive manner, the irresponsible and inappropriate service of alcoholic beverages by commercial establishments;

(4) The voluntary responsible alcoholic beverage server training program which has been conducted by the Delaware Division of Alcohol and Tobacco Enforcement staff has been well received by those licensed commercial servers of alcoholic beverages who have undergone the training;

(5) A voluntary server training program cannot be as effective as a mandatory program which would reach all licensed commercial servers of alcoholic beverages;

(6) Such a mandatory training program should be provided to licensees and their employees at a reasonable cost so as to encourage their full support and participation while creating an incentive for the employees to take the program seriously; and

(7) The establishment of a mandatory responsible alcoholic beverage server training program will promote highway safety and the public health and welfare of the citizens of Delaware.

Therefore, it is declared to be the policy of this State to promote the safety, health and welfare of its citizens by the establishment and operation of a mandatory responsible alcoholic beverage server training program pursuant to the provisions of this chapter.

(68 Del. Laws, c. 168, § 1; 70 Del. Laws, c. 602, § 6; 72 Del. Laws, c. 486, §§ 15, 21; 75 Del. Laws, c. 80, §§ 1, 2.)

§ 1202 Implementation.

(a) It shall be the responsibility of the Division of Alcohol and Tobacco Enforcement to establish training courses and materials, examinations and examination procedures with respect to the implementation of a mandatory responsible alcoholic beverage server training program in Delaware.

(b) It shall be permissible for any person or entity to establish a responsible alcoholic beverage server training program that conforms to the requirements of § 1204 of this title.

(c) In establishing, implementing, certifying or otherwise approving any training program, the Alcoholic Beverage Control Commissioner and the Division of Alcohol and Tobacco Enforcement shall consult with and seek comment from industry groups affected by the program as well as other interested state agencies.

(d) For the purposes of § 1203(a) and (c) of this title, the term “employees” means persons who have been employed by the holder of a license for at least 30 days and who work in a licensed establishment at least 10 hours a week.

(e) The Commissioner may grant new licenses or renew valid licenses conditional upon the certification required by § 1203(b) and (d) of this title being provided to the Commissioner within 30 days of the granting or renewal of such license.

(68 Del. Laws, c. 168, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 602, §§ 4, 5; 72 Del. Laws, c. 486, §§ 15, 21; 74 Del. Laws, c. 250, § 2; 75 Del. Laws, c. 80, § 3.)

§ 1203 Applicability; on-premises licenses.

(a) Effective July 1, 1992, every person who holds any valid license issued by the Alcoholic Beverage Control Commissioner pursuant to this title which authorizes the sale of alcoholic beverages for on-premises consumption shall, upon request, be required to demonstrate that his or her employees who as part of their employment responsibilities sell, prepare, dispense, serve or otherwise deliver alcoholic beverages directly to patrons of the licensed establishment for on-premises consumption, or who manage employees who do, have successfully completed a responsible alcoholic beverage server training program recognized and approved by the Commissioner in accordance with the provisions of this chapter. Each licensee who participates directly in the management of the licensed establishment shall also be required to successfully complete a responsible alcoholic beverage server training program recognized and approved by the Commissioner.

(b) Following July 1, 1992, every person who makes application for any license or for renewal of any valid license issued by the Alcoholic Beverage Control Commissioner pursuant to this title, which authorizes the sale of alcoholic beverages for on-premises consumption shall, as part of the application process, certify to the Commissioner that his or her employees who as part of their employment responsibilities sell, prepare, dispense, serve or otherwise deliver alcoholic beverages directly to patrons of the licensed establishment for on-premises consumption, or who manage employees who do, have successfully completed a responsible alcoholic beverage server training program recognized and approved by the Commissioner in accordance with the provisions of this chapter. Each applicant who intends to participate directly in the management of the licensed establishment shall also be required to successfully

complete a responsible alcoholic beverage server training program recognized and approved by the Commissioner.

(c) Effective January 1, 1997, every person who holds any valid license issued by Alcoholic Beverage Control Commissioner pursuant to this title which authorizes the sale of alcoholic beverages for off-premises consumption shall, upon request, be required to demonstrate that any employees who, as part of their employment responsibilities, sell, serve or otherwise deliver alcoholic beverages directly to patrons of the licensed establishment for off-premises consumption or who manage employees who do, have successfully completed a responsible alcoholic beverage server training program recognized and approved by the Commissioner in accordance with the provisions of this chapter. Each licensee who participates directly in the management of the licensed establishment shall also be required to successfully complete a responsible alcoholic beverage server training program recognized and approved by the Commissioner.

(d) Following January 1, 1997, every person who makes application for any license or renewal of any valid license issued by the Alcoholic Beverage Control Commissioner pursuant to this title which authorizes the sale of alcoholic beverages for off-premises consumption shall, as part of the application process, certify to the Commissioner that any employees who, as part of their employment responsibilities, sell, serve or otherwise deliver alcoholic beverages directly to patrons of the license establishment for off-premises consumption or who manage employees who do, have successfully completed a responsible alcoholic beverage server training program recognized and approved by the Commissioner in accordance with the provisions of this chapter. Each applicant who intends to participate directly in the management of the licensed establishment shall also be required to complete a responsible alcoholic beverage server training program recognized and approved by the Commissioner.

(e) The provisions of subsections (a) through (d) of this section shall not apply to licenses issued pursuant to §§ 514 and 525 of this title.

(68 Del. Laws, c. 168, § 1; 68 Del. Laws, c. 327, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 602, §§ 1-3; 72 Del. Laws, c. 486, §§ 15, 21.)

§ 1204 Training standards and curriculum.

(a) In order to be recognized and approved by the Alcoholic Beverage Control Commissioner, a responsible alcoholic beverage server training program shall include, but need not be limited to, providing information related to the following:

(1) Alcohol as a drug and its effects on the body and behavior, especially as to driving ability;

(2) Effects of alcohol in combination with commonly used legal prescription or nonprescription drugs and illegal drugs;

(3) Recognizing the problem drinker and the identification of community treatment programs and agencies;

(4) Applicable Delaware alcoholic beverage control laws and Alcoholic Beverage Control Commissioner rules;

(5) Delaware laws related to drinking and driving;

(6) Intervention techniques, involving methods of dealing with the problem customer who has had, or is approaching the point of having had, too much to drink;

(7) Advertising, promotion and marketing of alcoholic beverages for safe and responsible drinking patterns and standard operating procedures for dealing with customers.

(b) The Commissioner may by regulation provide additional training standards and curricula to be included within any responsible alcoholic beverage server training program as a condition to its being recognized and approved by the Commissioner.

(c) The Division of Alcohol and Tobacco Enforcement shall provide a responsible alcoholic beverage server training program through its trained personnel for a course approved by the Commissioner and the Commissioner may approve and certify such a training program or programs to be provided through independent contractors, private persons or educational institutions.

(d) Anyone required to undergo training in accordance with the provisions of this chapter, who has within the previous 4 years successfully completed a responsible alcoholic beverage server training program which satisfies the requirements of the Commissioner, and is approved by the Commissioner, shall not be obligated to undertake additional training until such time as the person is required to undergo renewal training in accordance with § 1205 of this title.

(68 Del. Laws, c. 168, § 1; 72 Del. Laws, c. 486, §§ 15, 21; 74 Del. Laws, c. 250, § 2; 75 Del. Laws, c. 80, § 4.)

§ 1205 Certification and renewal training.

Every person who successfully completes an approved responsible alcoholic beverage server training program shall be certified by the instructor as having met the requirements of this chapter. The course taught shall be either the Division of Alcohol and Tobacco Enforcement course or any other Commissioner approved course. The instructor shall provide the names of the persons who successfully complete the approved class, as well as such additional information that is required by the Commissioner, to the Commissioner and the Division of Alcohol and Tobacco Enforcement. Such certification shall be valid for a period of 4 years at which time the person must undergo renewal training in order to obtain recertification which shall also be valid for a period of 4 years. Renewal training shall include the information described in § 1204 of this title and/or such other information as the Commissioner may by regulation require.

(68 Del. Laws, c. 168, § 1; 72 Del. Laws, c. 486, § 15; 75 Del. Laws, c. 80, § 5.)

§ 1206 Violations; penalties.

(a) The Commissioner may reprimand or impose an administrative fine against any licensee who intentionally violates any provision of this chapter or any regulation promulgated by the Commissioner pursuant thereto.

(b) The Commissioner may preclude any employee of a licensee who fails to comply with the applicable training requirements contained in this chapter or any regulation promulgated by the Commissioner pursuant thereto from working in any capacity in a licensed

establishment until such time as it is provided with proof that the employee has successfully completed the applicable training requirements.

(c) The Commissioner may suspend or revoke the server training card of any person who the Commission determines, after a hearing, has violated this title or the Commissioner's rules. If a person's card is suspended or revoked, that person shall not be permitted to serve alcohol in Delaware during the period of suspension or, if revoked, for such period of time as stated by the Commissioner in the order of revocation. In addition, the Commissioner may require that a person that has completed the course attend and successfully complete either the full course or the recertification course.

(68 Del. Laws, c. 168, § 1; 72 Del. Laws, c. 486, § 15; 75 Del. Laws, c. 80, § 6.)

§ 1207 Enforcement.

The Division of Alcohol and Tobacco Enforcement shall be responsible for enforcement of this chapter and shall bring charges of violations of this chapter against a licensee or a certified trained server before the Commissioner. The Commissioner shall have exclusive original jurisdiction over all alleged violations of the provisions of this chapter.

(68 Del. Laws, c. 168, § 1; 72 Del. Laws, c. 486, §§ 15, 21; 75 Del. Laws, c. 80, § 7.)

§ 1208 Training program costs.

(a) All costs associated with the implementation, administration and enforcement of the requirements of this chapter shall be paid from a special fund entitled the "Delaware Responsible Alcoholic Beverage Server Training Program Fund."

(b) The Commissioner shall deposit $300 from each application process fee, collected pursuant to § 554(x) of this title, into the Delaware Responsible Alcoholic Beverage Server Training Program Fund.

(c) Any person that takes the course offered by the Division of Alcohol and Tobacco Enforcement after January 1, 2006, shall pay a fee, in the amount determined by the Commissioner, not to exceed $15 for the full course and $10 for the recertification course. Said fee shall be deposited into the Delaware Responsible Alcoholic Beverage Server Training Program Fund to pay for the costs associated with the program. Any person that is approved by the Commissioner to offer a responsible alcoholic beverage server training course may be required to remit a fee determined by the Commissioner, not to exceed $15, to offset any costs associated with creating an identification card for the server.

(d) The Fund shall be a revolving fund and no funds deposited therein shall revert to the General Fund of the State Treasury.

(e) The Alcoholic Beverage Control Commissioner and Division of Alcohol and Tobacco Enforcement shall, on or before December 31 of each year, make a report to the Governor of all income and expenditures made from said Fund. A copy of said reports shall be given biennially on or before December 31 to any member of the General Assembly who requests a copy.

(f) The Commissioner shall deposit $200 from each application process fee, collected pursuant to § 554(x) of this title, into an account designated by the Department of Finance for the General Fund of the State Treasury.

(68 Del. Laws, c. 168, § 1; 68 Del. Laws, c. 327, § 2; 72 Del. Laws, c. 486, §§ 15, 21; 75 Del. Laws, c. 80, § 8.)

Chapter 13
The Delaware Marijuana Control Act
Subchapter I
General Provisions

§ 1301 Purpose and findings.

(a) In the interest of creating jobs with community benefits, eliminating the marijuana illegal market to allow law enforcement to focus on violent crime and property crimes, and promoting individual freedom, the General Assembly finds and declares that the personal use of marijuana should be legal for persons 21 years of age or older and taxed in a manner similar to alcohol.

(b) In the interest of the health and public safety of our citizenry, the General Assembly further finds and declares that marijuana must be regulated in a manner similar to alcohol to ensure all of the following:

(1) Individuals will have to show proof of age before purchasing marijuana.

(2) Selling, distributing, or transferring marijuana to individuals under the age of 21 remains illegal.

(3) Driving under the influence of marijuana remains illegal.

(4) Legitimate, taxpaying businesspeople, not criminal actors, conduct sales of marijuana.

(5) Marijuana sold in this State will be tested, labeled, and subject to additional regulations to ensure that consumers are informed and protected.

(c) The General Assembly further finds and declares that it is necessary to ensure consistency and fairness throughout this State, and therefore, that the matters addressed by this chapter are of statewide concern, except as specified in this chapter.

(84 Del. Laws, c. 24, § 4.)

§ 1302 Definitions.

As used in this chapter:

(1) “Appeals Commission” means 3 persons, 1 from each county, appointed by the Governor with the advice and consent of the majority of the Senate.

(2) “Commissioner” means the person appointed by the Governor and confirmed by the Senate who serves as the Marijuana Commissioner for the State.

(3) “Compassion center” means an entity registered as a compassion center under § 4914A of Title 16.

(4) “Conditional license” means a license that is issued to an applicant who has met minimum qualifications and been selected through the Commissioner’s process to receive a license. Conditional licensees are granted for a period of 18 months to allow the licensee to secure a physical business premises, complete additional application requirements, receive approval from the Commissioner for the licensed premises, and demonstrate readiness to commence operations.

(5) “Consumer” means an individual 21 years of age or older who purchases marijuana, marijuana products, or marijuana accessories for personal use by the individual or other individuals 21 years of age or older, but not for resale to others.

(6) “Conversion license” means an open license issued to a compassion center for participation in the adult use recreational market.

(7) “Department” means the Department of Safety and Homeland Security.

(8) “Disproportionately-impacted area” means census tracts in the State identified by the Commissioner in collaboration with state and local agencies that have high rates of arrest, conviction, and incarceration relating to the sale, possession, use, cultivation, manufacture, or transport of marijuana.

(9) “Division” means the Division of Alcohol and Tobacco Enforcement.

(10) “Flowering plant” means a marijuana plant from the time it exhibits the first signs of sexual maturity through harvest, which includes budding.

(11) “Immature plant” means a nonflowering marijuana plant: no taller than 8 inches and no wider than 8 inches; that is produced from a cutting, clipping, or seedling; is in a cultivating container; and which does not have buds that may be observed by visual examination.

(12) “Labor peace agreement” means an agreement between a licensee and any bona fide labor organization that prohibits labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the licensee’s business. This agreement means that the licensee has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the licensee’s employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the licensee’s employees work, for the purpose of meeting with employees to discuss the employees’ right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

(13) “License” means any license or permit to cultivate, possess, manufacture, sell, transport, or test marijuana or marijuana products and accessories authorized or issued by the Commissioner under this chapter.

(14) “Marijuana” means as defined in § 4701 of Title 16.

(15) “Marijuana accessories” means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana; or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

(16) “Marijuana cultivation facility” or “cultivation facility” means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers. A marijuana cultivation facility may not produce marijuana concentrates, tinctures, extracts, or other marijuana products.

(17) “Marijuana establishment” means an entity licensed as a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

(18) “Marijuana product manufacturing facility” means an entity licensed to: purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and retail marijuana stores, but not to consumers.

(19) “Marijuana products” means products that are comprised of marijuana, including concentrated marijuana, and other ingredients and are intended for use or consumption, such as edible products, ointments, and tinctures.

(20) “Marijuana testing facility” means an entity licensed to test marijuana for potency and contaminants.

(21) “Microbusiness license” means a license issued pursuant to part C of subchapter III of this chapter which includes any of the following:

a. Marijuana cultivation facility license.

b. Marijuana product manufacturing license.

(22) “Open license” means a license issued pursuant to part B of subchapter III of this chapter that is not a social equity license or microbusiness license which includes all of the following:

a. Retail marijuana store license

b. Marijuana testing facility license.

c. Marijuana cultivation facility license.

d. Marijuana product manufacturing license.

(23) “Person” means as defined in § 302 of Title 1.

(24) “Personal use quantity” means as defined in § 4701 of Title 16.

(25) “Possession limit” means the amount of marijuana that may legally be possessed at any 1 time by an individual 21 years of age or older who is not a registered qualifying patient or a registered designated caregiver under Chapter 49A of Title 16.

(26) “Public place” means any indoor or outdoor area or portion thereof generally accessible to the public.

(27) “Retail marijuana” means “marijuana”, as defined in § 4701 of Title 16, that is cultivated, manufactured, distributed, or sold by a licensed marijuana establishment.

(28) “Retail marijuana store” means an entity licensed to purchase marijuana from marijuana cultivation facilities; to purchase marijuana and marijuana products from marijuana product manufacturing facilities; and to sell marijuana and marijuana products to consumers.

(29) “Smoking” means both of the following:

a. The burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains marijuana.

b. The use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form.

(30) “Social equity license” means a license issued pursuant to part C of subchapter III of this chapter for any of the following:

a. Retail marijuana store license.

b. Marijuana testing facility license.

c. Marijuana cultivation facility license.

d. Marijuana product manufacturing license.

(31) “Unreasonably impracticable” means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana establishment is not worthy of being carried out in practice by a reasonably-prudent businessperson.

(32) [Repealed.]

(84 Del. Laws, c. 24, § 4; 84 Del. Laws, c. 301, § 2; 84 Del. Laws, c. 303, § 1; 85 Del. Laws, c. 11, § 1.)

§ 1303 Marijuana accessories authorized.

An individual who is 21 years of age or older is authorized to manufacture, possess, and purchase marijuana accessories, and to distribute or sell marijuana accessories, to an individual who is 21 years of age or older.

(84 Del. Laws, c. 24, § 4.)

§ 1304 Places of employment.

Nothing in this chapter is intended to impact or impose any requirement or restriction on employers with respect to terms and conditions of employment including accommodation, policies, or discipline.

(84 Del. Laws, c. 24, § 4; 84 Del. Laws, c. 514, § 2.)

§ 1305 Driving under the influence prohibited.

Nothing in this chapter is intended to allow driving under the influence of marijuana or driving while impaired by marijuana or to supersede laws related to driving under the influence of marijuana or driving while impaired by marijuana. This chapter is not intended to prevent the State from enacting and imposing penalties for driving under the influence of or while impaired by marijuana.

(84 Del. Laws, c. 24, § 4.)

§ 1306 Individuals under age 21; prohibitions.

(a) Nothing in this chapter is intended to permit the transfer of marijuana, with or without remuneration, to an individual under the age of 21 or to allow an individual under the age of 21 to purchase, possess, use, transport, or consume marijuana.

(b) It is unlawful for an individual under the age of 21 years to knowingly enter or remain in an establishment licensed under this chapter. A violation of this subsection is a civil offense punishable by a civil penalty of $50.

(84 Del. Laws, c. 24, § 4.)

§ 1307 Private property rights.

Nothing in this chapter prohibits a person, employer, school, hospital, detention facility, corporation, or any other entity who occupies, owns, or controls a property from prohibiting or otherwise regulating the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property, except that in the case of the rental of a residential dwelling, a landlord may only prohibit the possession of marijuana or the consumption of marijuana by nonsmoked means if 1 or more of the following applies:

(1) The building is the primary residence of the landlord, no more than 3 rooms in the building are rented to tenants, and no more than 3 tenants occupy such building.

(2) Residence is merely incidental to detention or to the provision of medical, geriatric, educational, counseling, religious, or similar services, including prisons, student housing provided by a college or school, long-term care facilities, and hospitals.

(3) Failing to prohibit marijuana possession or consumption would violate federal law or regulations or cause the landlord to lose a monetary or licensing-related benefit under federal law or regulations.

(84 Del. Laws, c. 24, § 4.)

§ 1308 Unlawful marijuana extraction, penalties; class G felony.

(a) It is unlawful for a person, other than a marijuana product manufacturer complying with this chapter and department regulations, to extract compounds from marijuana using solvents other than water, glycerin, propylene glycol, vegetable oil, or food grade ethanol (ethyl alcohol).

(b) It is unlawful for a person to extract compounds from marijuana using ethanol in the presence or vicinity of open flame.

(c) Violation of this section is a class G felony.

(84 Del. Laws, c. 24, § 4.)

§ 1309 Lawful operation of marijuana-related establishments.

(a) It is lawful and may not be an offense under the law of this State, or be the basis for seizure or forfeiture of assets under the law of this State, for an individual 21 years of age or older to do any of the following:

(1) Manufacture, possess, or purchase marijuana accessories or sell marijuana accessories to an individual who is 21 years of age or older in a manner set forth in this chapter.

(2) Possess, display, or transport marijuana or marijuana products; purchase marijuana from a marijuana cultivation facility; purchase marijuana or marijuana products from a marijuana product manufacturing facility; or sell marijuana or marijuana products to consumers if the person conducting the activities described in this paragraph (a)(2) holds a valid license to operate a retail marijuana store or is acting in the person's capacity as an owner, employee, or agent of a licensed retail marijuana store.

(3) Cultivate, harvest, process, package, transport, display, or possess marijuana; deliver or transfer marijuana to a marijuana testing facility; sell marijuana to a marijuana cultivation facility, a marijuana product manufacturing facility, or a retail marijuana store; or purchase marijuana from a marijuana cultivation facility if the person conducting the activities described in this paragraph (a)(3) holds a valid license to operate a marijuana cultivation facility or is acting in the person's capacity as an owner, employee, or agent of a licensed marijuana cultivation facility.

(4) Package, process, transport, manufacture, display, or possess marijuana or marijuana products; deliver, transport, or transfer marijuana or marijuana products; sell marijuana or marijuana products to a retail marijuana store or a marijuana product manufacturing facility; purchase marijuana from a marijuana cultivation facility; or purchase marijuana or marijuana products from a marijuana product manufacturing facility if the person conducting the activities described in this paragraph (a)(4) holds a valid license to operate a marijuana product manufacturing facility or is acting in the person's capacity as an owner, employee, or agent of a licensed marijuana product manufacturing facility.

(5) Possess, cultivate, process, repackage, store, transport, display, transfer, or deliver marijuana or marijuana products if the person

holds a valid license to operate a marijuana testing facility or is acting in the person's capacity as an owner, employee, or agent of a licensed marijuana testing facility.

(6) Lease or otherwise allow the use of property owned, occupied, or controlled by any person, for any of the activities conducted lawfully under this chapter.

(b) (1) An entity licensed under this chapter may not sell or deliver marijuana or marijuana products on Thanksgiving, Easter, or Christmas or at hours other than those prescribed by the rules or regulations of the Commissioner.

(2) A holder of license for a retail marijuana store may not sell or deliver marijuana or marijuana products on Thanksgiving, Easter, or Christmas or between the hours of 10:00 p.m. and 9:00 a.m. on Mondays through Saturdays, and on Sundays before noon or after 8:00 p.m. Any municipality with a population of 50,000 or more may limit sales under this subsection within the boundaries of the municipality to a maximum of 4 hours on Sundays as established by ordinance of the municipality. The closing hours for days of the week other than Sunday may be made earlier in any municipality having a population of 50,000 or more persons, by ordinance of the municipality; provided, however, that such ordinance be consistent with the Delaware and federal constitutions and must treat all businesses fairly. During the months of October through December, a holder of a license for a retail marijuana store may have sales take place beginning at 8:00 a.m. on Fridays through Saturdays and 10:00 a.m. on Sundays.

(3) Any holder of a license for a retail marijuana store who wishes to sell marijuana or marijuana products on Sundays must pay a biennial license fee of $500 for the issuance of a special license to sell marijuana and marijuana products on Sundays, which is in addition to any other license fees which may be required of the holder.

(c) Marijuana and marijuana products may not be sold in an establishment licensed to sell alcoholic liquors under this title.

(84 Del. Laws, c. 24, § 4; 84 Del. Laws, c. 301, § 3.)

§ 1310 Enforcement.

(a) Inspections and enforcement activities are to be conducted by the Division of Alcohol and Tobacco Enforcement in accordance with Chapter 4 of this title.

(b) The Division of Alcohol and Tobacco Enforcement may conduct administrative inspections under § 403 of this title. The Office of the Marijuana Commissioner may conduct administrative inspections of a premise licensed under any provision of this title at any time the licensee, employee of the licensee, or customer is upon the licensed premise. Administrative inspections under this subsection may be conducted only for the purpose of ensuring compliance with the regulations of this title or the rules and regulations of the Marijuana Commissioner.

(84 Del. Laws, c. 24, § 4; 84 Del. Laws, c. 301, § 4.)

§ 1311 Contracts enforceable.

Contracts related to the operation of a marijuana establishment licensed under this chapter are enforceable. A contract entered into by a licensed marijuana establishment or its employees or agents as permitted under a valid license, or by those who allow property to be used by a licensed marijuana establishment, its employees, or its agents as permitted under a valid license, is not unenforceable on the basis that cultivating, obtaining, manufacturing, distributing, dispensing, transporting, selling, possessing, or using marijuana is prohibited by federal law.

(84 Del. Laws, c. 24, § 4.)

§ 1312 Verifying the age of marijuana consumers.

(a) Whoever sells any marijuana to a person who has not reached the age of 21 years, or sells to any person of more than such age any marijuana knowing that such marijuana is bought for a person who is less than 21 years of age shall be subject to a civil penalty not less than $250 nor more than $500.

(b) In any enforcement action under this section, it is an affirmative defense that the individual who is under 21 years old presented identification, with a photograph of such individual affixed thereon, to the accused and the identification set forth information which would lead a reasonable person to believe such individual was 21 years old or older.

(84 Del. Laws, c. 24, § 4.)

§ 1313 Medical marijuana provision not affected.

Nothing in this chapter may be construed to limit any privileges or rights of a medical marijuana patient, primary caregiver, or medical marijuana compassion center under the Delaware Medical Marijuana Act, Chapter 49A of Title 16.

(84 Del. Laws, c. 24, § 4.)

§ 1314 Oversight Committee; annual report by the Commissioner.

(a) The Delaware Marijuana Control Act Oversight Committee is established to evaluate and make recommendations regarding the implementation of this chapter.

(1) The Oversight Committee shall consist of 15 members who possess the qualifications and are appointed as follows:

a. The Secretary of the Department, or designee appointed by the Secretary.

b. The Director of the Division of Revenue, or the Director's designee.

c. The Director of the Division of Public Health, or the Director's designee.

d. The Director of the Division of Substance Abuse and Mental Health, or the Director's designee.
e. The Director of the Delaware Medical Marijuana Program, or the Director's designee.
f. The Chief Officer of the Division of Diversity, Equity and Inclusion, or the Chief Officer's designee.
g. The Director of the Division of Small Business, or the Director's designee.
h. One member of the House of Representatives, appointed by the Speaker of the House of Representatives.
i. One member of the Senate, appointed by the President Pro Tempore of the Senate.
j. One marijuana advocate from each county appointed by the Speaker of the House of Representatives.
k. One marijuana advocate from each county appointed by the President Pro Tempore of the Senate.

(2) The members of the Oversight Committee shall serve at the pleasure of the appointing authority.
(3) A quorum shall consist of a majority of the membership of the Oversight Committee.
(4) The Oversight Committee shall select a chair and vice chair from among its members.
(5) Staff support for the Oversight Committee shall be provided by the Division.
(6) The Oversight Committee shall meet at least 2 times per year for the purpose of evaluating and making recommendations to the Governor, the General Assembly, and the Department regarding the following:
a. The ability of consumers in all areas of the State to obtain legal marijuana.
b. The sufficiency of the regulatory and security safeguards under this chapter and adopted by the Commissioner to ensure that access to and use of marijuana cultivated is provided only to individuals age 21 or over.
c. Any recommended additions or revisions to the Commissioner's regulations or this chapter, including relating to security, safe handling, labeling, and nomenclature.
d. Any research studies regarding health effects of using marijuana.
e. The impact of this chapter on decreasing the illegal sales and production of marijuana.
f. The impact of this chapter other aspects of public safety, including the incidence of people driving under the influence, using marijuana in places or in a manner prohibited by this chapter, and the use of prescription opioids and illegal opioids.
g. Any research and recommendations to implement current best practices for the development of a diverse workforce among marijuana establishments, including diversity among employees, licensees, and owners of marijuana establishments.

(b) The Commissioner shall submit to the Governor and members of the General Assembly an annual report setting forth all matters of interest and all statistics concerning marijuana regulation and control in the State, including the following:
(1) The number of licenses of each kind issued within the State and the number cancelled during the year.
(2) The amount of marijuana and marijuana products sold within the State.
(3) Statistics regarding diversity among marijuana establishments, including diversity of employees, licensees, and owners of marijuana establishments.
(4) Outcomes and effectiveness of the issuance of social equity licenses which shall include all of the following:
a. The number of and types of social equity licenses issued.
b. The number of persons or entities receiving financial assistance, and from what source.
c. The location of the social equity licensed premises.
d. If applicable, the number of new jobs or other forms of economic output created as a result of the social equity licenses.
(5) Other data as may make a complete report to the people of this State.

(c) If marijuana is decriminalized under federal law, the Commissioner shall submit a report to the Governor and the General Assembly evaluating the State's compliance with federal law and make recommendations as to any changes needed in this State's marijuana law to be compliant with federal law.

(84 Del. Laws, c. 24, § 4; 84 Del. Laws, c. 89, § 1; 84 Del. Laws, c. 514, § 3.)

§ 1315 Protections for conduct authorized by this chapter.

(a) A public officer or employee of the State, including the members of any board, commission, conservation district or agency of the State, whether elected or appointed, and whether now or previously serving as such, and any contractor or volunteer performing work for the State, whose job functions include, assist, support, regulate, approve, or authorize any of the conduct authorized by this chapter are not subject to arrest, prosecution, or the denial of any right or privilege, including any criminal or civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau where the conduct of the public officer or employee, contractor, or volunteer meets all of the following:
(1) The conduct arises out of or relates to activities required or authorized by this chapter.
(2) The conduct was carried out as authorized by this chapter or regulations authorized by this chapter.
(3) The conduct was carried out in good faith.

(b) A public officer or employee of the State, including the members of any board, commission, conservation district or agency of the State, whether elected or appointed, and whether now or previously serving as such, and any contractor or volunteer performing work for the State, whose job functions include, assist, support, regulate, approve, or authorize any of the conduct authorized by this chapter is entitled to the same rights and privileges set forth in §§ 3925 and 4002 of Title 10.

(84 Del. Laws, c. 24, § 4.)

Subchapter II

Marijuana Commissioner and Appeals Commission

§ 1321 Marijuana Commissioner; Appeals Commission; qualifications; appointment; term; compensation.

(a) The Commissioner must be a resident of this State and suitably educated and experienced to carry out the duties and responsibilities set forth in this chapter.

(b) The Commissioner and the 3 members of the Appeals Commission, consisting of 1 member from each county, shall be appointed by the Governor and confirmed by a majority of the members elected to the Senate and shall serve at the pleasure of the Governor. The Governor shall make initial nominations for the Commissioner and the 3 members of the Appeals Commission by October 30, 2023.

(c) The Commissioner may name a Deputy Commissioner. The Commissioner may, during an absence from the State, appoint the Deputy Commissioner to serve as Acting Commissioner during such absence. In the event of death, resignation, temporary incapacity, or removal of the Commissioner, and prior to the appointment of a successor, the Governor may appoint the Deputy Commissioner, or such other person as deemed qualified by the Governor, to serve as Acting Commissioner. The Acting Commissioner has all the powers and shall perform all the duties and functions of the Commissioner during the Commissioner's absence or incapacity or until a successor is qualified and appointed.

(d) The Commissioner is to be compensated as provided for in the annual Budget Act.

(e) The members of the Appeals Commission are to be compensated at the rate of $150 per meeting together with the reasonable expenses for no more than 12 meetings per year.

(f) The Appeals Commission shall meet and elect a chair who shall convene meetings of the Commission as frequently as needed to consider appeals of the Commissioner's decision.

(84 Del. Laws, c. 24, § 4.)

§ 1322 Duties and powers of the Commissioner.

(a) The Commissioner, in accordance with the Administrative Procedures Act, Chapter 101 of Title 29, shall do all of the following:

(1) Adopt rules and regulations consistent with § 1331 of this title and other provisions of this chapter or of any other law of this State, and all such rules and regulations have the force and effect of law. A rule or regulation may not extend, modify, or conflict with any law of this State or the reasonable implications thereof. A rule or regulation adopted under this paragraph (a)(1) must focus primarily on public safety and the best interests of the consumer and may not unduly restrict competition within the marijuana industry.

(2) Maintain ongoing communication with the Department of Agriculture regarding the physical address where marijuana or hemp is cultivated. Prior to issuing any license for cultivation of marijuana, the Commissioner shall notify the Department of Agriculture of a proposed location of any marijuana cultivation establishment, and take into consideration any concerns by the Department of Agriculture as it relates to the indoor and outdoor cultivation of marijuana.

(3) Establish rules and regulations for the effective control of the business of cultivation, manufacture, and sale of marijuana and marijuana products within the State, including the time, place, and manner in which marijuana and marijuana products may be sold and dispensed, not inconsistent with § 1331 of this title and other provisions of this chapter or with any other law of this State.

(4) Establish health and safety regulations for the indoor and outdoor cultivation of marijuana by marijuana establishments under this chapter. Such rules and regulations under this section must be consistent with applicable rules and regulations established under the regulatory authority of the Department of Agriculture and the Department of Natural Resources and Environmental Control and may include all of the following:

a. Prohibition of the use of pesticides that are neither organic nor federally approved for marijuana.

b. Standards for the use of carbon dioxide.

c. Standards for water use.

d. Standards for disposal of waste.

e. Standards for indoor and outdoor air quality.

(5) Grant, refuse, suspend, or cancel licenses required by this chapter for the cultivation, manufacture, or sale of marijuana and marijuana products, or other licenses required by this chapter in regard thereto and to transfer any license granted. The Commissioner must provide the applicant or licensee with written communication regarding any decision to grant, refuse, suspend, or cancel licenses required by this chapter for the cultivation, manufacture, or sale of marijuana and marijuana products, or other licenses required by this chapter in regard thereto, and when transferring any license granted.

(6) Hear complaints in regard to the conduct of business in any establishment where marijuana or marijuana products are licensed to be sold upon receipt of a petition signed by at least 10 individuals who are residents of the same neighborhood. Ten days' notice of such hearings, together with a recital of the complaint, must be sent by the Commissioner's office by registered mail to the address of the holder of the license for the establishment. Like notice must be delivered at the establishment by affixing the notice addressed to the holder of the license to the outside of an entrance door to the establishment. The hearings must be public and conducted by the

Commissioner. The Commissioner, for the purpose of such hearings, has the power to issue subpoenas, compel the attendance of witnesses, administer oaths, take testimony, and compel the production of pertinent books, payrolls, accounts, papers, records, and documents. In case any person summoned to testify or to produce any such written or printed evidence refuses, without reasonable cause, to be examined, to answer a legal and pertinent question, or to produce any such written or printed evidence, the Commissioner conducting the hearing may certify the fact of any such refusal to the Superior Court of the county in which such hearing is held and the court may proceed against the person so refusing as for a contempt and punish such person in the same manner as persons are punished for contempt of court.

(7) Compel the attendance of witnesses and the production of contracts, papers, books, accounts, and other documents. Subpoenas issued must be signed by the Commissioner and may be served by any sheriff, deputy sheriff, constable, or any agent of the Division and return thereof made to the Commissioner. The Commissioner may enforce compliance with a subpoena issued under this subsection by filing a motion to compel in the Superior Court, which shall have jurisdiction over the matter. The court may award costs and attorneys' fees if it determines that noncompliance with a Commissioner subpoena was unjustified, intentional, or in bad faith.

(8) Act, for purposes of this chapter, as the competent authority in connection with other matters pertinent thereto.

(9) Provide such special seals, labels, and wrappers as deemed necessary for protection of the public against imitations, adulterations, and frauds, and prescribe the proper use of the seals, labels, and wrappers.

(10) Provide such warning signs as may be required by this chapter and distribute such signs to license holders and promulgate regulations with respect to the posting of said signs. The Commissioner may charge a fee to cover printing, handling, and distribution costs.

(11) Coordinate with the Division of Small Business to connect potential marijuana establishments licensed under this chapter with programs that support business development, including farms and programs that support small businesses owned by minorities, women, and veterans.

(12) Establish rules and regulations for the effective collection of data regarding retail sales of marijuana and marijuana products.

(13) Consult with the Division of Alcohol and Tobacco Enforcement before adopting or establishing any rules or regulations that concern enforcement.

(14) Oversee and administer the Delaware Medical Marijuana Act under Chapter 49A of Title 16.

(b) The Commissioner's decision on any appeal or hearing under this chapter must be in writing and is final and conclusive unless a party to such hearing files an appeal within 30 days from the date of the postmark on the Commissioner's decision by mailing notice of the appeal to the Commissioner's office. Upon receipt of the appeal, the Commissioner shall notify the chair of the Appeals Commission of the pending appeal and the chair shall convene the Appeals Commission with at least 20 days' notice to all parties. The Appeals Commission shall hear the appeal and shall: review the matter on the record; act in accordance with the Administrative Procedures Act, Chapter 101 of Title 29; and affirm, reverse, or modify the decision of the Commissioner. A decision of the Commissioner may only be reversed upon a finding of abuse of discretion.

(c) The Commissioner may appear before the Appeals Commission for any appeal of a Commissioner's decision and may appeal any decision of the Appeals Commission or any decision of the Superior Court on appeal from the Appeals Commission.

(84 Del. Laws, c. 24, § 4; 84 Del. Laws, c. 300, § 2; 84 Del. Laws, c. 301, § 5.)

§ 1323 Oath of Office of Commissioner and employees.

The Commissioner, members of the Appeals Commission, and any hearing officer shall, on entering office, take the oath or affirmation set forth in Article XIV of the Delaware Constitution. Any other employee may be required to take the oath or affirmation set forth in Article XIV of the Delaware Constitution at the discretion of the Secretary of the Department of Safety and Homeland Security.

(84 Del. Laws, c. 24, § 4.)

§ 1324 Conflict of interest.

(a) The Commissioner, members of the Appeals Commission, and any hearing officer or such person's spouse, or such person's parent, or child residing at such person's residence, may not have a financial interest in any entity that sells, manufactures, cultivates, or uses marijuana; provided, however, such persons may invest in mutual funds or similar financial instruments that hold no more than a 10% interest in any such entity.

(b) Neither the Commissioner nor any person employed in the office of the Commissioner shall receive any commission or profit whatsoever from, or have any interest whatsoever in a business licensed under this chapter to cultivate, manufacture, purchase, or sell marijuana or marijuana products; provided, however, that nothing in this section shall prevent the Commissioner, a member of the Appeals Commission, a hearing officer, or an employee from purchasing and keeping marijuana or marijuana products for the personal use of one's self or members of one's family or one's guests if such purchase is otherwise permitted by this chapter.

(c) The Commissioner and the members of the Appeals Commission shall annually file the financial report required under § 5813 of Title 29 with the Public Integrity Commission.

(84 Del. Laws, c. 24, § 4; 84 Del. Laws, c. 42, § 1.)

§ 1325 Commissioner's statement of interest in marijuana business.

When notified of appointment as Commissioner or to the Appeals Commission, the individual so notified shall furnish in duplicate and

in writing to the Governor and to the President Pro Tempore of the Senate a statement of every interest, direct or indirect, and however small, held or owned by the individual as a member or as a stockholder in any partnership, corporation, or other association engaged in the sale or in the cultivation or manufacture of marijuana or marijuana products or in any undertaking, industry, or business in which marijuana or marijuana products are used or required. Prior to taking the oath of office, the Commissioner and members of the Appeals Commission must wholly and fully dispose of all interests, except those permitted by § 1324 of this title. One copy of the statement must be inserted in the permanent records of the office of the Commissioner open to public inspection.

(84 Del. Laws, c. 24, § 4.)

§ 1326 Employees of the Division; Commissioner.

The Department of Safety and Homeland Security shall: appoint, employ, or dismiss every officer or employee, not appointed by the Governor, necessary for carrying out the work of the Division, Appeals Commission, and Commissioner; establish salaries, subject to the annual appropriation in the Budget Act; and assign official titles and duties. The Department may engage the services of experts and persons engaged in the practice of a relevant profession. At the discretion of the Secretary of the Department of Safety and Homeland Security, officers and employees of the Division: shall have the police powers of constables and other police officers of the State, counties, and other subdivisions of the State; shall be conservators of the peace throughout the State; shall be eligible for certification by the Police Officer Standards and Training Commission; and may suppress all acts of violence and enforce the provisions of this chapter.

(84 Del. Laws, c. 24, § 4; 84 Del. Laws, c. 149, § 17.)

§ 1327 Property and profits of the office of the Commissioner.

All property owned by the office of the Commissioner and all associated profits are the property of the State.

(84 Del. Laws, c. 24, § 4.)

Subchapter III

Regulation and Licensure

Part A

Regulations

§ 1331 Regulations.

The Commissioner shall adopt regulations necessary for implementation of this chapter. The regulations may not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. Regulations and fees for marijuana cultivation facilities may be varied based on the size of the facility to ensure that the operation of smaller facilities is not made unreasonably impracticable. The Commissioner shall include all of the following in the regulations:

(1) Procedures for the issuance, renewal, suspension, transfer, and revocation of a license to operate a marijuana establishment with all procedures subject to the Administrative Procedures Act, Chapter 101 of Title 29.

(2) A selection process to determine which applicants may obtain licenses to operate each type of marijuana establishment if more qualified applicants apply than the Commissioner may license under this subchapter and that ensures applicants will follow best practices for community engagement, consumer protection, food safety, worker safety, family support jobs, diversity, public safety, and environmental stewardship.

(3) Minimum qualifications for all license types must include submission of the following information:

a. The applicants comprehensive business plan, including an annual budget and pro forma financial statements.

b. The experience, training, and expertise of the applicant and managing officers.

c. The applicant's plans for safety, security, and the prevention of diversion.

d. The applicant's plans for operations, training, and staffing, including all of the following:

1. A social responsibility plan outlining diversity goals, including plans to recruit and hire people of color, women, and veterans and to support their ownership and promotion within the organization, as well as the percentage of employees it plans to hire from within the respective city or region of the State.

2. A plan to provide a safe, healthy, and economically beneficial working environment with fair scheduling practices, family-supporting wages, and benefits for its employees.

3. Any criminal, civil, or regulatory history encountered by other entities the applicant and managing officers have previously controlled or managed.

4. [Repealed.]

5. Any other criteria deemed appropriate by the Commissioner.

(4) For applications for marijuana cultivation facility licenses and marijuana product manufacturing facility licenses only, minimum qualifications must include an environment and sustainability plan, including efforts it will take to minimize the environmental impact,

and resource needs of its facilities and other business operations, such as plans to minimize water usage, employing organic cultivation methods, and adoption of other sustainable business practices.

a., b. [Repealed.]

(5) Except as provided in part C of this subchapter, a nonrefundable $5,000 application fee for all marijuana establishments that the Commissioner may adjust annually for inflation.

(6) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment.

(7) Procedures for how establishments licensed under this chapter must track marijuana from seed to sale.

(8) Security requirements for marijuana establishments, including lighting, physical security, video, and alarm requirements.

(9) Requirements for the transportation and storage of marijuana and marijuana products by marijuana establishments.

(10) Employment and training requirements for licensees, employees, and agents of marijuana establishments, including the following:

a. That the Commissioner must create and issue identification badges for each employee or agent and may require a fee for each identification badge. The amount to be charged for the fee imposed under this paragraph (10)a. must approximate and reasonably reflect the costs necessary to defray the expenses of the Division.

b. That employees of retail marijuana store establishments must complete training approved by the Commissioner in recognizing valid identification cards.

c. That agents of a marijuana establishment are subject to all standards and requirements of regulations adopted by the Commissioner.

(11) Requirements to prevent the sale or diversion of marijuana and marijuana products to individuals under the age of 21. To protect individual privacy, the Commissioner may not require a consumer to provide a retail marijuana store with personal information other than government-issued identification to determine the consumer's age and a retail marijuana store may not be required to acquire and record personal information about consumers.

(12) Standards for marijuana product manufacturers to use so that consumers can determine the amount of marijuana in each product and compare the amount of marijuana in different products based upon the standard measurements, including a definition of the amount of delta-9 tetrahydrocannabinol that constitutes a single serving in a marijuana product.

(13) Requirements for marijuana and marijuana products sold or distributed by marijuana establishments, including information for consumers and labeling requirements for marijuana products that include all of the following:

a. The length of time it typically takes for a product to take effect.

b. The amount of marijuana in the product using the standard established in this section, not to exceed 10 mg per serving.

c. The serving size and the number of servings in each package, not to exceed 10 servings.

d. Ingredients and possible allergens.

e. A nutritional fact panel.

f. The requirement that information on the packaging may not mislead consumers.

g. The specific batch number of the product.

h. Educational information for consumers to educate consumers, including evidence-based information about how to interpret the information on the label, health effects, and potential interactions with prescription and nonprescription medications.

i. Opaque, resealable, and continually child-resistant packaging, which must be designed or constructed to be significantly difficult for children under 5 years of age to open and not difficult for an adult to use properly as defined by 16 C.F.R. § 1700.20.

j. A standard symbol indicating edible marijuana products contain marijuana so that marijuana products are clearly identifiable.

k. A warning label that explains evidence-based harms from consuming marijuana, including the impact on developing brains, the impact on an individual's ability to operate machinery, the impact on pregnant and breastfeeding women, and any interference with prescription drugs.

l. A label that indicates the product is not for children.

m. All required information must be in typed, legible font that is easy to read, is unobstructed and conspicuous, and contrasts sufficiently with the background. The information must be in English, but may also include translations in additional languages.

(14) Health and safety regulations and standards for the manufacture of marijuana products by marijuana establishments consistent with other Delaware requirements for food, including all of the following:

a. Prohibition of the manufacture of products that look like candy or cartoon characters.

b. Restrictions or prohibitions on additives to marijuana and marijuana-infused products, including additives that are toxic, designed to make the product more addictive, or designed to make the product more appealing to children, but not including common baking and cooking items.

c. Standards for the safe manufacture of marijuana extracts and concentrates.

d. Requirements for random sample testing, including the manner and frequency of testing, to ensure quality control, including by ensuring that marijuana and marijuana-infused products are accurately labeled for potency. The testing analysis must include testing for: residual solvents, poisons, or toxins; harmful chemicals; dangerous molds or mildew; filth; harmful microbials such as E. coli or salmonella; and pesticides.

(15) Restrictions on the advertising, marketing, and signage of marijuana and marijuana products, including a prohibition on mass-market campaigns that have a high likelihood of reaching minors.

(16) Restrictions on the display of marijuana and marijuana products, including requirements that marijuana and marijuana products may not be displayed in a manner that is visible to the general public from a public right-of-way.

(17) Requirements governing visits to cultivation facilities and product manufacturers, including the requirement that these marijuana establishment log visitors.

(18) Requirements that educational materials be disseminated to consumers who purchase marijuana-infused products.

(19) Standards for the operation of marijuana testing facilities, including requirements for equipment and qualifications for personnel, which shall be based upon international standard ISO/IEC 17025. Marijuana testing facilities shall achieve and maintain accreditation to ISO/IEC 17025 by an International Laboratory Accreditation Corporation recognized accreditation body. The marijuana testing facilities shall achieve and maintain accreditation within the first applicable licensing period.

(20) Civil penalties for the failure to comply with regulations made under this chapter.

(21) Procedures for receiving and processing consumer complaints about marijuana establishments.

(84 Del. Laws, c. 24, § 4; 84 Del. Laws, c. 301, § 6.)

Part B

Open Licenses

§ 1332 Retail marijuana store licenses.

(a) A retail marijuana store license may only be issued to a person selling retail marijuana or retail marijuana products under the terms and conditions of this chapter. A license issued under this section is valid for 2 years. Each application for a retail marijuana store license must contain all of the following:

(1) The application materials required by the Commissioner, including the location where the retail marijuana store will operate.

(2) The application fee in an amount determined by the Commissioner.

(3) Materials required by § 1331(3) and (4) of this title.

(b) A retail marijuana store licensee shall pay the Commissioner $10,000 biennially for the retail marijuana store license. A retail marijuana store licensee must renew the license biennially by paying the fee required by this subsection and by providing documentation of a labor peace agreement.

(c) A retail marijuana store may purchase retail marijuana from a licensed retail marijuana cultivation facility or may cultivate its own retail marijuana if it obtains a retail marijuana cultivation facility license under § 1334 of this title.

(d) A retail marijuana store shall track all of its retail marijuana and retail marijuana products from the point that they are transferred from a retail marijuana cultivation facility or retail marijuana products manufacturer to the point of sale.

(e) (1) A retail marijuana store licensee may also sell retail marijuana products that are prepackaged and labeled as required by this chapter.

(2) A retail marijuana store licensee may transact with a retail marijuana products manufacturing licensee for the purchase of retail marijuana products upon a retail marijuana products manufacturing licensee's licensed premises or a retail marijuana store's licensed premises.

(f) (1) A retail marijuana store may not sell more than a personal use quantity of marijuana, except for nonedible, nonpsychoactive retail marijuana products, including ointments, lotions, balms, and other nontransdermal topical products, during a single transaction to an individual.

(2) Before initiating a sale to an individual, an employee of the retail marijuana store making the sale shall verify that the purchaser has a valid government-issued photo identification card showing that the individual is 21 years of age or older. If an individual under 21 years of age presents a fraudulent proof of age, any action relying on the fraudulent proof of age is not grounds for the revocation or suspension of any license issued under this section.

a. If a retail marijuana store licensee or employee has reasonable cause to believe that an individual is under 21 years of age and is exhibiting fraudulent proof of age in an attempt to obtain any retail marijuana or marijuana product, the licensee or employee is authorized to confiscate such fraudulent proof of age, if possible, and shall, within 72 hours after the confiscation, remit it to a state or local law-enforcement agency. The failure to confiscate such fraudulent proof of age or to remit to a state or local law-enforcement agency within 72 hours after the confiscation does not constitute a criminal offense.

b. The questioning of an individual suspected of providing fraudulent proof of age by an employee of the Division or a law-enforcement officer does not render the employee of the Division or the law-enforcement officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention.

(g) A retail marijuana store must provide a sample of its products to a facility that has a marijuana testing facility license for testing and research purposes as required by regulations adopted under this chapter. A retail marijuana store shall maintain a record of what was provided to the testing facility, the identity of the testing facility, and the results of the testing.

(h) All retail marijuana and retail marijuana products sold at a licensed retail marijuana store must be packaged and labeled as required by this chapter.

(i) A retail marijuana store shall comply with all provisions of Delaware and federal law in regard to individuals with disabilities.

(j) (1) A retail marijuana store may only sell retail marijuana; retail marijuana products; marijuana accessories; nonconsumable products such as apparel; and marijuana related products, such as childproof packaging containers. A retail marijuana store is prohibited from selling or giving away any consumable product, including cigarettes or alcohol, or any edible product that does not contain marijuana, including sodas, candies, or baked goods.

(2) A retail marijuana store may not sell any retail marijuana or retail marijuana products that contain nicotine or alcohol if the sale of the alcohol would require a license under this title.

(3) A retail marijuana store may not sell retail marijuana or retail marijuana products over the Internet or deliver retail marijuana or retail marijuana products to a person not physically present in the retail marijuana store's licensed premises.

(k) A display case containing marijuana concentrate must include the potency of the marijuana concentrate next to the name of the product using the standard established under this chapter.

(*l*) [Repealed.]

(m) Marijuana or marijuana products may not be consumed on the premises of a retail marijuana store.

(84 Del. Laws, c. 24, § 4; 84 Del. Laws, c. 301, § 7.)

§ 1333 Marijuana testing facility licenses.

(a) A marijuana testing facility license may be issued to a person who performs testing and research on retail marijuana under the terms and conditions of this chapter. A license issued under this section is valid for 2 years. Each application for a marijuana testing facility license must contain all of the following:

(1) The application materials required by the Commissioner, including the location where the marijuana testing facility will operate.

(2) The application fee in an amount determined by the Commissioner.

(3) Materials required by § 1331(3) and (4) of this title.

(b) A marijuana testing facility licensee shall pay the Commissioner $10,000 biennially for the marijuana testing facility license. A marijuana testing facility licensee must renew the license biennially by paying the fee required by this subsection and by providing documentation of a labor peace agreement.

(c) The Commissioner shall promulgate rules related to: acceptable testing and research practices, including testing, standards; quality control analysis; equipment certification and calibration; chemical identification; identifying other substances; and other measurers used in bona fide research methods.

(d) A person who has a financial interest in a marijuana testing facility license from the Commissioner for testing purposes may not have a financial interest in a registered compassion center, a marijuana cultivation facility, a marijuana products manufacturing facility, or a retail marijuana store. A person that has a financial interest in a registered compassion center, a marijuana cultivation facility, a marijuana products manufacturing facility, or a retail marijuana store may not have a financial interest in a facility that has a marijuana testing facility license or is a registered safety compliance facility.

(e) Marijuana or marijuana products may not be consumed on the premises of a marijuana testing facility.

(84 Del. Laws, c. 24, § 4.)

§ 1334 Marijuana cultivation facility licenses.

(a) A marijuana cultivation facility license may be issued only to a person who cultivates retail marijuana for sale and distribution to licensed retail marijuana stores, marijuana products manufacturing licensees, or other marijuana cultivation facilities under the terms and conditions of this chapter. A license issued under this section is valid for 2 years. Each application for a marijuana cultivation facility license must contain all of the following:

(1) The application materials required by the Commissioner, including the location where the marijuana cultivation facility will operate.

(2) The application fee in an amount determined by the Commissioner.

(3) Materials required by § 1331(3) and (4) of this title.

(b) (1) A marijuana cultivation facility shall pay the Commissioner biennially for a marijuana cultivation facility license as set forth in this subsection. A marijuana cultivation facility licensee must renew the license biennially by paying the fee set forth in this subsection and by providing documentation of a labor peace agreement.

(2) The license fee is based on the cannabis plant grow canopy area, which is calculated as follows:

a. Square footage of a cannabis plant grow canopy area is measured horizontally starting from the outermost point of the furthest plant in a cannabis plant grow canopy area and continuing around the outside of all plants located within the cannabis plant grow canopy area.

b. If a vertically-tiered or shelving system is included in the cultivation area, the surface area of each tier or shelf must be included in calculating the cannabis plant grow canopy area. Vertical tiers or shelving systems may not exceed 24 feet in height.

c. A cannabis plant grow canopy area is the total square feet of space used by a cannabis cultivator for the production of flowering

plants and does not include areas exclusively used for harvesting, drying, curing, packaging, labeling, or storing cannabis.

(3) a. For an indoor facility with a cannabis plant grow canopy area less than or equal to 2,500 square feet or for an outdoor facility with a cannabis plant grow canopy area less than or equal to 1 acre, the fee is $2,500.

b. For an indoor facility with a cannabis plant grow canopy area equal to or between 2,501 and 7,500 square feet or for an outdoor facility with a cannabis plant grow canopy area equal to or between 1.1 and 2.5 acres, the fee is $5,000.

c. For an indoor facility with a cannabis plant grow canopy area between 7,501 and 10,000 square feet or for an outdoor facility with a cannabis plant grow canopy area equal to or between 2.6 and 5 acres, the fee is $7,500.

d. For an indoor facility with a cannabis plant grow canopy area equal to or greater than 10,001 square feet or for an outdoor facility with a cannabis plant grow canopy area equal to or greater than 5.1 acres, the fee is $10,000.

(c) A marijuana cultivation facility shall track the marijuana it cultivates from seed or immature plant to sale pursuant to subsection (a) of this section.

(d) A marijuana cultivation facility must provide a sample of its products to a facility that has a marijuana testing facility license for testing and research purposes as required by regulations adopted under this chapter. A marijuana cultivation facility shall maintain a record of what was provided to the testing facility, the identity of the testing facility, and the testing results.

(e) Marijuana or marijuana products may not be consumed on the premises of a marijuana cultivation facility.

(f) No marijuana cultivation facility license may be issued for an indoor facility with a cannabis plant grow canopy area exceeding 12,500 square feet or for an outdoor facility with a cannabis plant grow canopy area exceeding 7.5 acres unless additional tiers are created by the Commissioner under subsection (h) of this section.

(g) At the time of renewal under subsection (b) of this section, a marijuana cultivation facility licensee may request a 1-tier increase in size each renewal period, as long as an updated safety, security and prevention of diversion plan is provided as required under § 1331(3)c. of this title.

(h) The Commissioner may create additional tiers under subsection (b) of this section anytime after August 1, 2025, if demand requires additional tiers.

(84 Del. Laws, c. 24, § 4; 84 Del. Laws, c. 301, § 8.)

§ 1335 Marijuana product manufacturing facility license.

(a) A marijuana product manufacturing facility license may be issued only to a person who manufactures and distributes marijuana products under the terms and conditions of this chapter. A license issued under this section is valid for 2 years. Each application for a marijuana product manufacturing facility license must contain all of the following:

(1) The application materials required by the Commissioner, including the location where the marijuana product manufacturing facility will operate.

(2) The application fee in an amount determined by the Commissioner.

(3) Materials required by § 1331(3) and (4) of this title.

(b) A marijuana product manufacturing facility licensee shall pay the Commissioner $10,000 biennially for the marijuana product manufacturing facility license. A marijuana product manufacturing facility licensee must renew the license biennially by paying the fee required by this subsection and by providing documentation of a labor peace agreement.

(c) A marijuana product manufacturing facility shall track all of its marijuana products from the point the marijuana is received from the retail marijuana cultivation facility until the products are transferred to a retail marijuana store.

(d) A marijuana product manufacturing facility may not do any of the following:

(1) Add any marijuana to a food product where the manufacturer of the food product holds a trademark to the food product's name; except that a manufacturer may use a trademarked food product if the manufacturer uses the product as a component or as part of a recipe and where the marijuana product manufacturer does not state or advertise to the consumer that the final retail marijuana product contains a trademarked food product.

(2) Intentionally or knowingly label or package a retail marijuana product in a manner that would cause a reasonable consumer confusion as to whether the retail marijuana product was a trademarked food product.

(3) Label or package a product in a manner that violates any federal trademark law or regulation.

(e) Retail marijuana products shall be prepared in a marijuana product manufacturing facility that is used exclusively for the manufacture and preparation of retail marijuana or retail marijuana products and using equipment that is used exclusively for the manufacture and preparation of retail marijuana products.

(f) All licensed premises on which retail marijuana products are manufactured must meet the sanitary standards for retail marijuana product preparation promulgated under this chapter and as applicable under all of the following:

(1) Section 122(3)u of Title 16 and related regulations, the State of Delaware Food Code, 16 DE Admin. Code 4458, and the Cottage Food Regulations, 16 DE Admin. Code 4458A.

(2) Chapter 35 of Title 16.

(3) Chapter 41 of Title 16.

(4) Chapter 43 of Title 16.

(g) All retail marijuana products must be shelf-stable and not require refrigeration to prevent spoilage.

(h) A retail marijuana product must be sealed and conspicuously labeled in compliance with this chapter and any rules promulgated under this chapter.

(1) A marijuana product manufacturing facility shall package and label each product manufactured as required by the rules established by the Commissioner, including the use of the standard symbol.

(2) An edible retail marijuana product must list its ingredients and may list its compatibility with dietary practices.

(3) The standard symbol requirements as established by the Commissioner do not apply to a multi-serving liquid retail marijuana product that is impracticable to mark if the product complies with all statutory and rule packaging requirements for multi-serving edibles and with all of the following enhanced requirements to reduce the risk of accidental ingestion:

a. A multi-serving liquid is packaged in a structure that uses a single mechanism to achieve both child-resistance and accurate pouring measurement of each liquid serving in increments equal to or less than 10 milligrams of active THC per serving, with no more than 500 milligrams of active THC total per package.

b. The measurement component is within the child-resistant cap or closure of the bottle and is not a separate component.

(i) Retail marijuana or retail marijuana products may not be consumed on the premises of a marijuana product manufacturing facility.

(j) A marijuana product manufacturing facility must provide a sample of its products to a facility that has a marijuana testing facility license for testing and research purposes as required by regulations adopted under this chapter. A marijuana product manufacturing facility shall maintain a record of what was provided to the testing facility, the identity of the testing facility, and the results of the testing.

(84 Del. Laws, c. 24, § 4.)

§ 1335A Conversion licenses.

(a) Conversion licenses may be issued to a currently licensed compassion center when the applicant meets the following criteria:

(1) The applicant is eligible for renewal under § 4916A of Title 16.

(2) The applicant has submitted documentation demonstrating how the applicant currently meets the demands of the medical market and a plan outlining how the applicant will continue to serve the medical market.

(3) The applicant has submitted a plan detailing how the applicant will support the social equity program.

(4) The applicant has submitted a signed labor peace agreement with a bona fide labor organization.

(5) If seeking a conversion license for a cultivation facility, the applicant has submitted facility dimensions.

(6) The applicant has paid a conversion license fee.

a. Except as described in paragraphs (6)b. and c. of this section, the base conversion license fee is $100,000, which may be paid in quarterly installments over 12 months.

b. If the conversion license sought is for a cultivation facility, the base conversion license fee is $200,000, which may be paid in quarterly installments over 12 months.

c. The conversion license fee may be paid in quarterly installments over 18 months, in which case the base conversion license fee is increased by 10%.

(7) If the conversion license sought is for a retail facility, the applicant has submitted a signed attestation that the applicant will serve medical cardholders in accordance with Chapter 49A of Title 16, including a commitment to doing the following:

a. Selling tax-free marijuana to qualifying patients directly or through designated caregivers.

b. Selling up to 3 ounces of marijuana in any 14-day period to qualifying patients directly or through designated caregivers and up to a total of 6 ounces per month.

c. Providing home delivery to qualifying patients.

(8) The applicant meets all other requirements set forth in this title or by regulation for each requested license.

(b) If an existing registered compassion center or marijuana testing facility seeking a conversion license is located in a jurisdiction that prohibits the operation of an open license under this title, the registered compassion center or marijuana testing facility may request an open license in a new location. If the conversion license would be granted under this section but for the jurisdictional prohibition on the operation of an open license, the Commissioner must grant the request so long as the new location meets the requirements set forth in this title for the open license.

(c) If an applicant seeks a conversion license for a cultivation facility, pays the conversion license fee, and otherwise qualifies for and is granted a conversion license, the applicant may upon receipt of a conversion license operate a facility with any grow canopy area allowed under this chapter or regulations established by the Commissioner under § 1334(h) of this title.

(84 Del. Laws, c. 303, § 1.)

§ 1335B Conversion license for retail marijuana stores.

(a) If a conversion license to operate a retail marijuana store is granted to a compassion center under § 1335A of this title, the licensee and any successor licensee must, in addition to complying with any other requirements for the operation of a retail marijuana store under this title or regulations promulgated by the Commissioner, do the following:

(1) Continue to operate the former compassion center as a medical dispensing location.

(2) Prioritize the distribution of marijuana and marijuana products to qualifying patients, including suspending recreational marijuana and recreational marijuana product sales to consumers in the event of a shortage of marijuana or marijuana products.

(3) Maintain or increase the diversity of medical marijuana products available.

(4) Provide to the Commissioner a product list with the maximum prices to be offered for all marijuana or marijuana products, and provide an updated list within 7 days when a new product is offered or the maximum price for any marijuana or marijuana product offered by the licensee is increased.

(b) The licensee must agree and abide by the agreement to continue medical marijuana operations, maintain an adequate and diverse supply, and maintain justifiable pricing with respect to medical marijuana and medical marijuana products.

(c) Failure to abide by subsection (a) or (b) of this section is a violation of this chapter for which the Commissioner may fine the licensee or take any other action against the license authorized under § 1361 of this title.

(84 Del. Laws, c. 303, § 1.)

§ 1335C Conversion license for marijuana cultivation facilities.

(a) If a conversion license to operate a marijuana cultivation facility is granted to a compassion center under § 1335A of this title, the licensee and any successor licensee must, in addition to complying with any other requirements for the operation of a marijuana cultivation facility under this title or regulations promulgated by the Commissioner, provide monthly wholesale pricing information to the Commissioner.

(b) Failure to abide by this section is a violation of this chapter for which the Commissioner may fine the licensee or take any other action against the license authorized under § 1361 of this title.

(84 Del. Laws, c. 303, § 1.)

§ 1335D Conversion license for marijuana product manufacturing facility.

(a) If a conversion license to operate a marijuana product manufacturing facility is granted to a compassion center under § 1335A of this title, the licensee and any successor licensee must, in addition to complying with any other requirements for the operation of a marijuana product manufacturing facility under this title or regulations promulgated by the Commissioner, provide monthly wholesale pricing information to the Commissioner.

(b) Failure to abide by this section is a violation of this chapter for which the Commissioner may fine the licensee or take any other action against the license authorized under § 1361 of this title.

(84 Del. Laws, c. 303, § 1.)

Part C

Social Equity and Microbusiness Licenses

§ 1336 Social equity applicant.

A social equity applicant must meet 1 of the following criteria:

(1) An applicant for any type of license with at least 51% ownership and control by 1 or more individuals who have resided for at least 5 of the preceding 15 years in a disproportionately-impacted area, as defined in § 1302 of this title.

(2) An applicant for any type of license with at least 51% ownership and control by 1 or more individuals who meets 1 of the following criteria:

a. Was convicted of or adjudicated delinquent of a marijuana-related offense under Delaware law prior to April 23, 2023, except any of the following:

1. Delivery to a minor.

2. Any marijuana offense with a Tier 3 quantity of marijuana as defined in § 4751C of Title 16.

3. [Repealed.]

b. Had or has a parent, legal guardian, child, spouse, or dependent who was convicted of or adjudicated delinquent for any marijuana-related offense that would qualify an applicant under paragraph (2)a. of this section.

(84 Del. Laws, c. 24, § 4; 84 Del. Laws, c. 301, § 9.)

§ 1337 Social equity application and fees.

(a) A social equity license issued under this part is valid for 2 years. Each application for a social equity license must contain all of the following:

(1) The application materials required by the Commissioner.

(2) The discounted application fee in the amount of $1,000.

(3) Materials required by § 1331(3) and (4) of this title.

(b) A social equity licensee shall pay the Commissioner biennially for the social equity license at a discounted rate of 40% of the applicable open license. A social equity licensee must renew the license biennially by paying the fee required by this subsection, providing confirmation that all of the criteria in § 1336 of this title are satisfied, and by providing documentation of a labor peace agreement.

(84 Del. Laws, c. 24, § 4.)

§ 1338 Technical assistance.

The Commissioner shall develop a technical assistance program to aid social equity applicants in applying for a license and finding financial resources. The Commissioner may partner with the Division of Small Business to administer workshops to assist social equity applicants and licensees in applying for a license and operating a business.

(84 Del. Laws, c. 24, § 4.)

§ 1339 Financial assistance.

(a) The Commissioner shall investigate opportunities for public and private sources of financial assistance that could support social equity applicants, including, but not limited to, portions of the Justice Reinvestment Fund under § 1387 of this title.

(b) All funds derived from the issuance of conversion licenses shall only be used as sources of financial assistance for social equity applicants issued a conditional license under § 1342 of this title.

(84 Del. Laws, c. 24, § 4; 84 Del. Laws, c. 301, § 10; 84 Del. Laws, c. 303, § 1.)

§ 1340 Microbusiness license.

A microbusiness applicant is an applicant for a marijuana cultivation facility license or a marijuana product manufacturing license who meets all the following criteria:

(1) [Repealed.]

(2) Intends to employ no more than 10 employees.

(3) Will not operate a facility with a cannabis plant grow canopy area greater than 2500 square feet.

(4) [Repealed.]

(84 Del. Laws, c. 24, § 4; 84 Del. Laws, c. 301, § 11.)

§ 1341 Microbusiness application and fees.

(a) A microbusiness license issued under this part is valid for 2 years. Each application for a microbusiness license must contain all of the following:

(1) The application materials required by the Commissioner.

(2) The discounted application fee in the amount of $3,000.

(3) Materials required § 1331(3) and (4) of this title.

(b) A microbusiness licensee shall pay the Commissioner biennially for the microbusiness license at a discounted rate of 40% of the applicable open license. A microbusiness licensee must renew the license biennially by paying the fee required by this subsection and by providing confirmation that all of the criteria in § 1340 of this title are satisfied.

(84 Del. Laws, c. 24, § 4.)

§ 1342 Conditional license [Repealed].

84 Del. Laws, c. 24, § 4; repealed by 84 Del. Laws, c. 301, § 12, effective July 17, 2024.

Part D

Issuance of All Licenses

§ 1343 Licensing process.

(a) Beginning September 1, 2024, the Commissioner may begin accepting applications for all licenses, including open, social equity, and microbusiness licenses.

(b) [Repealed.]

(c) Beginning November 1, 2024, the Commissioner shall issue the following number of conditional licenses for cultivation facilities, provided a sufficient number of qualified applicants exist:

(1) Indoor facility with a cannabis plant grow canopy area less than or equal to 2500 square feet or an outdoor facility with a cannabis plant grow canopy area less than or equal to 1 acre:

a. Twenty microbusiness licenses.

b. Ten social equity licenses.

(2) Indoor facility with a cannabis plant grow canopy area greater than 2500 square feet or an outdoor facility with a cannabis plant grow canopy area greater than 1 acre:

a. Twenty open licenses.

b. Ten social equity licenses.

(d) Beginning December 1, 2024, the Commissioner shall issue the following number of conditional licenses for product manufacturing facilities, provided a sufficient number of qualified applicants exist:

(1) Ten open licenses.

(2) Ten social equity licenses.

(3) Ten microbusiness licenses.

(e) Beginning March 1, 2025, the Commissioner shall issue the following number of conditional licenses, provided a sufficient number of qualified applicants exist:

(1) Retail store licenses:

a. Fifteen open licenses.

b. Fifteen social equity licenses.

(2) Testing facility licenses:

a. Three open licenses.

b. Two social equity licenses.

(f) Impossibility of performance because of opposition by localities or lack of qualified applications is a defense to any lawsuit brought against the Commissioner to comply with the issuance of the required number of licenses.

(g) At any time after August 1, 2025, the Commissioner may accept applications for any type of license and issue licenses in excess of the numbers identified in this section for any of the following reasons:

(1) The Commissioner determines that additional stores or facilities are needed.

(2) The number of licenses for a particular type of license is less than the number permitted for that type of license in this section.

(84 Del. Laws, c. 24, § 4; 84 Del. Laws, c. 301, § 13.)

§ 1343A Conversion licensing process.

(a) Beginning August 1, 2024, the Commissioner may begin accepting applications for conversion licenses from compassion centers. Facilities granted a conversion license may commence operations as follows:

(1) A cultivation facility, manufacturing facility, or testing facility may commence operations immediately upon receipt of a conversion license.

(2) A retail facility may commence operations only upon receipt of authorization to operate by the Commissioner. Before authorizing a retail marijuana store with a conversion license to commence operations, the Commissioner must consider the following:

a. The ability of the converted retail marijuana store to continue to serve the medical market.

b. The number of retail marijuana stores under this Part C of this subchapter that are available to open.

(b) A conversion license expires 24 months after it is issued.

(c) No conversion license may be issued after November 1, 2024.

(d) Prior to the expiration of a conversion license, the licensee may apply to renew the license as an open license of the type applicable to the facility. A renewal fee of $10,000 is required to renew the conversion license as an open license. This renewal fee is in lieu of any renewal fee that would be required to renew an open license other than a conversion license.

(84 Del. Laws, c. 303, § 1.)

§ 1344 Applications for multiple licenses.

(a) An applicant may not apply for, may not be issued, and may not renew any license that would result in the applicant, or a person with a financial interest in that application or license under this chapter, owning or operating more than 1 marijuana establishment of the same license type in a single county.

(b) This section does not prohibit an applicant from applying for and being issued or renewed more than 1 license in a single county, provided that each license is of a different license type.

(84 Del. Laws, c. 301, § 13.)

§ 1345 Conditional license.

The Commissioner may grant an applicant a conditional license under this section. Any applicant who receives a conditional license must identify a physical location for the licensed premises and become operational within 18 months from the date the conditional license is granted. The proposed licensed premises must be approved by the Commissioner. If the applicant is unable to begin operations meeting all criteria established by the Commissioner within 18 months of issuance of the conditional license, the Commissioner may extend the period to become operational if the conditional licensee demonstrates good faith efforts to begin operations. If the Commissioner denies the extension of the conditional license or the licensee is unable to become operational, the Commissioner must rescind the conditional license.

(84 Del. Laws, c. 301, § 13.)

§ 1346 Active license.

(a) The Commissioner shall grant an active license to a conditional licensee who does all of the following:

(1) Pays any fees or costs associated with obtaining a background check.

(2) Provides financial and ownership documentation for review and approval.

(3) Submits an attestation signed by a bona fide labor organization stating that the licensee has entered into a labor peace agreement with such bona fide labor organization.

(4) Is in compliance with all local laws including local zoning, fire codes and building codes.

(5) Submits any additional information or documentation required by the Commissioner.

(b) The Commissioner may refuse to grant an active license to a conditional licensee if the requirements of subsection (a) of this section are not met.

(84 Del. Laws, c. 301, § 13.)

§ 1347 Background checks.

(a) All of the following persons are required to complete a background check under this chapter:

(1) An applicant for a marijuana establishment license.

(2) A person who performs work at or for a marijuana establishment, whether classified as a contractor, employee, or volunteer, with or without compensation, and prior to beginning work.

(3) A person who is or seeks to become a director, officer, or board member of a licensed marijuana establishment or a business entity that is an applicant for a marijuana establishment license.

(4) A person who holds an ownership interest of 10% or more in a licensed marijuana establishment or a business entity that is an applicant for a marijuana establishment license.

(b) A person required to obtain a background check under subsection (a) of this section must submit fingerprints and other necessary information to the State Bureau of Identification in order to obtain a Delaware and national criminal history background check through all of the following:

(1) A report of the person's entire criminal history record from the State Bureau of Identification or a statement that the State Central Repository contains no such information relating to that person.

(2) A report of the person's entire federal criminal history record pursuant to the Federal Bureau of Investigation (FBI) appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534) or a statement that the FBI's records contain no such information relating to that person.

(c) The State Bureau of Identification is the intermediary for the purpose of this section and must forward all information required by subsections (a) and (b) of this section to the Division of Alcohol and Tobacco Enforcement.

(d) The Division and the Commissioner may use the background check required by this section only to consider the background, qualifications, and suitability of persons required to obtain a background check for licensure or employment under this chapter.

(e) A person required to obtain a background check under this chapter is responsible for any costs associated with obtaining the background check.

(f) If a current applicant, person performing work at or for a marijuana establishment, director, officer, board member, or person who holds an ownership interest of 10% or more in a licensed marijuana establishment or a business entity that is an applicant for a marijuana establishment license obtains a background check under this section, the State Bureau of Identification shall provide all of the following to the Division:

(1) Any subsequent state criminal history record information of the person.

(2) Any subsequent criminal history record information of the person available through the "Rap Back System" as defined under § 8502 of Title 11, if the Rap Back System is available.

(g) The failure of an applicant, person holding a 10% or more ownership interest in a licensed marijuana establishment, or current officer or director to satisfy the requirements of § 1336(2), § 1354(b)(4), or § 1361(c) of this title may constitute grounds for refusal, suspension, or cancellation of a license issued by the Commissioner pursuant to this chapter.

(84 Del. Laws, c. 301, § 13; 85 Del. Laws, c. 11, § 2; 85 Del. Laws, c. 114, § 1.)

§ 1348 Confidentiality.

(a) Information and data required by the Commissioner to be furnished in the application or background investigative process, or which may otherwise be obtained by the Commissioner during the license application or renewal process is confidential and is exempt from the Delaware Freedom of Information Act [Chapter 100 of Title 29].

(b) No part of the information and data described under subsection (a) of this section may be revealed except in the ordinary administration of this chapter, upon the lawful order of a court of competent jurisdiction, or, with the approval of the Attorney General, to a duly authorized law-enforcement agency.

(84 Del. Laws, c. 301, § 13.)

Subchapter IV

Determination of Applications

§ 1351 Local control.

(a) A municipality may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or through an initiated or referred measure.

(b) A municipality or county may enact ordinances or regulations that are not in conflict with this chapter or in conflict with regulations enacted by the Commissioner, governing the time, place, manner, and number of marijuana establishment operations. A municipality or

county may establish civil penalties for violation of an ordinance or regulations governing the time, place, and manner that a marijuana establishment may operate in such municipality or county.

(84 Del. Laws, c. 24, § 4.)

§ 1352 Procedural requirements governing Commissioner's action; hearing; appeal.

(a) The Commissioner shall distribute and receive all of the applications for licensure under this chapter and shall refer an application to the Division for investigation. If it appears that any application should not be granted, the Commissioner shall timely notify the applicant stating the reason for denial.

(b) *Hearings on applications for licensure under this chapter.* — (1) If 10 or more persons who reside or own property within 1 mile of the premises where the licensee is to operate or in any incorporated areas located within 1 mile of the premises where the licensee is to operate file a protest against the issuance of the license with the Commissioner within 30 days from the filing of the application, then a hearing must be held to consider the application and protest and, specifically, the concerns of the members of the community within which the licensee is to operate.

(2) The Commissioner may hold a hearing in the absence of a protest.

(3) The Commissioner shall cause notice of the time and location of the hearing to be published in 2 consecutive issues of the same newspapers within which the applicant published notice of the applicant's application for the license.

(4) The Commissioner shall send notice of the time and location of the hearing to the applicant and to each of the persons who signed the protest and provided a legible name and address; provided, however, that it is sufficient for the Commissioner to send notice to a legal agent representing a person.

(5) The Commissioner shall conduct the hearing and shall make and keep a record of the hearing. The record must include the evidence, the Commissioner's findings of fact, the Commissioner's decision, and a brief statement of the reasons for the decision.

(6) The Commissioner shall issue a written decision after the hearing. The Commissioner's decision must show the manner in which the Commissioner construed the law and applied it to the facts, must recite any objections presented by the community, and must show how and the extent to which the Commissioner took community concerns into account and gave them due consideration when making the decision.

(c) The Commissioner's decision on an application must be in writing and is final and conclusive unless a party to such hearing files an appeal within 30 days from the date of the postmark on the Commissioner's decision by mailing notice of the appeal to the Commissioner's office. Upon receipt of the appeal, the Commissioner shall notify the chair of the Appeals Commission of the pending appeal and the chair shall convene the Appeals Commission with at least 20 days' notice to all parties. The Appeals Commission shall hear the appeal and shall review the matter on the record; act in accordance with the Administrative Procedures Act, Chapter 101 of Title 29; and affirm, reverse, or modify the decision of the Commissioner. A decision of the Commissioner may only be reversed upon a finding of abuse of discretion.

(d) A party who is aggrieved by a final decision of the Appeals Commission may file a written appeal with the Superior Court within 30 days of the date that the Appeals Commission's decision was mailed. The Superior Court's review of an appeal shall be on the record and in accordance with the Administrative Procedures Act, subchapter V of Chapter 101 of Title 29. The Superior Court's review shall take into account the experience and specialized competence of the Commissioner and the purpose under which the Commissioner acted. Further, the Superior Court's review, in the absence of fraud, shall be limited to whether the Commissioner's decision is supported by substantial evidence on the record and is free from legal error.

(84 Del. Laws, c. 24, § 4.)

§ 1353 Decision upon application for renewal of license; time of making.

On or before the first day of the month preceding the biennial expiration date of a license, the Commissioner shall render a decision upon every application properly and completely made to it on or before the first day of the third month preceding the biennial expiration date of a license.

(84 Del. Laws, c. 24, § 4.)

§ 1354 Grounds for refusal of license; transfer or extension of premises.

(a) The Commissioner may not grant a license under this chapter in any county or subdivision thereof, if granting a license is contrary to the law of any municipality or county adopted under § 1351 of this title.

(b) The Commissioner may refuse to license an applicant if the Commissioner has substantial evidence that would reasonably support a belief that any of the following apply:

(1) There are sufficient licensed premises in the municipality or county, or the granting of a license in the municipality or county stated in the application is not otherwise demanded by public interest or convenience.

(2) The applicant is financially irresponsible.

(3) The applicant has made false statements to the Commissioner.

(4) The applicant, including any of the directors, officers, and board members, or such other person who holds an ownership interest of 10% or more in a licensed marijuana establishment or a business entity that is an applicant for a marijuana establishment, has been convicted of an offense that may impact the qualifications, functions, or duties of the business or profession for which the application is made, except that if the Commissioner determines that the applicant is otherwise suitable to be issued a license, and granting the license

would not compromise public safety, the Commissioner shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the applicant to be issued a license based on the evidence found through the review. In determining which offenses may impact the qualifications, functions, or duties of the business or profession for which the application is made, the Commissioner shall include the following:

a. A violent Title 11 or Title 31 felony conviction as defined in § 4201(c) of Title 11 or its functional equivalent under the laws of the United States, any state or territory of the United States, or any other country.

b. Any class A through C felony conviction as defined in Title 11 or its functional equivalent under the laws of the United States, any state or territory of the United States, or any other country.

c. Any felony conviction regarding an offense against public administration as defined in subchapter VI of Chapter 5 of Title 11 or its functional equivalent under the laws of the United States, any state or territory of the United States, or any other country.

d. A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.

e. Any felony conviction as defined in Chapter 47 of Title 16 or its equivalent under the laws of the United States, any state or territory of the United States, or any other country.

f. Any felony conviction as defined in Chapter 5 of Title 30 or its equivalent under the laws of the United States, any state or territory of the United States, or any other country.

(5) A substantial objection to the granting of the license has been presented by the community within which the license is to operate, or that the granting of such license is otherwise not in the public interest. For the purposes of this subsection, the term "substantial objection" includes 1 or more of the following:

a. Any objection, or group of objections, presented to the Commissioner either individually or as a group, by persons who reside within 5 miles of where the licensee is to operate, sufficient to give the Commissioner reason to believe that a majority of the residents in that 5 mile radius within which the licensee is to operate oppose the issuance of the license.

b. Any objection, or group of objections, presented to the Commissioner either individually or as a group, the content of which gives the Commissioner reason to believe the quality of life of the community within which the licensee is to operate will be adversely affected by the granting of the license.

(c) Except as set forth in subsection (b) of this section, a prior conviction for possession of, possession for sale, sale, manufacture, transportation, or cultivation of marijuana may not be a ground for denial of a license.

(d) The Commissioner may refuse to grant a license to sell marijuana, marijuana products, or marijuana accessories to any new establishment to be located in the vicinity of a church, school, college or substance abuse treatment facility as defined under § 2203 of Title 16. The Commissioner may issue a license to any establishment located in the vicinity of a church, school, or college when such establishment has been located in a place prior to the time any church, school, or college may thereafter be located in the vicinity of such establishment.

(e) The Commissioner shall refuse to grant a license for the sale of marijuana, marijuana products, or marijuana accessories when there is an existing licensed establishment of the same type within 1200 feet by accessible public road or street in any incorporated city or town, or within 1 mile by accessible public road or street in any unincorporated or rural area. If there is an existing licensed establishment less than 1 mile but more than $^{9}/_{10}$ of 1 mile by accessible public road or street in any unincorporated or rural area, the Commissioner may grant such license. This subsection does not apply to any of the following:

(1) Any existing license or to the sale, transfer of ownership, or renewal of an existing license.

(2) Any licensee who desires to move the location of the licensee's licensed premises to a location within 500 feet thereof by accessible public road or street or any licensee located in a shopping center or shopping mall who desires to move the location of the licensee's licensed premises any distance within the same shopping center or shopping mall, whether such center or mall consists of 1 or more than 1 separate buildings.

(f) Any holder of an existing license who desires to move the location of the existing licensed premises due to the destruction of the building, loss of lease, diversion of highway traffic pattern, or other reason beyond the control of the licensee, shall have preference in the issuance of a new license provided that the application satisfies this section and all other requirements under this chapter.

(g) The Commissioner may not grant a new license of any type and may not grant an extension of premises of an existing license of any type unless the application for said new license or for said extension is accompanied by a certificate of compliance from the appropriate political subdivision showing all of the following:

(1) That the premises where the license is to be used are properly zoned for the applicant's intended use.

(2) That all necessary permits have been approved.

(3) That the applicant has complied with all other applicable licensing requirements of the appropriate political subdivision.

(h) Subsection (g) of this section does not apply to any application for a temporary extension of premises as authorized by Commissioner rule if such application has not been objected to by the appropriate political subdivision and the political subdivision was provided with notice of the application by the applicant within 7 days of the date the application is filed with the Commissioner.

(i) The Commissioner may refuse to issue a license to an applicant that in the Commissioner's discretion, based on information collected

in the criminal background check process, presents a risk to the health or public safety of Delaware citizens.

(84 Del. Laws, c. 24, § 4; 84 Del. Laws, c. 514, § 4; 85 Del. Laws, c. 11, § 3.)

§ 1355 Finality of Commissioner's decision refusing license.

If an application is not timely protested, but the Commissioner determines that the application should nevertheless be denied, the Commissioner shall render the decision promptly in writing. The Commissioner's decision shall be final and conclusive unless, within 30 days after notice thereof has been mailed by the Commissioner's office, the applicant files an appeal in the office of the Commissioner. The appeal shall follow the procedure outlined in § 1362 of this title.

(84 Del. Laws, c. 24, § 4.)

§ 1356 Improvements to premises.

The Commissioner may not require an applicant to make improvements to the premises before the issuance of a license; however, the Commissioner may issue a license to sell marijuana, marijuana products, or marijuana accessories upon the condition that certain improvements shall be made to the premises.

(84 Del. Laws, c. 24, § 4.)

Subchapter V

Cancellation or Suspension of License

§ 1361 Grounds for cancellation, suspension, or fines.

(a) The Commissioner may cancel every license made use of on behalf of any person other than the one to whom or on behalf of whom it has been issued.

(b) If the Commissioner has reasonable grounds to believe that a licensee has committed any of the violations in subsection (c) of this section, the Commissioner may do 1 or more of the following:

(1) Suspend the licensee's license.

(2) Cancel the licensee's license if the Commissioner determines the violations to be repeated and continuous, or egregious.

(3) Fine the licensee.

(c) It is a violation for a licensee to do any of the following:

(1) Violate any provision of this chapter, any regulation of the Commissioner, or any applicable regulation of the Department of Health and Social Services.

(2) Make any false representation or statement to the Commissioner in order to induce or prevent action by the Commissioner.

(3) Not maintain an acceptable bond, if a bond is required.

(4) Maintain a noisy, lewd, disorderly, or unsanitary establishment or supply impure or otherwise deleterious marijuana or marijuana products.

(5) Habitually use dangerous or narcotic drugs, or habitually uses alcoholic beverages or marijuana to excess.

(6) Sell marijuana or marijuana products to minors in contravention of § 1312 of this title.

(7) Possess on the licensee's licensed premises or sell or offer for sale any marijuana or marijuana products not purchased or sold in compliance with this chapter.

(8) Use any seal, labels, or wrapper not purchased from or through the Commissioner which are deceptively similar to those used by the Commissioner.

(9) Be convicted of a felony or be convicted of violating any of the marijuana laws of this State, general or local, including the provisions of this chapter.

(10) Admit guilt or be adjudged guilty of violations of local, municipal, county, or Delaware regulations, ordinances, or codes related to the operation of a licensed premises.

(11) Discipline, threaten, or otherwise penalize any person for refusing to violate or aiding the enforcement of the provisions of this chapter or the rules of the Commissioner.

(d) Notwithstanding subsection (b) of this section, the Commissioner may cancel or suspend a license if there is any other reason which, in the opinion of the Commissioner, warrants cancelling or suspending the license.

(e) The Commissioner may not cancel or suspend any license for the sale of marijuana products or impose any fine for an alleged violation of § 1306 or § 1312 of this title where the licensee or its employee has made a reasonable effort to determine the age of a purchaser of the marijuana products. For purposes of this subsection, a licensee or its employee is deemed to have made a reasonable effort to determine the age of a purchaser if, prior to any sale of marijuana products, the licensee or its employee requires the purchaser to display identification, with a photograph of the purchaser thereon affixed, which sets forth information that would lead a reasonable person to believe the purchaser to be 21 years of age or older.

(f) The Commissioner may also suspend a license for any of the grounds for refusal of a license under § 1354 of this title.

(g) The Commissioner may cancel any retail license if it has reasonable grounds to believe that the license was granted in violation of

this chapter, or any regulation enacted pursuant to § 1331 of this title.

(84 Del. Laws, c. 24, § 4.)

§ 1362 Public hearing and right of appeal.

(a) The Commissioner may not cancel or suspend a license, or fine a licensee, before both of the following occur:

(1) The licensee has been given a public hearing by the Commissioner at which time the licensee is entitled to legal representation and to present witnesses.

(2) The ground for canceling or suspending a license is established by clear and convincing evidence.

(b) The Commissioner shall keep a full and complete record of all proceedings incident to a hearing under subsection (a) of this section. The Commissioner shall record all testimony at such hearing, but need not have it transcribed unless an order of the Commissioner is appealed to the Superior Court under subsection (c) of this section.

(c) An order of the Commissioner relative to suspension or cancellation of a license, or fining a licensee, becomes final 10 days after the licensee receives notice thereof, unless, within 10 days of the date of the postmark on the Commissioner's decision, a written appeal is filed in the Superior Court. No bond may be required for filing such appeal.

(d) The appeal must state the grounds upon which a review is sought. After the appeal is filed, service shall be made by the sheriff upon the Commissioner. The Commissioner shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter, together with the Commissioner's findings therein as soon as practicable but in no event later than 20 calendar days from the date of service of the appeal. The Superior Court's review of an appeal shall be on the record and the Superior Court shall take into account the experience and specialized competence of the Commissioner and the purpose under which the Commissioner acted. Further, the Superior Court's review, in the absence of fraud, shall be limited to whether the Commissioner's decision is supported by substantial evidence on the record and is free from legal error.

(e) An appeal without bond may be taken from the decision of the Superior Court to the Supreme Court in the same manner as is provided in civil cases. Upon the final determination of judicial proceedings, the Commissioner shall enter an order in accordance with such determination, or shall take such further or other action as the Court may order. A petition for Supreme Court review shall act as a supersedeas.

(84 Del. Laws, c. 24, § 4.)

§ 1363 Effect of cancellation or surrender of license; notice.

(a) The cancellation or acceptance of a surrender of a license entails the loss of the privilege conferred by the license and entails the acceptance of or the seizure by the Commissioner of any marijuana or marijuana products found in the possession of the licensee, except those which occur solely by reason of the death of the licensee.

(b) Notice of the order of the cancellation or acceptance of the surrender of a license may be served by an officer designated by the Commissioner: by affixing a duplicate thereof to the outside of the entrance door of the licensed premises; by leaving a duplicate with the holder of the license, or with any member of the family of the holder over the age of 18 years at the residence of the holder; or otherwise as in the judgment of the Commissioner will give notice of such cancellation or acceptance of the surrender. All cancellations or acceptances of surrender of a license take effect as soon as the order is served.

(c) The cancellation or acceptance of surrender of a license does not prevent the filing of any criminal proceedings for any offense against the licensee while the license was in force. No conviction obtained for any offense prevents the Commissioner from cancelling a license or from making at the same time a seizure of marijuana or marijuana products as provided in this title.

(d) The Commissioner shall adopt regulations for seizure of marijuana and marijuana products that preserves and does not destroy the marijuana or marijuana products.

(84 Del. Laws, c. 24, § 4.)

§ 1364 Payments to former licensee.

The Commissioner shall, within 30 days of the date of the cancellation or acceptance of surrender of a license, remit to the former licensee a part of the license fee which has been paid and pertains to the unexpired term of the license. In addition, the Commissioner shall remit to the former licensee the amount originally received by the Commissioner from the former licensee in payment for such marijuana or marijuana products accepted or seized as remains in packages sealed by the Commissioner, after paying or deducting therefrom all reasonable costs and expenses incurred by the Commissioner by reason of the acceptance or seizure of the marijuana or marijuana products of the former licensee. When other legally-acquired marijuana or marijuana products have been accepted or seized under this section, the fair market value thereof as determined by the Commissioner must be remitted by the Commissioner to the former licensee, after paying or deducting therefrom all reasonable costs and expenses incurred by the Commissioner by reason of the acceptance or seizure of the marijuana or marijuana products of the former licensee. No payment may be made for illegally-acquired marijuana or marijuana products that have been seized under this section.

(84 Del. Laws, c. 24, § 4.)

Subchapter VI

Transfer of License; Death of Licensee

§ 1366 Transfer of license.

(a) The rights conferred by a license may be transferred by the Commissioner to any representative designated by the person to whom or on behalf of whom the license was originally granted, if such representative is a person approved by the Commissioner. In the case of death of a licensee, the Commissioner may transfer the license to a qualified person recommended by the executor or administrator of the estate of the deceased licensee.

(b) In instances where the Commissioner has approved the transfer of a license, all matters concerning marijuana inventories must be handled directly between the transferor and the transferee and all payments must be made directly and not through the Commissioner.

(c) A social equity licensee may not transfer the license to a person who would not meet the criteria for the issuance of a social equity license until at least 3 years from the date the licensee was awarded an active social equity license.

(84 Del. Laws, c. 24, § 4; 84 Del. Laws, c. 301, § 14.)

§ 1367 Death of licensee; payments to licensee's estate.

If any licensee dies and no application is made for transfer of the license, or the Commissioner refuses to permit the transfer of the license to another person, the Commissioner shall return to the legal representative of such deceased licensee a share of the license fee received by the Department proportionate to the number of full calendar months of the unexpired term. If the marijuana or marijuana products in possession of the licensee at the time of the licensee's death are delivered to the Commissioner and the Commissioner ascertains that such marijuana or marijuana products have been received by the deceased licensee according to law, the Commissioner must pay to the legal representative the amount originally received by the Commissioner for such marijuana or marijuana products less 10% thereof, or the appraised value less 10% thereof.

(84 Del. Laws, c. 24, § 4.)

Subchapter VII

Owner and Financial Interests of Licensee

§ 1371 Commissioner approval.

The commissioner may refuse approval of changes in the ownership, officers, or directors, financial interest, or lease in connection with any license. No such change shall be implemented until reported to and approved by the Commissioner.

(84 Del. Laws, c. 24, § 4.)

§ 1372 Change in ownership.

(a) In order to change ownership of a license, all of the following must be filed with the Commissioner on behalf of the new owner or owners:

(1) An application.

(2) A financial statement of the new owner or owners.

(3) Personal financial statements of all individuals, partners, or stockholders holding at least 10% of the corporate stock.

(4) A copy of the agreement of the terms of the sale or other exchange of financial interest, including stock distribution.

(5) Copy of all documents explaining interest and profit/loss distribution.

(6) Any application fee required by the Commissioner.

(7) Any other documents requested by the Commissioner.

(b) A change in ownership includes a change in the entire ownership, change in the partial ownership, or the sale or exchange of shares of stock by stockholders.

(84 Del. Laws, c. 24, § 4.)

§ 1373 Change in officers or directors.

A person elected as an officer or director of a licensee must notify the Commissioner within 7 days of the election and provide all information requested by the Commissioner.

(84 Del. Laws, c. 24, § 4.)

§ 1374 Changes in financial interest.

No person may obtain a financial interest in a license or licensee without doing all of the following:

(1) Notifying the Commissioner.

(2) Providing all information and documents requested by the Commissioner.

(84 Del. Laws, c. 24, § 4.)

§ 1375 Fees.

If there is a change in ownership or financial interest more than 10%, a fee of $5,000 or 15% of the value of the transaction, whichever is higher, is required.

(84 Del. Laws, c. 24, § 4.)

Subchapter VIII

Marijuana Regulation Fund; Taxes

§ 1381 Marijuana Regulation Fund; Justice Reinvestment Fund.

(a) The Marijuana Regulation Fund is established as a special fund of the State consisting of fees collected, civil penalties imposed under this chapter, and a portion of taxes imposed under this subchapter. The Office of the State Treasurer shall administer the Fund.

(b) The Justice Reinvestment Fund is established as a special fund of the State consisting of a portion of taxes imposed under this subchapter as set forth in § 1386 of this title.

(84 Del. Laws, c. 24, § 4.)

§ 1382 Levy and rate of marijuana tax; collection.

(a) A tax is imposed on the retail sale of marijuana products under this chapter in this State. This tax is not imposed on the sale of medical marijuana products under Chapter 49A of Title 16.

(b) The tax imposed under this section is at the rate of 15% of the retail sales price of the marijuana product.

(c) If the tax imposed under this section does not equal an amount calculable to a whole cent, the tax shall be equal to the next higher whole cent.

(d) The amount of tax shall be separately stated on an invoice, receipt, or other similar document, in the manner directed by the Director of Revenue, that the marijuana retailer provides to the consumer at the time the retail sale occurs.

(e) A person may not knowingly sell, purchase, install, transfer, or possess electronic devices or software programs for the purposes of either of the following:

(1) Hiding or removing records of retail sales of marijuana products.

(2) Falsifying records of retail sales of marijuana products.

(f) A marijuana retailer may not discount a marijuana item or offer a marijuana item for free if the retail sale of the marijuana item is made in conjunction with the retail sale of any other item.

(84 Del. Laws, c. 24, § 4.)

§ 1383 Collection and administration of the marijuana tax; mandatory reports; preemption.

(a) The marijuana tax imposed on the consumer under § 1382 of this title shall be collected at the point of sale and remitted by each retail marijuana store licensee that engages in the retail sale of marijuana products. The marijuana tax is considered a tax upon the retail marijuana store licensee that is required to collect the tax, and the retail marijuana store licensee is considered a taxpayer.

(b) A retail marijuana store licensee shall file a monthly report to the Commissioner, the Division of Revenue, and the Division of Alcohol and Tobacco Enforcement.

(c) A retail marijuana store licensee shall pay the marijuana tax to the Division of Revenue in the form and manner prescribed by the Director of Revenue, but not later than with each monthly report.

(d) Except to the extent inconsistent with specific provisions of this chapter, the provisions of Chapter 5 of Title 30 shall govern the assessment, collection, review, and appeal of deficiencies of tax imposed by this title, and any interest and penalties thereon, and claims for refund of overpayment of taxes imposed by this chapter.

(e) The fees, charges, and taxes imposed by the State under this chapter shall be in lieu of all county and municipal license fees and taxes upon the business of selling, growing, and manufacturing marijuana as such. Provided, however, general occupational licenses fees and general taxes imposed uniformly on everyone within the class are not preempted.

(f) Any information set forth or disclosed in any report or return required under or as a result of this section, including any information which is required to be attached or included on any report or return required under or as a result of this section, is subject to the provisions of § 368 of Title 30.

(84 Del. Laws, c. 24, § 4.)

§ 1384 Retention of records by retail marijuana store licensee; penalties.

(a) Each retail marijuana store licensee shall maintain and keep, for a period of 3 years, such records of marijuana products sold within this State by such retail marijuana store licensee, together with invoices, bills of lading, and other pertinent records and papers as may be required by the Commissioner for the reasonable administration of this chapter.

(b) A person who violates this section is subject to a civil penalty of up to $1,000 and may be charged the costs of an enforcement action .

(84 Del. Laws, c. 24, § 4.)

§ 1385 Discontinuance, sale, or transfer of business by retail marijuana store licensee; penalties.

(a) Whenever a person ceases to engage in business as retail marijuana store licensee within this State, all taxes, penalties, and interest

under this chapter not yet due and payable under the provisions of this chapter shall, notwithstanding such provisions, become due and payable concurrently with the discontinuance, sale, or transfer, and the retail marijuana store licensee shall concurrently with such discontinuance, sale, or transfer make a report and pay all such taxes, interest, and penalties.

(b) If a retail marijuana store license is transferred under § 1366 of this title, the purchaser or transferee shall be liable to this State for the amount of all taxes, penalties, and interest under this chapter, accrued against any retail marijuana store licensee selling or transferring a business, on the date of such sale or transfer, but only to the extent of the value of the property and business thereby acquired from such distributor or retailer.

(c) A person who violates this section is subject to a civil penalty of not less than $50 nor more than $500.

(84 Del. Laws, c. 24, § 4.)

§ 1386 Deposit of receipts.

(a) All money received by the Division of Revenue under this chapter shall be allocated as follows:

(1) All marijuana tax money and all money received through fees or other mechanisms must be deposited in accordance with § 6103(a) of Title 29 and credited to the Marijuana Regulation Fund.

(2) Each month, 7% of total marijuana tax money received from the preceding month shall be withdrawn from the Marijuana Regulation Fund and credited to the Justice Reinvestment Fund.

(b) The State Treasurer shall invest the Funds consistent with the investment policies established by the Cash Management Policy Board. The State Treasurer shall credit interest to the Funds on a monthly basis consistent with the rate established by the Cash Management Policy Board.

(84 Del. Laws, c. 24, § 4.)

§ 1387 Appropriation of revenue.

(a) The funds in the Marijuana Regulation Fund in each fiscal year must be appropriated by the General Assembly as follows:

(1) To the administrative costs and expenses of the Commissioner and the Division, including administrative expenses, including payroll and other employment costs.

(2) To the administrative costs and expenses of the Department of Finance, Department of Health and Social Services, Department of Agriculture, and other agencies responsible for taxing and regulating personal use marijuana in Delaware. These departments shall submit a proposed expenditure plan for approval by the Commissioner, Controller General, and Director of the Office of Management and Budget prior to the expenditure of these funds.

(3) To the administrative costs and expenses of the Criminal Justice Council incurred to administer the Justice Reinvestment Fund.

(4) The maximum unencumbered balance which shall remain in the Marijuana Regulation Fund at the end of any fiscal year shall not exceed $5,000,000.

(5) After the payment under paragraphs (a)(2) and (3) of this section, the transfer to the Justice Reinvestment Fund set forth in § 1386(a)(2) of this title, and the maximum unencumbered balance set forth under paragraph (a)(4) of this section, any remainder shall be deposited to the General Fund.

(b) The funds in the Justice Reinvestment Fund in each fiscal year shall be appropriated to the Criminal Justice Council to administer grants, contracts, services, or initiatives that focus on any of the following:

(1) Restorative justice, jail diversion, workforce development, industry-specific technical assistance or mentoring services for economically-disadvantaged persons in disproportionately-impacted areas.

(2) Addressing the underlying causes of crime, reducing drug-related arrests, and reducing the prison population in this State.

(3) Creating or developing technology to assist with the restoration of civil rights and expungement of criminal records.

(4) Supporting social equity applicants with select business-related expenses.

(5) Supporting or providing reentry services for justice-involved individuals.

(6) Any remainder in the Fund at the end of a fiscal year is not subject to reversion.

(84 Del. Laws, c. 24, § 4; 84 Del. Laws, c. 295, § 139; 84 Del. Laws, c. 301, § 15; 85 Del. Laws, c. 62, § 31.)

§ 1388 Financial statements of the Commissioner.

The Commissioner shall render an account to the State Treasurer, in the manner and at the time required by the latter, of its receipts and disbursements, and of its assets and liabilities. The State Treasurer may not, however, require such reports to be rendered more often than quarterly.

(84 Del. Laws, c. 24, § 4.)

§ 1389 Annual audit.

The State Auditor of Accounts shall annually examine and audit the operation of the Office of the Commissioner.

(84 Del. Laws, c. 24, § 4.)

Title 11

Crimes and Criminal Procedure

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Part I
Delaware Criminal Code

Chapter 1
Introductory Provisions

§ 101. Short title.

Part I of this title shall be known as the “Delaware Criminal Code.”

(11 Del. C. 1953, § 101; 58 Del. Laws, c. 497, § 1.)

§ 102. Applicability to offenses committed prior to July 1, 1973.

(a) Except as provided in subsections (b) and (c) of this section, this Criminal Code does not apply to offenses committed prior to July 1, 1973. Prosecutions for offenses committed prior to July 1, 1973, shall be governed by the prior law, which is continued in effect for that purpose, as if this Criminal Code were not in force. For the purpose of this section, an offense was committed prior to July 1, 1973, if any of the elements of the offense occurred prior thereto.

(b) In any case pending on or commenced after July 1, 1973, involving an offense committed prior to that date:

(1) Procedural provisions of this Criminal Code shall govern, insofar as they are justly applicable and their applicability does not introduce confusion, delay or manifest injustice;

(2) Provisions of this Criminal Code according a defense or mitigations shall apply, with the consent of the defendant.

(c) Provisions of this Criminal Code governing the treatment and the release or discharge of prisoners, probationers and parolees shall apply to persons under sentence for offenses committed prior to July 1, 1973, except that the minimum or maximum period of their detention or supervision shall in no case be increased, nor shall this Criminal Code affect the substantive or procedural validity of any judgment of conviction entered prior to July 1, 1973, regardless of the fact that appeal time has not run or that an appeal is pending.

(11 Del. C. 1953, § 102; 58 Del. Laws, c. 497, § 1.)

§ 103. Applicability to offenses committed after July 1, 1973.

(a) This Criminal Code establishes the criminal law of this State and governs the construction of and punishment for any offense set forth herein committed after July 1, 1973, as well as the construction and application of any defense to a prosecution for such an offense.

(b) Unless otherwise expressly provided, or unless the context otherwise requires, this Criminal Code governs the construction of any offense defined in a statute other than this Criminal Code and committed after July 1, 1973, as well as the construction and application of any defense to a prosecution for such an offense.

(11 Del. C. 1953, § 103; 58 Del. Laws, c. 497, § 1.)

Part I
Delaware Criminal Code
Chapter 2
General Provisions Concerning Offenses

§ 201. General purposes.

The general purposes of this Criminal Code are:

(1) To proscribe conduct which unjustifiably and inexcusably causes or threatens harm to individual or public interests;

(2) To give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;

(3) To define the act or omission and the accompanying mental state which constitute each offense;

(4) To differentiate upon reasonable grounds between serious and minor offenses and to prescribe proportionate penalties therefor; and

(5) To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the rehabilitation of those convicted and their confinement when required in the interests of public protection.

(11 Del. C. 1953, § 201; 58 Del. Laws, c. 497, § 1.)

§ 202. All offenses defined by statute.

(a) No conduct constitutes a criminal offense unless it is made a criminal offense by this Criminal Code or by another law.

(b) This section does not affect the power of a court to punish for civil contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

(11 Del. C. 1953, § 202; 58 Del. Laws, c. 497, § 1.)

§ 203. Principles of construction.

The general rule that a penal statute is to be strictly construed does not apply to this Criminal Code, but the provisions herein must be construed according to the fair import of their terms to promote justice and effect the purposes of the law, as stated in § 201 of this title.

(11 Del. C. 1953, § 203; 58 Del. Laws, c. 497, § 1.)

§ 204. Territorial applicability.

(a) Except as otherwise provided in this section a person may be convicted under the law of this State of an offense committed by the person's own conduct or by the conduct of another for which the person is legally accountable if:

(1) Either the conduct or the result which is an element of the offense occurs within Delaware; or

(2) Conduct occurring outside the State is sufficient under Delaware law to constitute a conspiracy to commit an offense within the State and an overt act in furtherance of the conspiracy occurs within the State; or

(3) Conduct occurring within the State establishes complicity in the commission of, or an attempt, solicitation or conspiracy to commit, an offense in another jurisdiction which also is an offense under the law of Delaware; or

(4) The offense consists of the omission to perform a legal duty imposed by Delaware law with respect to domicile, residence or a relationship to a person, thing or transaction in the State; or

(5) The offense is based on a statute of Delaware which expressly prohibits conduct outside the State, when the conduct bears a reasonable relation to a legitimate interest of this State and the defendant knows or should know that the defendant's conduct is likely to affect that interest.

(b) Paragraph (a)(1) of this section does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside Delaware which would not constitute an offense if the result had occurred in the same place, unless the defendant intentionally, knowingly or recklessly caused the result within Delaware.

(c) When the offense is homicide, either the death of the victim or the bodily impact causing death constitutes a "result" within the meaning of paragraph (a)(1) of this section and if the body of a homicide victim is found within this State it is presumed that the result occurred within the State.

(11 Del. C. 1953, § 204; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 205. Time limitations.

(a) A prosecution for murder or any class A felony, or any attempt to commit said crimes, may be commenced at any time.

(b) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

(1) A prosecution for any felony except murder or any class A felony, or any attempt to commit said crimes, must be commenced within 5 years after it is committed;

(2) A prosecution for a class A misdemeanor must be commenced within 3 years after it is committed;

(3) A prosecution for a class B misdemeanor, a class C misdemeanor, an unclassified misdemeanor or a violation must be commenced within 2 years after it is committed.

(c) If the period prescribed by subsection (b) of this section has expired, a prosecution for any offense in which the accused's acts include or constitute forgery, fraud, breach of fiduciary duty or actively concealed theft or misapplication of property by an employee, pledgee, bailee or fiduciary may be commenced within 2 years after discovery of the offense has been made or should have been made in the exercise of ordinary diligence by an aggrieved party or by an authorized agent, fiduciary, guardian, personal representative or parent (in the case of an infant) of an aggrieved party who is not a party to the offense. In no case shall this provision extend the period of limitation otherwise applicable by more than an additional 3 years beyond the period specified in subsection (b) of this section.

(d) If the period prescribed by subsection (b) of this section has expired, a prosecution for any offense based upon misconduct in office by a public officer or employee may be commenced at any time when the defendant is in public office or employment or within 2 years thereafter. In no case shall this provision extend the period of limitation otherwise applicable by more than an additional 3 years beyond the period specified in subsection (b) of this section.

(e) Notwithstanding the period prescribed by subsection (b) of this section, a prosecution for any crime that is delineated in § 787 of this title and in which the victim is a minor, subpart D of subchapter II of Chapter 5 of this title, or is otherwise defined as a "sexual offense" by § 761 of this title except § 763, § 764 or § 765 of this title, or any attempt to commit said crimes, may be commenced at any time. No prosecution under this subsection shall be based upon the memory of the victim that has been recovered through psychotherapy unless there is some evidence of the corpus delicti independent of such repressed memory. This subsection applies to all causes of action arising before, on or after July 15, 1992, and to the extent consistent with this subsection, it shall revive causes of action that would otherwise be barred by this section.

(f) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(g) For purposes of this section, a prosecution is commenced when either an indictment is found or an information is filed.

(h) The period of limitation does not run:

(1) During any time when the accused is fleeing or hiding from justice so that the accused's identity or whereabouts within or outside the State cannot be ascertained, despite a diligent search for the accused; or

(2) During any time when the accused in a prosecution has become a fugitive from justice by failing to appear for any scheduled court proceeding related to such prosecution for which proper notice under the law was provided or attempted. It is no defense to a prosecution under this paragraph that the person did not receive notice of the scheduled court proceeding.

(3) During any time when a prosecution, including a prosecution under a defective indictment or information, against the accused for the same conduct has been commenced and is pending in this State.

(i) If the period prescribed by subsection (b) of this section has expired, a prosecution for any offense in this title may be commenced within 10 years after it is committed if based upon forensic DNA testing.

(j) In any prosecution in which subsection (c), (d), (e), (h) or (i) of this section is sought to be invoked to avoid the limitation period of subsection (b) of this section, the State must allege and prove the applicability of subsection (c), (d), (e), (h) or (i) as an element of the offense.

(11 Del. C. 1953, § 205; 58 Del. Laws, c. 497, § 1; 60 Del. Laws, c. 401, § 1; 68 Del. Laws, c. 397, §§ 1, 2; 70 Del. Laws, c. 92, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 264, §§ 1, 2; 72 Del. Laws, c. 320, §§ 1, 2; 74 Del. Laws, c. 56, § 1; 75 Del. Laws, c. 367, § 1; 79 Del. Laws, c. 276, § 4.)

§ 206. Method of prosecution when conduct constitutes more than 1 offense.

(a) When the same conduct of a defendant may establish the commission of more than 1 offense, the defendant may be prosecuted for each offense. The defendant's liability for more than 1 offense may be considered by the jury whenever the State's case against the defendant for each offense is established in accordance with § 301 of this title. The defendant may not, however, be convicted of more than 1 offense if:

(1) One offense is included in the other, as defined in subsection (b) of this section; or

(2) One offense consists only of an attempt to commit the other; or

(3) Inconsistent findings of fact are required to establish the commission of the offenses.

(b) A defendant may be convicted of an offense included in an offense charged in the indictment or information. An offense is so included when:

(1) It is established by the proof of the same or less than all the facts required to establish the commission of the offense charged; or

(2) It consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or

(3) It involves the same result but differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.

(c) The court is not obligated to charge the jury with respect to an included offense unless there is a rational basis in the evidence for a verdict acquitting the defendant of the offense charged and convicting the defendant of the included offense.

(11 Del. C. 1953, § 206; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 207. When prosecution is barred by former prosecution for the same offense.

When a prosecution is for a violation of the same statutory provisions and is based upon the same facts as a former prosecution, it is barred by the former prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal which has not subsequently been set aside. There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of fact or in a determination by the court that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense, although the conviction is subsequently set aside.

(2) The former prosecution was terminated, after the information had been filed or the indictment found, by a final order or judgment for the defendant, which has not been set aside, reversed or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(3) The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in a judgment of conviction which has not been reversed or vacated, a verdict of guilty which has not been set aside and which is capable of supporting a judgment or a plea of guilty or nolo contendere accepted by the court.

(4) The former prosecution was improperly terminated. Except as provided in this subdivision there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the first witness is sworn but before verdict. Termination under any of the following circumstances is not improper:

a. The defendant consents to the termination or waives, by motion to dismiss or otherwise, the right to object to the termination.

b. The trial court declares a mistrial in accordance with law.

(11 Del. C. 1953, § 207; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 208. When prosecution is barred by former prosecution for different offense.

Although a prosecution is for a violation of a different statutory provision or is based on different facts, it is barred by a former prosecution in a court having jurisdiction over the subject matter of the second prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal which has not subsequently been set aside or in a conviction as defined in § 207 of this title and the subsequent prosecution is for:

a. Any offense of which the defendant could have been convicted on the first prosecution; or

b. The same conduct, unless:

1. The offense for which the defendant is subsequently prosecuted requires proof of a fact not required by the former offense and the law defining each of the offenses is intended to prevent a substantially different harm or evil; or

2. The second offense was not consummated when the former trial began.

(2) The former prosecution was terminated by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.

(3) The former prosecution was improperly terminated as improper termination is defined in § 207(4) of this title and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

(11 Del. C. 1953, § 208; 58 Del. Laws, c. 497, § 1.)

§ 209. Former prosecution in another jurisdiction; when a bar.

When conduct constitutes an offense within the concurrent jurisdiction of this State and of the United States or another state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in this State under the following circumstances:

(1) The first prosecution resulted in an acquittal which has not subsequently been set aside or in a conviction as defined in § 207 of this title and the subsequent prosecution is based on the same conduct, unless:

a. The offense for which the defendant is subsequently prosecuted requires proof of a fact not required by the former offense and the law defining each of the offenses is intended to prevent a substantially different harm or evil; or

b. The second offense was not consummated when the former trial began; or

(2) The former prosecution was terminated, after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense for which the defendant is subsequently prosecuted; or

(3) The former prosecution was improperly terminated as improper termination is defined in § 207(4) of this title and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

(11 Del. C. 1953, § 209; 58 Del. Laws, c. 497, § 1.)

§ 210. Former prosecution before court lacking jurisdiction or when fraudulently procured by defendant.

A prosecution is not a bar within the meaning of §§ 207, 208 and 209 of this title under any of the following circumstances:

(1) The former prosecution was before a court which lacked jurisdiction over the defendant or the offense; or

(2) The former prosecution was procured by the defendant without the knowledge of the appropriate prosecuting officer and with the purpose of avoiding the sentence which might otherwise be imposed; or

(3) The former prosecution resulted in a judgment of conviction which was held invalid on appeal or in a subsequent proceeding on a writ of habeas corpus, coram nobis or similar process.

(11 Del. C. 1953, § 210; 58 Del. Laws, c. 497, § 1.)

§ 211. Repeal of statutes as affecting existing liabilities.

(a) The repeal of any statute creating, defining or relating to any criminal offense set forth under the laws of this State, shall not have the effect of releasing or extinguishing any penalty, forfeiture or liability incurred under such statute, unless the repealing act shall so expressly provide, and such statute shall be treated as remaining in full force and effect for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability.

(b) Any action, case, prosecution, trial or other legal proceeding in progress under or pursuant to any statute relating to any criminal offense set forth under the laws of this State shall be preserved and shall not become illegal or terminated in the event that such statute is later amended by the General Assembly, irrespective of the stage of such proceeding, unless the amending act expressly provides to the contrary. For the purposes of such proceedings, the prior law shall remain in full force and effect.

(71 Del. Laws, c. 263, § 1.)

§§ 212-220. [Reserved.]

§ 221. Principles of definitions.

(a) In this Criminal Code when the word "means" is employed in defining a word or term, the definition is limited to the meaning given.

(b) In this Criminal Code, when the word "includes" is employed in defining a word or term, the definition is not limited to the meaning given, but in appropriate cases the word or term may be defined in any way not inconsistent with the definition given.

(c) If a word used in this Criminal Code is not defined herein, it has its commonly accepted meaning, and may be defined as appropriate to fulfill the purposes of the provision as declared in § 201 of this title.

(11 Del. C. 1953, § 221; 58 Del. Laws, c. 497, § 1.)

§ 222. General definitions.

When used in this Criminal Code:

(1) "Building," in addition to its ordinary meaning, includes any structure, vehicle or watercraft. Where a building consists of 2 or more units separately secured or occupied, each unit shall be deemed a separate building.

(2) "Controlled substance" or "counterfeit substance" shall have the same meaning as used in Chapter 47 of Title 16.

(3) "Conviction" means a verdict of guilty by the trier of fact, whether judge or jury, or a plea of guilty or a plea of nolo contendere accepted by the court.

(4) "Covert firearm" means any firearm that is constructed in a shape or configuration such that it does not resemble a firearm.

(5) "Dangerous instrument" means all of the following:

a. Any instrument, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury.

b. Any disabling chemical spray.

c. Any electronic control device, including a neuromuscular incapacitation device designed to incapacitate a person.

(6) a. "Deadly weapon" includes any of the following:

1. A firearm.

2. A bomb.

3. A knife of any sort, other than an ordinary pocketknife carried in a closed position.

4. A switchblade knife.

5. A billy.

6. A blackjack.

7. A bludgeon.

8. Metal knuckles.

9. A slingshot.

10. A razor.

11. A bicycle chain.

12. An ice pick.

13. A dangerous instrument, which is used, or attempted to be used, to cause death or serious physical injury.

14. A projectile weapon.

b. For the purpose of this definition, "ordinary pocketknife" means a knife having a blade not more than 3.75 inches in length.

(7) "Defraud" means to acquire a gain or advantage by fraud.

(8) "Disabling chemical spray" includes mace, tear gas, pepper spray or any other mixture containing quantities thereof, or any other aerosol spray or any liquid, gaseous or solid substance capable of producing temporary physical discomfort, disability or injury through being vaporized or otherwise dispersed in the air, or any canister, container or device designed or intended to carry, store or disperse such aerosol spray or such gas or solid.

(9) "Drug" means any substance or preparation capable of producing any alteration of the physical, mental or emotional condition of a person.

(10) "Elderly person" means any person who is 62 years of age or older. Thus, the terms "elderly person" and "person who is 62 years of age or older" shall have the same meaning as used in this Code or in any action brought pursuant to this Code.

(11) "Electronic control device" is a device designed to incapacitate a person, including but not limited to a neuromuscular incapacitation device.

(12) "Female" means a person of the female sex.

(13) "Firearm" means all of the following:

a. A weapon from which a shot, projectile, or other object is designed or may readily be converted to be discharged by force of an explosive, whether operable or inoperable, loaded or unloaded.

b. A firearm frame or receiver.

(14) "Firearm frame or receiver" means the part of the firearm that provides housing for the firearm's internal components, and includes the hammer, bolt or breechblock, action, and firing mechanism.

(15) "Fraud" means an intentional perversion, misrepresentation or concealment of truth.

(16) "Gender identity" means a gender-related identity, appearance, expression, or behavior of a person, regardless of the person's assigned sex at birth.

(17) "Law" includes statutes and ordinances. Unless the context otherwise clearly requires, "law" also includes settled principles of the common law of Delaware governing areas other than substantive criminal law.

(18) "Law-enforcement officer" includes police officers, the Attorney General and the Attorney General's deputies, agents of the State Division of Alcohol and Tobacco Enforcement, agents employed by a state, county or municipal law-enforcement agency engaged in monitoring sex offenders, correctional officers, probation and parole officers, state fire marshals, municipal fire marshals that are graduates of a Delaware Police Academy which is accredited/authorized by the Police Officer Standards and Training Commission, sworn members of the City of Wilmington Fire Department who have graduated from a Delaware Police Academy which is authorized/accredited by the Police Officer Standards and Training Commission, environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control, and constables. A sheriff or deputy sheriff shall be considered a "law-enforcement officer" when acting upon a specific order of a judge or commissioner of Superior Court. Sheriffs and deputy sheriffs shall not have any arrest authority. However, sheriffs and deputy sheriffs may take into custody and transport a person when specifically so ordered by a judge or commissioner of Superior Court.

(19) "Lawful" means in accordance with law or, where the context so requires, not prohibited by law.

(20) "Major component of a firearm" means the slide, barrel, cylinder, trigger group, or receiver of a firearm.

(21) "Male" means a person of the male sex.

(22) "Mental illness" means any condition of the brain or nervous system recognized as a mental disease by a substantial part of the medical profession.

(23) "Narcotic drug" shall have the same definition as contained in § 4701 of Title 16.

(24) "Oath or affirmation," for the purpose of warrants, can be made via videophone, telephone, secure electronic means or in person.

(25) "Person" means a human being who has been born and is alive, and, where appropriate, a public or private corporation, a trust, a firm, a joint stock company, a union, an unincorporated association, a partnership, a government or a governmental instrumentality.

(26) “Physical force” means any application of force upon or toward the body of another person.

(27) “Physical injury” means impairment of physical condition or substantial pain.

(28) “Projectile weapon” means any of the following:

a. A bow.

b. A crossbow.

c. An airbow.

d. A weapon designed to discharge or project an arrow, crossbow bolt, or spear.

e. An airgun that discharges or projects a pellet, slug, or bullet larger than .177 caliber.

(29) “Public transit operator” means a person in control or in charge of a transportation vehicle for public use, in exchange for a fee or charge, offered by any railroad, street railway, traction railway, motor bus, or trolley coach. Specifically excluded are:

a. Transportation to and from any school or school-sponsored event when such transportation is under the regulation of the Department of Education; and

b. Transportation to and from a church, synagogue or other place of worship;

c. Shuttle-type transportation provided by business establishments without charge to customers of the businesses offering such shuttle transportation between fixed termini; and

d. Limousine services.

(30) “Security exemplar” means an object, to be fabricated at the direction of the United States Attorney General, that is all of the following:

a. Constructed of 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun.

b. Suitable for testing and calibrating metal detectors.

(31) “Serious mental disorder” means any condition of the brain or nervous system recognized as defective, as compared with an average or normal condition, by a substantial part of the medical profession.

(32) “Serious physical injury” means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.

(33) “Sexual orientation” includes heterosexuality, homosexuality, bisexuality, asexuality, or pansexuality.

(34) “Telephone,” in addition to its ordinary meaning, includes any computer (as defined in § 931 of this title) or any other electronic device which is actually used to engage in a wire communication (as defined in § 2401(20) of this title) with any other telephone, computer or electronic device.

(35) “Therapeutic abortion” means an abortion performed pursuant to subchapter IX of Chapter 17 of Title 24.

(36) “Three-dimensional printer” means a computer or computer-driven machine of device capable of producing a 3-dimensional object from a digital model.

(37) “Undetectable firearm” means a firearm constructed entirely of nonmetal substances, or a firearm that after removal of all of the major components of a firearm, is not detectable by walk-through metal detectors calibrated and operated to detect the security exemplar, or firearm which includes a major component of a firearm, which, if subject to the types of detection devices commonly used at airports for security screening, would not generate an image that accurately depicts the shape of the component. It does not include a firearm subject to the provisions of 18 U.S.C. § 922(p)(3) through (6).

(38) “Unfinished firearm frame or receiver” means a firearm frame or receiver that requires further machining or molding in order to be used as part of a functional firearm, and which is designed and intended to be used in the assembly of a functional firearm.

(39) “Unlawful” means contrary to law or, where the context so requires, not permitted by law. It does not mean wrongful or immoral.

(40) “Untraceable firearm” means a firearm for which the sale or distribution chain from a licensed retailer to the point of its first retail sale cannot be traced by law-enforcement officials. “Untraceable firearm” does not include any of the following:

a. Firearms manufactured prior to 1968.

b. Muzzle-loading firearms designed to use black powder or its equivalent.

c. Firearms which are designed as replicas of antique firearms originally manufactured prior to 1898.

(41) “Vehicle” includes any means in or by which someone travels or something is carried or conveyed or a means of conveyance or transport, whether or not propelled by its own power.

(11 Del. C. 1953, § 222; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 203, § 1; 63 Del. Laws, c. 92, § 1; 64 Del. Laws, c. 17, § 1; 68 Del. Laws, c. 378, §§ 1-3; 69 Del. Laws, c. 24, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 383, § 1; 71 Del. Laws, c. 374, §§ 1-3; 72 Del. Laws, c. 34, § 8; 72 Del. Laws, c. 43, § 2; 72 Del. Laws, c. 50, § 1; 72 Del. Laws, c. 371, § 1; 72 Del. Laws, c. 379, § 1; 73 Del. Laws, c. 126, § 1; 73 Del. Laws, c. 249, § 1; 73 Del. Laws, c. 413, § 1; 74 Del. Laws, c. 71, § 4; 74 Del. Laws, c. 250, § 2; 76 Del. Laws, c. 270, §§ 1, 2; 77 Del. Laws, c. 64, § 3; 78 Del. Laws, c. 13, § 3; 78 Del. Laws, c. 224, § 1; 78 Del. Laws, c. 266, § 1; 78 Del. Laws, c. 325, § 3; 79 Del. Laws, c. 200, § 1; 79 Del. Laws, c. 341, § 1; 80 Del. Laws, c. 264, § 1; 83

Del. Laws, c. 246, § 1; 84 Del. Laws, c. 149, § 2; 84 Del. Laws, c. 215, § 1; 84 Del. Laws, c. 525, § 1; 84 Del. Laws, c. 530, § 3; 85 Del. Laws, c. 119, § 1.)

§ 223. Words of gender or number.

Unless the context otherwise requires, words denoting the singular number may, and where necessary shall, be construed as denoting the plural number, and words denoting the plural number may, and where necessary shall, be construed as denoting the singular number, and words denoting the masculine gender may, and where necessary shall, be construed as denoting the feminine gender or the neuter gender.

(11 Del. C. 1953, § 223; 58 Del. Laws, c. 497, § 1.)

§ 224. Valuation of property.

Whenever the value of property is determinative of the degree of an accused's criminal guilt or otherwise relevant in a criminal prosecution, it shall be ascertained as follows:

(1) Except as otherwise specified in this section, "value" means the market value of the property at the time and place of the crime, or if that cannot be satisfactorily ascertained, the cost of replacing the property within a reasonable time after the crime.

(2) Whether or not they have been issued or delivered, the value of certain written instruments, not including those having a readily ascertainable market value, shall be ascertained as follows:

a. The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

b. The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(3) When the value of property cannot satisfactorily be ascertained pursuant to the standards set forth in paragraphs (1) and (2) of this section, its value shall be deemed to be an amount less than $100.

(11 Del. C. 1953, § 224; 58 Del. Laws, c. 497, § 1.)

§§ 225-230. [Reserved.]

§ 231. Definitions relating to state of mind.

(a) *"Criminal negligence"*. — A person acts with criminal negligence with respect to an element of an offense when the person fails to perceive a risk that the element exists or will result from the conduct. The risk must be of such a nature and degree that failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

(b) *"Intentionally"*. — A person acts intentionally with respect to an element of an offense when:

(1) If the element involves the nature of the person's conduct or a result thereof, it is the person's conscious object to engage in conduct of that nature or to cause that result; and

(2) If the element involves the attendant circumstances, the person is aware of the existence of such circumstances or believes or hopes that they exist.

(c) *"Knowingly"*. — A person acts knowingly with respect to an element of an offense when:

(1) If the element involves the nature of the person's conduct or the attendant circumstances, the person is aware that the conduct is of that nature or that such circumstances exist; and

(2) If the element involves a result of the person's conduct, the person is aware that it is practically certain that the conduct will cause that result.

(d) *"Negligence"*. — A person acts with negligence with respect to an element of an offense when the person fails to exercise the standard of care which a reasonable person would observe in the situation.

(e) *"Recklessly"*. — A person acts recklessly with respect to an element of an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the element exists or will result from the conduct. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

(11 Del. C. 1953, § 231; 58 Del. Laws, c. 497, § 1; 63 Del. Laws, c. 88, § 6; 70 Del. Laws, c. 186, § 1.)

§ 232. Definition relating to elements of offense.

"Elements of an offense" are those physical acts, attendant circumstances, results and states of mind which are specifically included within the definition of the offense or, if the definition is incomplete, those states of mind which are supplied by the general provisions of this Criminal Code. Facts establishing jurisdiction and venue and establishing that the offense was committed within the time period prescribed in § 205 of this title must also be proved as elements of the offense.

(11 Del. C. 1953, § 232; 58 Del. Laws, c. 497, § 1.)

§ 233. Definition and classification of offenses.

(a) "Crime" or "offense" means an act or omission forbidden by a statute of this State and punishable upon conviction by:

(1) Imprisonment; or

(2) Fine; or

(3) Removal from office; or

(4) Disqualification to hold any office of trust, honor or profit under the State; or

(5) Other penal discipline.

(b) An act or omission is forbidden by a statute of this State if a statute makes the act or omission punishable by any form of punishment mentioned in subsection (a) of this section.

(c) An offense is either a felony, a misdemeanor or a violation. Any offense not specifically designated by law to be a felony or a violation is a misdemeanor.

(11 Del. C. 1953, § 233; 58 Del. Laws, c. 497, § 1.)

§ 234. Definition of terms requiring certain sentences.

When used for the purpose of describing or requiring a sentence of incarceration imposed pursuant to this title, the terms "minimum," "mandatory," "minimum mandatory" and "mandatory minimum" shall be construed as being synonymous.

(71 Del. Laws, c. 98, § 1.)

§§ 235-240. [Reserved.]

§ 241. Conviction to precede punishment.

The punishments prescribed by this Criminal Code or by any other statute of a criminal nature may be inflicted only after a judgment of conviction by a court having jurisdiction over the person of the defendant and over the subject matter.

(11 Del. C. 1953, § 241; 58 Del. Laws, c. 497, § 1.)

§ 242. Requirements for criminal liability in general.

A person is not guilty of an offense unless liability is based on conduct which includes a voluntary act or the omission to perform an act which the person is physically capable of performing.

(11 Del. C. 1953, § 242; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 243. Definition of "voluntary act."

"Voluntary act" means a bodily movement performed consciously or habitually as a result of effort or determination, and includes possession if the defendant knowingly procured or received the thing possessed or was aware of the defendant's control thereof for a sufficient period to have been able to terminate possession.

(11 Del. C. 1953, § 243; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§§ 244-250. [Reserved.]

§ 251. Proof of state of mind required unless otherwise provided; strict liability.

(a) No person may be found guilty of a criminal offense without proof that the person had the state of mind required by the law defining the offense or by subsection (b) of this section.

(b) When the state of mind sufficient to establish an element of an offense is not prescribed by law, that element is established if a person acts intentionally, knowingly or recklessly.

(c) It is unnecessary to prove the defendant's state of mind with regard to:

(1) Offenses which constitute violations, unless a particular state of mind is included within the definition of the offenses; or

(2) Offenses defined by statutes other than this Criminal Code, insofar as a legislative purpose to impose strict liability for such offenses or with respect to any material element thereof plainly appears.

In all cases covered by this subsection, it is nevertheless necessary to prove that the act or omission on which liability is based was voluntary as provided in §§ 242 and 243 of this title.

(11 Del. C. 1953, § 251; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 252. Prescribed state-of-mind requirement applies to all material elements.

When a statute defining an offense prescribes the state of mind that is sufficient for the commission of the offense, without distinguishing among the elements thereof, the provision shall apply to all the elements of the offense, unless a contrary legislative purpose plainly appears.

(11 Del. C. 1953, § 252; 58 Del. Laws, c. 497, § 1.)

§ 253. Substitutes for criminal negligence, recklessness and knowledge.

Whenever a statute provides that negligence suffices to establish an element of an offense, the element is also established if a person acts intentionally, knowingly, recklessly or with criminal negligence. When a statute provides that criminal negligence suffices to establish an element of an offense, the element also is established if a person acts intentionally, knowingly or recklessly. When recklessness suffices to establish an element of an offense, the element also is established if a person acts intentionally or knowingly. When acting knowingly suffices to establish an element of an offense, the element also is established if a person acts intentionally.

(11 Del. C. 1953, § 253; 58 Del. Laws, c. 497, § 1; 76 Del. Laws, c. 101, § 7.)

§ 254. Conditional intention.

The fact that a defendant's intention was conditional is immaterial unless the condition negatives the harm or evil sought to be prevented by the statute defining the offense.

(11 Del. C. 1953, § 254; 58 Del. Laws, c. 497, § 1.)

§ 255. Knowledge of high probability.

When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless the person actually believes that it does not exist.

(11 Del. C. 1953, § 255; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§§ 256-260. [Reserved.]

§ 261. Causation.

Conduct is the cause of a result when it is an antecedent but for which the result in question would not have occurred.

(11 Del. C. 1953, § 261; 58 Del. Laws, c. 497, § 1.)

§ 262. Intentional or knowing causation; different result from that expected.

The element of intentional or knowing causation is not established if the actual result is outside the intention or the contemplation of the defendant unless:

(1) The actual result differs from that intended or contemplated, as the case may be, only in the respect that a different person or different property is injured or affected or that the injury or harm intended or contemplated would have been more serious or more extensive than that caused; or

(2) The actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence to have a bearing on the actor's liability or on the gravity of the offense.

(11 Del. C. 1953, § 262; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 263. Reckless or negligent causation; different result from that expected or overlooked.

The element of reckless or negligent causation is not established if the actual result is outside the risk of which the defendant is aware or, in the case of negligence, of which the defendant should be aware unless:

(1) The actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the probable injury or harm would have been more serious or more extensive than that caused; or

(2) The actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence to have a bearing on the actor's liability or on the gravity of the offense.

(11 Del. C. 1953, § 263; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 264. Causation in offenses of strict liability.

When causing a particular result is an element of an offense for which strict liability is imposed by law, the element is not established unless the actual result is a probable consequence of the actor's conduct.

(11 Del. C. 1953, § 264; 58 Del. Laws, c. 497, § 1.)

§§ 265-270. [Reserved.]

§ 271. Liability for the conduct of another — Generally.

A person is guilty of an offense committed by another person when:

(1) Acting with the state of mind that is sufficient for commission of the offense, the person causes an innocent or irresponsible person to engage in conduct constituting the offense; or

(2) Intending to promote or facilitate the commission of the offense the person:

a. Solicits, requests, commands, importunes or otherwise attempts to cause the other person to commit it; or

b. Aids, counsels or agrees or attempts to aid the other person in planning or committing it; or

c. Having a legal duty to prevent the commission of the offense, fails to make a proper effort to do so; or

(3) The person's conduct is expressly declared by this Criminal Code or another statute to establish the person's complicity.

Nothing in this section shall apply to any law-enforcement officer or the officer's agent while acting in the lawful performance of duty.

(11 Del. C. 1953, § 271; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 272. Liability for the conduct of another — No defense.

In any prosecution for an offense in which the criminal liability of the accused is based upon the conduct of another person pursuant to § 271 of this title, it is no defense that:

(1) The other person is not guilty of the offense in question because of irresponsibility or other legal incapacity or exemption, or because of unawareness of the criminal nature of the conduct in question or of the accused's criminal purpose, or because of other factors precluding the mental state required for the commission of the offense; or

(2) The other person has not been prosecuted for or convicted of any offense based on the conduct in question, or has previously been acquitted thereof, or has been convicted of a different offense or in a different degree, or has legal immunity from prosecution for the conduct in question; or

(3) The offense in question, as defined, can be committed only by a particular class of persons, and the defendant, not belonging to that class, is for that reason legally incapable of committing the offense in an individual capacity, unless imposing liability on the defendant is inconsistent with the purpose of the provision establishing the defendant's incapacity.

(11 Del. C. 1953, § 272; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 273. Liability for the conduct of another — Exemption.

Unless otherwise provided by this Criminal Code or by the statute defining the offense, a person is not liable for an offense committed by another person if:

(1) The person is a victim of that offense; or

(2) The offense is so defined that the person's conduct is inevitably incident to its commission; or

(3) The person terminates complicity prior to commission of the offense and:

a. Wholly deprives it of effectiveness in the commission of the offense; or

b. Gives timely warning to the Attorney General or the police or otherwise makes a proper effort to prevent the commission of the offense.

If the actor's conduct constitutes a separate offense, the actor is liable for that offense only and not for the conduct or offense committed by the other person.

(11 Del. C. 1953, § 273; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 274. Offenses involving 2 or more persons; convictions for different degrees of offense.

When, pursuant to § 271 of this title, 2 or more persons are criminally liable for an offense which is divided into degrees, each person is guilty of an offense of such degree as is compatible with that person's own culpable mental state and with that person's own accountability for an aggravating fact or circumstance.

(11 Del. C. 1953, § 274; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 275. Indictment as principal and conviction as accomplice; indictment as accomplice and conviction as principal.

(a) A person indicted for committing an offense may be convicted as an accomplice to another person guilty of committing the offense.

(b) A person indicted as an accomplice to an offense committed by another person may be convicted as a principal.

(11 Del. C. 1953, § 275; 58 Del. Laws, c. 497, § 1.)

§§ 276-280. [Reserved.]

§ 281. Criminal liability of organizations.

An organization is guilty of an offense when:

(1) The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on organizations by law; or

(2) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of employment and in behalf of the organization; or

(3) The conduct constituting the offense is engaged in by an agent of the organization while acting within the scope of employment and in behalf of the organization and:

a. The offense is a misdemeanor or a violation; or

b. The offense is one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on an organization.

(11 Del. C. 1953, § 281; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 71, §§ 1, 2.)

§ 282. Criminal liability of an individual for organizational conduct.

A person is criminally liable for conduct constituting an offense which the person performs or causes to be performed in the name of or in behalf of an organization to the same extent as if the conduct were performed in the person's own name or behalf.

(11 Del. C. 1953, § 282; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 71, §§ 2, 3.)

§ 283. Impermissible organizational activity no defense.

In any prosecution for an offense alleged to have been committed by an organization, it is no defense that the act charged to constitute the offense was an impermissible organizational activity.

(11 Del. C. 1953, § 283; 58 Del. Laws, c. 497, § 1; 74 Del. Laws, c. 71, §§ 2, 3.)

§ 284. Definitions relating to organizational liability.

(a) "Agent" means any director, officer or employee of an organization, or any other person who is authorized to act in behalf of the organization.

(b) "High managerial agent" means an officer of an organization or any other agent in a position of comparable authority with respect to the formulation of organizational policy or the supervision in a managerial capacity of subordinate employees.

(c) "Organization" means any entity listed in the definition of "person" contained in § 222 of this title, other than an individual human being.

(11 Del. C. 1953, § 284; 58 Del. Laws, c. 497, § 1; 74 Del. Laws, c. 71, §§ 2, 3, 5.)

Part I
Delaware Criminal Code

Chapter 3
Proving and Disproving Criminal Guilt

§ 301. State's prima facie case; proof beyond reasonable doubt.

(a) In any prosecution for an offense, a prima facie case for the State consists of some credible evidence tending to prove the existence of each element of the offense.

(b) No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt.

(c) In any prosecution for any compound crime, including but not limited to first degree murder under § 636(a)(2) or (a)(6) of this title or for second degree murder under § 635(2) of this title, the corpus delicti of the underlying felony need not be proved independently of a defendant's extrajudicial statement.

(11 Del. C. 1953, § 301; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 463, § 1.)

§ 302. Jury instruction for defendant on reasonable doubt.

(a) Pursuant to § 301(b) of this title, the defendant is entitled to a jury instruction that the jury must acquit if they fail to find each element of the offense proved beyond a reasonable doubt.

(b) The defendant may produce whatever evidence the defendant has tending to negate the existence of any element of the offense, and, if the court finds that a reasonable juror might believe that evidence, the defendant is entitled to a jury instruction that the jury must consider whether the evidence raises a reasonable doubt as to the defendant's guilt.

(11 Del. C. 1953, § 302; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 303. Credible evidence to support defenses.

(a) No defense defined by this Criminal Code or by another statute may be considered by the jury unless the court is satisfied that some credible evidence supporting the defense has been presented.

(b) Evidence supports a defense when it tends to establish the existence of each element of the defense.

(c) If some credible evidence supporting a defense is presented, the defendant is entitled to a jury instruction that the jury must acquit the defendant if they find that the evidence raises a reasonable doubt as to the defendant's guilt.

(11 Del. C. 1953, § 303; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 547, § 1; 70 Del. Laws, c. 186, § 1.)

§ 304. Defendant's affirmative defenses; prove by preponderance of evidence.

(a) When a defense declared by this Criminal Code or by another statute to be an affirmative defense is raised at trial, the defendant has the burden of establishing it by a preponderance of the evidence.

(b) Unless the court determines that no reasonable juror could find an affirmative defense established by a preponderance of the evidence presented by the defendant, the defendant is entitled to a jury instruction that the jury must acquit the defendant if they find the affirmative defense established by a preponderance of the evidence.

(c) An affirmative defense is established by a preponderance of the evidence when the jury is persuaded that the evidence makes it more likely than not that each element of the affirmative defense existed at the required time.

(11 Del. C. 1953, § 304; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 305. Exemption from criminal liability; affirmative defense to be proved by defendant.

When this Criminal Code or another statute specifically exempts a person or activity from the scope of its application and the defendant contends that the defendant is legally entitled to be exempted thereby, the burden is on the defendant to prove, as an affirmative defense, facts necessary to bring the defendant within the exemption.

(11 Del. C. 1953, § 305; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 306. No conclusive presumptions; rebuttable presumptions and proof thereof.

(a) There are no conclusive presumptions in this Criminal Code, and all conclusive presumptions formerly existing in the criminal law of this State are hereby abolished.

(b) Rebuttable presumptions formerly existing in the criminal law of this State are preserved except to the extent that they are inconsistent with this Criminal Code.

(c) Notwithstanding any other provision of this Criminal Code, the following rebuttable presumptions are expressly preserved:

(1) A person is presumed to intend the natural and probable consequences of the person's act.

(2) A person found in possession of goods acquired as a result of the commission of a recent crime is presumed to have committed the crime.

(d) Proof of a fact tending to create a rebuttable presumption not inconsistent with this Criminal Code or a presumption created by this Criminal Code constitutes prima facie evidence of the presumed conclusion.

(e) The court may tell the jury of the existence of the presumption, and if it does so the defendant is entitled to a jury instruction that the presumption does not relieve the State of its burden of proving guilt beyond a reasonable doubt. Nevertheless, the jury may convict the defendant, despite the existence of evidence tending to rebut the presumption, if they find no reasonable doubt about the defendant's guilt.

(11 Del. C. 1953, § 306; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 203, § 2; 70 Del. Laws, c. 186, § 1.)

§ 307. Jury inference of defendant's intention, recklessness, knowledge or belief.

(a) The defendant's intention, recklessness, knowledge or belief at the time of the offense for which the defendant is charged may be inferred by the jury from the circumstances surrounding the act the defendant is alleged to have done. In making the inference permitted by this section, the jury may consider whether a reasonable person in the defendant's circumstances at the time of the offense would have had or lacked the requisite intention, recklessness, knowledge or belief.

(b) When the defendant's intention, recklessness, knowledge or belief is an element of an offense, it is sufficient to establish a prima facie case for the State to prove circumstances surrounding the act which the defendant is alleged to have done from which a reasonable juror might infer that the defendant's intention, recklessness, knowledge or belief was of the sort required for commission of the offense.

(11 Del. C. 1953, § 307; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 308. Construction of provisions allowing no defense.

When a provision of this Criminal Code expressly denies the applications of a specific defense, no inference is thereby created that any other defense is valid.

(11 Del. C. 1953, § 308; 58 Del. Laws, c. 497, § 1.)

Part I
Delaware Criminal Code
Chapter 4
Defenses to Criminal Liability

§ 401. Mental illness or psychiatric disorder.

(a) In any prosecution for an offense, it is an affirmative defense that, at the time of the conduct charged, as a result of mental illness or serious mental disorder, the accused lacked substantial capacity to appreciate the wrongfulness of the accused's conduct. If the defendant prevails in establishing the affirmative defense provided in this subsection, the trier of fact shall return a verdict of "not guilty by reason of insanity."

(b) Where the trier of fact determines that, at the time of the conduct charged, a defendant suffered from a mental illness or serious mental disorder which substantially disturbed such person's thinking, feeling or behavior and/or that such mental illness or serious mental disorder left such person with insufficient willpower to choose whether the person would do the act or refrain from doing it, although physically capable, the trier of fact shall return a verdict of "guilty, but mentally ill."

(c) It shall not be a defense under this section if the alleged insanity or mental illness was proximately caused by the voluntary ingestion, inhalation or injection of intoxicating liquor, any drug or other mentally debilitating substance, or any combination thereof, unless such substance was prescribed for the defendant by a licensed health-care practitioner and was used in accordance with the directions of such prescription. As used in this chapter, the terms "insanity" or "mental illness" do not include an abnormality manifested only by repeated criminal or other antisocial conduct.

(11 Del. C. 1953, § 401; 58 Del. Laws, c. 497, § 1; 63 Del. Laws, c. 328, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 141, §§ 1, 2; 78 Del. Laws, c. 224, §§ 2, 3.)

§ 402. Rules to prescribe procedures for psychiatric examination; testimony of psychiatrist or other expert.

(a) The procedures for examination of the accused by the accused's own psychiatrist or by a psychiatrist employed by the State and the circumstances under which such an examination will be permitted may be prescribed by rules of the court having jurisdiction over the offense.

(b) A psychiatrist or other expert testifying at trial concerning the mental condition of the accused shall be permitted to make a statement as to the nature of the examination, the psychiatrist's or expert's diagnosis of the mental condition of the accused at the time of the commission of the offense charged and the psychiatrist's or expert's opinion as to the extent, if any, to which the capacity of the accused to appreciate the wrongfulness of the accused's conduct or to choose whether the accused would do the act or refrain from doing it or to have a particular state of mind which is an element of the offense charged was impaired as a result of mental illness or serious mental disorder at that time. The psychiatrist or expert shall be permitted to make any explanation reasonably serving to clarify the diagnosis and opinion and may be cross-examined as to any matter bearing on the psychiatrist's or expert's competence or credibility or the validity of the diagnosis or opinion.

(11 Del. C. 1953, § 402; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 224, § 4.)

§ 403. Verdict of "not guilty by reason of insanity;" commitment to Delaware Psychiatric Center of persons no longer endangering the public safety; periodic review of commitments to Delaware Psychiatric Center; participation of patient in treatment program.

(a) Upon the rendition of a verdict of "not guilty by reason of insanity," the court shall, upon motion of the Attorney General, order that the person so acquitted shall forthwith be committed to the Delaware Psychiatric Center.

(b) Except as provided in subsection (c) of this section below, a person committed, confined or transferred to the Delaware Psychiatric Center in accordance with subsection (a) of this section, § 404, § 405, § 406 or § 408 of this title (referred to herein as "the patient") shall be kept there at all times in a secured building until the Superior Court of the county wherein the case would be tried or was tried is satisfied that the public safety will not be endangered by the patient's release. The Superior Court shall without special motion reconsider the necessity of continued detention of a patient thus committed after the patient has been detained for 1 year. The Court shall thereafter reconsider the patient's detention upon petition on the patient's behalf or whenever advised by the Psychiatric Center that the public safety will not be endangered by the patient's release.

(c) (1) Upon petition by a patient confined pursuant to this section, § 404, § 405, § 406 or § 408 of this title, or upon petition by the Center Director of the Delaware Psychiatric Center, the Court may permit housing in an unsecured building or participation by the patient in any treatment program that is offered by the Center, which requires or provides that the patient be placed outside a secured building. Such participation shall include, but not be limited to, employment off hospital grounds, job interviews, family visits and other activities inside and outside the Center, as may be prescribed by the Medical Director in the interest of rehabilitation.

(2) The petition shall include an affidavit from the Medical Director which states that the patient has not exhibited dangerous behavior during the last year of confinement and that in the opinion of the Medical Director, the patient will benefit from such participation.

(3) The petition shall set forth any specific treatment program being sought; the specific goals and course of treatment involved; and a schedule for periodic judicial reevaluation of the patient's treatment status, all of which shall be subject to the Court's approval and modification.

(4) Copies of the petition shall be served on the Attorney General, the Medical Director and the patient or the patient's counsel or guardian.

(5) There shall be a judicial hearing on the petition, and any person or agency served with a copy of the petition, or a representative of such person or agency, shall have the right to testify, present evidence and/or cross-examine witnesses. The patient shall have the right to be represented by counsel at any proceeding held in accordance with this section. The Court shall appoint counsel for the patient if the patient cannot afford to retain counsel.

(6) Upon conclusion of a hearing on a petition pursuant to this section, the Court may approve, modify or disapprove any request or matter within the petition. If the patient's participation in any treatment program is approved, such approval or participation shall be effective for not longer than 6 months from the date of the judge's signature on the petition or order permitting such participation. Immediately prior to the conclusion of the 6-month period, the Center Director shall report to the Court on the patient's status, and make recommendations. Any authorization by the Court for continued participation by the patient in any authorized treatment programs may be extended, modified or discontinued at the end of the effective period with or without further hearings, as the Court may determine.

(d) Any treatment program approved by the Court under this section may be terminated by the Medical Director of the Delaware Psychiatric Center. When a treatment program is terminated earlier than its court-approved expiration date, the Medical Director shall immediately notify the Superior Court. The Superior Court shall, after giving appropriate notice, hear the matter and review the decision of the Medical Director. At such termination hearing, the patient shall have such rights as are provided for other hearings under this section, including the right to counsel, the right to present evidence and the right to cross-examine witnesses. Where the Medical Director's decision to terminate is based upon the patient's mental or psychological condition, the patient may be examined by an independent psychiatrist or other qualified expert; provided, however, that the termination hearing shall not be held until such examination has been finally concluded.

(11 Del. C. 1953, § 403; 58 Del. Laws, c. 497, § 1; 63 Del. Laws, c. 428, §§ 1-3; 65 Del. Laws, c. 90, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, § 1.)

§ 404. Confinement in Delaware Psychiatric Center of persons too mentally ill to stand trial; requiring State to prove prima facie case in such circumstances; adjustment of sentences.

(a) Whenever the court is satisfied, after hearing, that an accused person, because of mental illness or serious mental disorder, is unable to understand the nature of the proceedings against the accused, or to give evidence in the accused's own defense or to instruct counsel on the accused's own behalf, the court may order the accused person to be confined and treated in the Delaware Psychiatric Center until the accused person is capable of standing trial. However, upon motion of the defendant, the court may conduct a hearing to determine whether the State can make out a prima facie case against the defendant, and if the State fails to present sufficient evidence to constitute a prima facie case, the court shall dismiss the charge. This dismissal shall have the same effect as a judgment of acquittal.

(b) When the court finds that the defendant is capable of standing trial, the defendant may be tried in the ordinary way, but the court may make any adjustment in the sentence which is required in the interest of justice, including a remission of all or any part of the time spent in the Psychiatric Center.

(11 Del. C. 1953, § 404; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 203, § 3; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, § 1; 78 Del. Laws, c. 224, § 5.)

§ 405. Confinement in Delaware Psychiatric Center of persons developing mental illness after conviction but before sentencing; adjustment of sentences.

(a) Whenever the court is satisfied that a prisoner has developed a mental illness after conviction but before sentencing so that the prisoner is unable understandingly to participate in the sentencing proceedings, and if the court is satisfied that a sentence of imprisonment may be appropriate, the court may order the prisoner to be confined and treated in the Delaware Psychiatric Center until the prisoner is capable of participating in the sentencing proceedings.

(b) When the court finds that the prisoner is capable of participating in the sentencing proceedings, the prisoner may be sentenced in the ordinary way, but the court may make any adjustment in the sentence which is required in the interest of justice, including a remission of all or any part of the time spent in the Psychiatric Center.

(11 Del. C. 1953, § 405; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, § 1; 78 Del. Laws, c. 224, §§ 6, 7.)

§ 406. Transfer of convicted persons becoming mentally disabled from prison to Delaware Psychiatric Center; appointment of physicians to conduct inquiry; expenses of transfer.

(a) Whenever in any case it appears to the Superior Court, upon information received from the Department of Health and Social Services, that a prisoner confined with the Department has developed a mental illness after conviction and sentence, the Court may appoint

2 reputable practicing physicians to inquire of the mental condition of the prisoner and make report of their finding to the Court within 2 days from the date of their appointment, by writing under their hands and seals. Should the report of the physicians be that the prisoner has a mental illness, the prisoner shall at once be ordered by the Court transferred from the prison facility where the prisoner is confined to the Delaware Psychiatric Center.

(b) The expenses of the removal of such a person with a mental illness and of admission into such Psychiatric Center and maintenance therein up and until the time the person is discharged by the Court shall be borne by the State. If any such person with a mental illness has any real or personal estate, the Department of Health and Social Services shall have for the expenses and charges so incurred the same remedy as is provided in § 5019 of Title 16.

(11 Del. C. 1953, § 406; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, § 1; 78 Del. Laws, c. 224, § 8; 79 Del. Laws, c. 442, § 2; 81 Del. Laws, c. 79, § 8.)

§ 407. [Reserved.]

§ 408. Verdict of "guilty, but mentally ill" — Sentence; confinement; discharge from treating facility.

(a) Where a defendant's defense is based upon allegations which, if true, would be grounds for a verdict of "guilty, but mentally ill" or the defendant desires to enter a plea to that effect, no finding of "guilty, but mentally ill" shall be rendered until the trier of fact has examined all appropriate reports (including the presentence investigation); has held a hearing on the sole issue of the defendant's mental illness, at which either party may present evidence; and is satisfied that the defendant did in fact have a mental illness at the time of the offense to which the plea is entered. Where the trier of fact, after such hearing, is not satisfied that the defendant had a mental illness at the time of the offense, or determines that the facts do not support a "guilty, but mentally ill" plea, the trier of fact shall strike such plea, or permit such plea to be withdrawn by the defendant. A defendant whose plea is not accepted by the trier of fact shall be entitled to a jury trial, except that if a defendant subsequently waives the right to a jury trial, the judge who presided at the hearing on mental illness shall not preside at the trial.

(b) In a trial under this section a defendant found guilty but mentally ill, or whose plea to that effect is accepted, may have any sentence imposed which may lawfully be imposed upon any defendant for the same offense. Such defendant shall be committed into the custody of the Department of Correction, and shall undergo such further evaluation and be given such immediate and temporary treatment as is psychiatrically indicated. The Commissioner shall retain exclusive jurisdiction over such person in all matters relating to security. The Commissioner shall thereupon confine such person in the Delaware Psychiatric Center, or other suitable place for the residential treatment of criminally culpable persons with a mental illness under the age of 18 who have been found nonamenable to the processes of Family Court. Although such person shall remain under the jurisdiction of the Department of Correction, decisions directly related to treatment for the mental illness for individuals placed at the Delaware Psychiatric Center, shall be the joint responsibility of the Director of the Division of Substance Abuse and Mental Health and those persons at the Delaware Psychiatric Center who are directly responsible for such treatment. The Delaware Psychiatric Center, or any other residential treatment facility to which the defendant is committed by the Commissioner, shall have the authority to discharge the defendant from the facility and return the defendant to the physical custody of the Commissioner whenever the facility believes that such a discharge is in the best interests of the defendant. The offender may, by written statement, refuse to take any drugs which are prescribed for treatment of the offender's mental illness; except when such a refusal will endanger the life of the offender, or the lives or property of other persons with whom the offender has contact.

(c) When the Psychiatric Center or other treating facility designated by the Commissioner discharges an offender prior to the expiration of such person's sentence, the treating facility shall transmit to the Commissioner and to the Parole Board a report on the condition of the offender which contains the clinical facts; the diagnosis; the course of treatment, and prognosis for the remission of symptoms; the potential for the recidivism, and for danger to the offender's own person or the public; and recommendations for future treatment. Where an offender under this section is sentenced to the Psychiatric Center or other facility, the offender shall not be eligible for any privileges not permitted in writing by the Commissioner (including escorted or unescorted on-grounds or off-grounds privileges) until the offender has become eligible for parole. Where the court finds that the offender, before completing the sentence, no longer needs nor could benefit from treatment for the offender's mental illness, the offender shall be remanded to the Department of Correction. The offender shall have credited toward the sentence the time served at the Psychiatric Center or other facility.

(d) No individual under the age of 18 shall be placed at the Delaware Psychiatric Center. Nothing herein shall prevent either the transfer to or placement at the Delaware Psychiatric Center any person who has reached the age of 18 following any finding of guilty, but mentally ill.

(63 Del. Laws, c. 328, § 2; 64 Del. Laws, c. 467, § 8; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, § 1; 73 Del. Laws, c. 41, § 1; 76 Del. Laws, c. 322, §§ 1-3; 78 Del. Laws, c. 224, § 9; 79 Del. Laws, c. 371, § 9.)

§ 409. Verdict of "guilty, but mentally ill" — Parole; probation.

(a) A person who has been adjudged "guilty, but mentally ill" and who during incarceration is discharged from treatment may be placed on prerelease or parole status under the same terms and laws applicable to any other offender. Psychological or psychiatric counseling and treatment may be required as a condition for such status. Failure to continue treatment, except by agreement of the Department of Correction, shall be a basis for terminating prerelease status or instituting parole violation hearings.

(b) If the report of the Delaware Psychiatric Center or other facility recommends parole, the paroling authority shall within 45 days or at the expiration of the offender's minimum sentence, whichever is later, meet to consider the offender's request for parole. If the report does not recommend parole, but other laws or administrative rules of the Department permit parole, the paroling authority may meet to consider a parole request. When the paroling authority considers the offender for parole, it shall consult with the State Hospital or other facility at which the offender had been treated, or from which the offender has been discharged.

(c) If an offender who has been found "guilty, but mentally ill" is placed on probation, the court, upon recommendation by the Attorney General, shall make treatment a condition of probation. Reports as specified by the trial judge shall be filed with the probation officer, and the sentencing court. Treatment shall be provided by an agency of the State or, with the approval of the sentencing court and at individual expense, private agencies, private physicians or other mental health personnel.

(63 Del. Laws, c. 328, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, § 1.)

§§ 410-420. [Reserved.]

§ 421. Voluntary intoxication.

The fact that a criminal act was committed while the person committing such act was in a state of intoxication, or was committed because of such intoxication, is no defense to any criminal charge if the intoxication was voluntary.

(11 Del. C. 1953, § 421; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 103, § 1; 59 Del. Laws, c. 203, § 37; 60 Del. Laws, c. 680, § 1.)

§ 422. Intoxication not mental illness.

Evidence of voluntary intoxication shall not be admissible for the purpose of proving the existence of mental illness, mental defect, serious mental disorder or psychiatric disorder within the meaning of § 401 of this title.

(11 Del. C. 1953, § 422; 58 Del. Laws, c. 497, § 1; 71 Del. Laws, c. 153, § 1; 78 Del. Laws, c. 224, § 10.)

§ 423. Involuntary intoxication as a defense.

In any prosecution for an offense it is a defense that, as a result of intoxication which is not voluntary, the actor at the time of the conduct lacked substantial capacity to appreciate the wrongfulness of the conduct or to perform a material element of the offense, or lacked sufficient willpower to choose whether the person would do the act or refrain from doing it.

(11 Del. C. 1953, § 423; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 424. Definitions relating to intoxication.

As used in §§ 421-423 of this title:

(1) "Intoxication" means the inability, resulting from the introduction of substances into the body, to exercise control over one's mental faculties.

(2) "Voluntary intoxication" means intoxication caused by substances which the actor knowingly introduces into the actor's body, the tendency of which to cause intoxication the actor knows or should know, unless the actor introduces them pursuant to medical advice or under such duress as would afford a defense to a prosecution for a criminal offense.

(11 Del. C. 1953, § 424; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§§ 425-430. [Reserved.]

§ 431. Duress as affirmative defense; defense unavailable in certain situations.

(a) In any prosecution for an offense, it is an affirmative defense that the defendant engaged in the conduct charged to constitute the offense because the defendant was coerced to do so by the use of, or a threat to use, force against the defendant's person or the person of another, which a reasonable person in the defendant's situation would have been unable to resist.

(b) The defense provided by subsection (a) of this section is unavailable if the defendant intentionally or recklessly placed himself or herself in a situation in which it was probable that the defendant would be subjected to duress.

(c) It is not a defense that a woman acted on the command of her husband, unless she acted under such coercion as would establish a defense under this section. The presumption that a woman acting in the presence of her husband is coerced is abolished.

(11 Del. C. 1953, § 431; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 432. Entrapment as affirmative defense; defense unavailable in certain situations.

(a) In any prosecution for an offense, it is an affirmative defense that the accused engaged in the proscribed conduct because the accused was induced by a law-enforcement official or the law-enforcement official's agent who is acting in the knowing cooperation with such an official to engage in the proscribed conduct constituting such conduct which is a crime when such person is not otherwise disposed to do so. The defense of entrapment as defined by this Criminal Code concedes the commission of the act charged but claims that it should not be punished because of the wrongdoing of the officer originates the idea of the crime and then induces the other person to engage in conduct constituting such a crime when the other person is not otherwise disposed to do so.

(b) The defense afforded by subsection (a) of this section is unavailable when causing or threatening physical injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

(11 Del. C. 1953, § 432; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 203, § 38; 70 Del. Laws, c. 186, § 1.)

§§ 433-440. [Reserved.]

§ 441. Ignorance or mistake of fact as defense.

In any prosecution for an offense, it is a defense that the accused engaged in the conduct charged to constitute the offense under ignorance or mistake of fact if:

(1) The ignorance or mistake negatives the state of mind for the commission of the offense; or

(2) The statute defining the offense or a statute related thereto expressly provides that the ignorance or mistake constitutes a defense or exemption; or

(3) The ignorance or mistake is of a kind that supports a defense of justification as defined in this Criminal Code.

(11 Del. C. 1953, § 441; 58 Del. Laws, c. 497, § 1.)

§§ 442-450. [Reserved.]

§ 451. Consent of victim to acts not involving physical injury as defense.

In any prosecution for an offense, it is a defense that the victim consented to the act done, provided that:

(1) The act did not involve or threaten physical injury; and

(2) Such consent negatives an element of the offense.

Any person who enters the presence of other people consents to the normal physical contacts incident to such presence.

(11 Del. C. 1953, § 451; 58 Del. Laws, c. 497, § 1.)

§ 452. Consent of victim to inflictions of physical injury as defense.

In any prosecution for an offense involving or threatening physical injury, it is a defense that the victim consented to the infliction of physical injury of the kind done or threatened, provided that:

(1) The physical injury done or threatened by the conduct consented to is not serious physical injury; or

(2) The physical injury done or threatened is a reasonably foreseeable hazard of joint participation in any concerted activity, athletic contest or sport not prohibited by law.

(11 Del. C. 1953, § 452; 58 Del. Laws, c. 497, § 1.)

§ 453. Circumstances negativing consent as defense.

Unless otherwise provided by this Criminal Code or by the law defining the offense, consent of the victim does not constitute a defense if:

(1) It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense unless the defendant believes the victim is legally competent; or

(2) It is given by a person who, because of youth, mental illness, mental condition, mental defect, serious mental disorder, psychiatric disorder or intoxication is manifestly unable or known by the defendant to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(3) It is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or

(4) It is induced by force, duress or deception.

(11 Del. C. 1953, § 453; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 224, § 11.)

§ 454. Knowledge of victim's age.

Notwithstanding any provision of law to the contrary, it is no defense for an offense or sentencing provision defined in this title or in Title 16 or 31 which has as an element of such offense or sentencing provision the age of the victim that the accused did not know the age of the victim or reasonably believed the person to be of an age which would not meet the element of such offense or sentencing provision unless the statute defining such offense or sentencing provision or a statute directly related thereto expressly provides that knowledge of the victim's age is an element of the offense or that lack of such knowledge is a defense.

(73 Del. Laws, c. 126, § 2.)

§§ 455-460. [Reserved.]

§ 461. Justification — A defense.

In any prosecution for an offense, justification, as defined in §§ 462-471 of this title, is a defense.

(11 Del. C. 1953, § 461; 58 Del. Laws, c. 497, § 1.)

§ 462. Justification — Execution of public duty.

(a) Unless inconsistent with the ensuing sections of this Criminal Code defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable when it is required or authorized by a provision of law or by a judicial decree, including:

(1) Laws defining duties and functions of public officers;

(2) Laws defining duties of private citizens to assist public servants in the performance of certain of their functions;

(3) Laws governing the execution of legal process;

(4) Laws governing the military services and the conduct of war; and

(5) Judgments or orders of competent courts or tribunals.

(b) The justification afforded by subsection (a) of this section applies when:

(1) The defendant's conduct is required or authorized by the judgment or order of a competent court or tribunal or in the lawful execution of legal process, notwithstanding lack of jurisdiction of the court or defect in the legal process; or

(2) The defendant believes the conduct to be required or authorized to assist a public officer in the performance of the officer's duties, notwithstanding that the officer exceeded the officer's legal authority.

(11 Del. C. 1953, § 462; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 203, § 4; 70 Del. Laws, c. 186, § 1.)

§ 463. Justification — Choice of evils.

Unless inconsistent with the ensuing sections of this Criminal Code defining justifiable use of physical force, or with some other provisions of law, conduct which would otherwise constitute an offense is justifiable when it is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the defendant, and which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding such injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue. The necessity and justifiability of such conduct may not rest upon considerations pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder.

(11 Del. C. 1953, § 463; 58 Del. Laws, c. 497, § 1.)

§ 464. Justification — Use of force in self-protection.

(a) The use of force upon or toward another person is justifiable when the defendant reasonably believes that such force is immediately necessary for the purpose of protecting the defendant against the use of unlawful force by the other person on the present occasion.

(b) Except as otherwise provided in subsections (d) and (e) of this section, a person employing protective force may estimate the necessity thereof under the circumstances as the person reasonably believes them to be when the force is used, without retreating, surrendering possession, doing any other act which the person has no legal duty to do or abstaining from any lawful action.

(c) The use of deadly force is justifiable under this section if the defendant reasonably believes that such force is necessary to protect the defendant against death, serious physical injury, kidnapping or sexual intercourse compelled by force or threat.

(d) The use of force is not justifiable under this section to resist an arrest which the defendant knows or should know is being made by a peace officer, whether or not the arrest is lawful.

(e) The use of deadly force is not justifiable under this section if:

(1) The defendant, with the purpose of causing death or serious physical injury, provoked the use of force against the defendant in the same encounter; or

(2) The defendant knows that the necessity of using deadly force can be avoided with complete safety by retreating, by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that the defendant abstain from performing an act which the defendant is not legally obligated to perform except that:

a. The defendant is not obliged to retreat in or from the defendant's dwelling; and

b. The defendant is not obliged to retreat in or from the defendant's place of work, unless the defendant was the initial aggressor; and

c. A public officer justified in using force in the performance of the officer's duties, or a person justified in using force in assisting an officer or a person justified in using force in making an arrest or preventing an escape, need not desist from efforts to perform the duty or make the arrest or prevent the escape because of resistance or threatened resistance by or on behalf of the person against whom the action is directed.

(11 Del. C. 1953, § 464; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 203, § 5; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 73, § 1.)

§ 465. Justification — Use of force for the protection of other persons.

(a) The use of force upon or toward the person of another is justifiable to protect a third person when:

(1) The defendant would have been justified under § 464 of this title in using such force to protect the defendant against the injury the defendant reasonably believes to be threatened to the person whom the defendant seeks to protect; and

(2) Under the circumstances as the defendant reasonably believes them to be, the person whom the defendant seeks to protect would have been justified in using such protective force; and

(3) The defendant reasonably believes that intervention is necessary for the protection of the other person.

(b) Although the defendant would have been obliged under § 464 of this title to retreat, to surrender the possession of a thing or to comply with a demand before using force in self-protection, there is no obligation to do so before using force for the protection of another person, unless the defendant knows that the defendant can thereby secure the complete safety of the other person.

(c) When the person whom the defendant seeks to protect would have been obliged under § 464 of this title to retreat, to surrender the possession of a thing or to comply with a demand if the person knew that the person could obtain complete safety by so doing, the defendant is obliged to try to cause the person to do so before using force in the person's protection if the actor knows that complete safety can be secured in that way.

(d) Neither the defendant nor the person whom the defendant seeks to protect is obliged to retreat when in the other's dwelling or place of work to any greater extent than in their own.

(11 Del. C. 1953, § 465; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 73, § 2.)

§ 466. Justification — Use of force for the protection of property.

(a) The use of force upon or toward the person of another is justifiable when the defendant reasonably believes that such force is immediately necessary:

(1) To prevent the commission of criminal trespass or burglary in a building or upon real property in the defendant's possession or in the possession of another person for whose protection the defendant acts; or

(2) To prevent entry upon real property in the defendant's possession or in the possession of another person for whose protection the defendant acts; or

(3) To prevent theft, criminal mischief or any trespassory taking of tangible, movable property in the defendant's possession or in the possession of another person for whose protection the defendant acts.

(b) The defendant may in the circumstances named in subsection (a) of this section use such force as the defendant reasonably believes is necessary to protect the threatened property, provided that the defendant first requests the person against whom force is used to desist from interference with the property, unless the defendant reasonably believes that:

(1) Such a request would be useless; or

(2) It would be dangerous to the defendant or another person to make the request; or

(3) Substantial harm would be done to the physical condition of the property which is sought to be protected before the request could effectively be made.

(c) The use of deadly force for the protection of property is justifiable only if the defendant reasonably believes that:

(1) The person against whom the force is used is attempting to dispossess the defendant of the defendant's dwelling otherwise than under a claim of right to its possession; or

(2) The person against whom the deadly force is used is attempting to commit arson, burglary, robbery or felonious theft or property destruction and either:

a. Had employed or threatened deadly force against or in the presence of the defendant; or

b. Under the circumstances existing at the time, the defendant reasonably believed the use of force other than deadly force would expose the defendant, or another person in the defendant's presence, to the reasonable likelihood of serious physical injury.

(d) Where a person has used force for the protection of property and has not been convicted for any crime or offense connected with that use of force, such person shall not be liable for damages or be otherwise civilly liable to the one against whom such force was used.

(11 Del. C. 1953, § 466; 58 Del. Laws, c. 497, § 1; 62 Del. Laws, c. 266, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 73, § 3.)

§ 467. Justification — Use of force in law enforcement.

(a) The use of force upon or toward the person of another is justifiable when:

(1) The defendant is making an arrest or assisting in making an arrest and reasonably believes that such force is immediately necessary to effect the arrest; or

(2) The defendant is attempting to arrest an individual that has taken a hostage, and refused to comply with an order to release the hostage; and

a. The defendant reasonably believes that the use of force is necessary to prevent physical harm to any person taken hostage; or

b. The defendant has been ordered by an individual the defendant reasonably believes possesses superior authority or knowledge to apply the use of force.

(b) The use of force is not justifiable under this section unless:

(1) The defendant makes known the purpose of the arrest or reasonably believes that it is otherwise known or cannot reasonably be made known to the person to be arrested; and

(2) When the arrest is made under a warrant, the warrant is valid or reasonably believed by the defendant to be valid; or

(3) When the arrest is made without a warrant, the defendant reasonably believes the arrest to be lawful.

(c) The use of deadly force is justifiable under this section if all other reasonable means of apprehension have been exhausted, and:

(1) The defendant reasonably believes the arrest is for any crime involving physical injury or threat thereof, and the deadly force is directed at a vehicle to disable it for the purpose of effecting the arrest, or the defendant reasonably believes the arrest is for a felony involving physical injury or threat thereof;

(2) The defendant reasonably believes that the force employed creates no substantial risk of injury to innocent persons; and

(3) The defendant reasonably believes that there is a substantial risk that the person to be arrested will cause death or serious physical injury, or will never be captured if apprehension is delayed.

(d) The use of force to prevent the escape of an arrested person from custody is justifiable when the force could justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a peace officer is justified in using any force, including deadly force, which the person reasonably believes to be immediately necessary to prevent the escape of a person from a jail, prison or other institution for the detention of persons charged with or convicted of a crime.

(e) The use of force upon or toward the person of another is justifiable when the defendant reasonably believes that such force is immediately necessary to prevent such other person from committing suicide, inflicting serious physical injury upon the person's self or committing a crime involving or threatening physical injury, damage to or loss of property or a breach of the peace, except that the use of deadly force is not justifiable under this subsection unless:

(1) The defendant reasonably believes that there is a substantial risk that the person whom the defendant seeks to prevent from committing a crime will cause death or serious physical injury to another unless the commission of the crime is prevented and that the use of deadly force presents no substantial risk of injury to innocent persons; or

(2) The defendant reasonably believes that the use of deadly force is necessary to suppress a riot or mutiny after the rioters or mutineers have been ordered to disperse and warned, in any manner that the law may require, that such force will be used if they do not obey.

(f) The use of deadly force is justifiable under this section if the defendant is attempting to arrest an individual that has taken a hostage, and has refused to comply with an order to release the hostage; and

(1) The defendant reasonably believes that the use of force is necessary to prevent physical harm to any person taken hostage, or the defendant has been ordered by an individual the defendant reasonably believes possesses superior authority or knowledge to apply the use of force; and

(2) The defendant reasonably believes that the force employed creates no substantial risk of injury to innocent persons; and

(3) The defendant or a person of superior authority or knowledge who order the use of deadly force reasonably believes that there is a substantial risk that the person to be arrested will cause death or serious physical injury.

(11 Del. C. 1953, § 467; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 203, § 6; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 180, §§ 1, 2; 83 Del. Laws, c. 73, § 4.)

§ 468. Justification — Use of force by persons with special responsibility for care, discipline or safety of others.

The use of force upon or toward the person of another is justifiable if it is reasonable and moderate and:

(1) The defendant is the parent, guardian, foster parent, legal custodian or other person similarly responsible for the general care and supervision of a child, or a person acting at the request of a parent, guardian, foster parent, legal custodian or other responsible person, and:

a. The force is used for the purpose of safeguarding or promoting the welfare of the child, including the prevention or punishment of misconduct; and

b. The force used is intended to benefit the child, or for the special purposes listed in paragraphs (2)a., (3)a., (4)a., (5), (6) and (7) of this section. The size, age, condition of the child, location of the force and the strength and duration of the force shall be factors considered in determining whether the force used is reasonable and moderate; but

c. The force shall not be justified if it includes, but is not limited to, any of the following: Throwing the child, kicking, burning, cutting, striking with a closed fist, interfering with breathing, use of or threatened use of a deadly weapon, prolonged deprivation of sustenance or medication, or doing any other act that is likely to cause or does cause physical injury, disfigurement, mental distress, unnecessary degradation or substantial risk of serious physical injury or death; or

(2) The defendant is a teacher or a person otherwise entrusted with the care or supervision of a child for a special purpose, and:

a. The defendant reasonably believes the force used is necessary to further the special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of force is consistent with the welfare of the child; and

b. The degree of force, if it had been used by the parent, guardian, foster parent or legal custodian of the child, would be justifiable under paragraph (1)a. and b. of this section and not enumerated under paragraph (1)c. of this section; or

(3) The defendant is the guardian or other person similarly responsible for the general care and supervision of a person who is incompetent, and:

a. The force is used for the purpose of safeguarding or promoting the welfare of the person who is incompetent, including the prevention of misconduct, or, when such person who is incompetent is in a hospital or other institution for care and custody, for the maintenance of reasonable discipline in such institution; and

b. The force used is reasonable and moderate; the size, age, condition of the person who is incompetent, location of the force and the strength and duration of the force shall be factors considered in determining whether the force used is reasonable and moderate; and

c. The force is not enumerated under paragraph (1)c. of this section; and

d. The force is not proscribed as abuse or mistreatment under Chapter 11 of Title 16; or

(4) The defendant is a doctor or other therapist or a person assisting at the doctor's or other therapist's direction, and:

a. The force is used for the purpose of administering a recognized form of treatment which the defendant reasonably believes to be adapted to promoting the physical or mental health of the patient; and

b. The treatment is administered with the consent of the patient or, if the patient is a minor or a person who is incompetent, with the consent of a parent, guardian or other person legally competent to consent in the patient's behalf, or the treatment is administered in an emergency when the defendant reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent; or

(5) The defendant is a warden or other authorized official of a correctional institution, or a superintendent, administrator or other authorized official of the Division of Youth Rehabilitative Service, and:

a. The defendant reasonably believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution; and

b. The nature or degree of force used is not forbidden by any statute governing the administration of the institution; and

c. If deadly force is used, its use is otherwise justifiable under this Criminal Code; or

(6) The defendant is a person responsible for the safety of a vessel or an aircraft or a person acting at the responsible person's direction, and:

a. The defendant reasonably believes that the force used is necessary to prevent interference with the operation of the vessel or aircraft or obstruction of the execution of a lawful order; and

b. If deadly force is used, its use is otherwise justifiable under this Criminal Code; or

(7) The defendant is a person who is authorized or required by law to maintain order or decorum in a vehicle, train or other carrier or in a place where others are assembled, and:

a. The defendant reasonably believes that the force used is necessary for such purpose; and

b. The force used is not designed to cause or known to create a substantial risk of causing death, physical injury or extreme mental distress.

(11 Del. C. 1953, § 468; 58 Del. Laws, c. 497, § 1; 68 Del. Laws, c. 442, §§ 1, 2, 4; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 224, §§ 12, 13; 83 Del. Laws, c. 73, § 5.)

§ 469. Justification — Person unlawfully in dwelling.

In the prosecution of an occupant of a dwelling charged with killing or injuring an intruder who was unlawfully in said dwelling, it shall be a defense that the occupant was in the occupant's own dwelling at the time of the offense, and:

(1) The encounter between the occupant and intruder was sudden and unexpected, compelling the occupant to act instantly; or

(2) The occupant reasonably believed that the intruder would inflict personal injury upon the occupant or others in the dwelling; or

(3) The occupant demanded that the intruder disarm or surrender, and the intruder refused to do so.

(63 Del. Laws, c. 276, § 1; 70 Del. Laws, c. 186, § 1.)

§ 470. Provisions generally applicable to justification.

(a) When the defendant reasonably believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such relief would establish a justification under § § 462-468 of this title but the defendant is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which is material to the justifiability of the use of force, the justification afforded by those sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(b) When the defendant is justified under §§ 462-468 of this title in using force upon or toward the person of another but the defendant recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for an offense involving recklessness or negligence towards innocent persons.

(11 Del. C. 1953, § 469; 58 Del. Laws, c. 497, § 1; 63 Del. Laws, c. 276, § 1; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 73, § 6.)

§ 471. Definitions relating to justification.

(a) "Deadly force" means force which the defendant uses with the purpose of causing or which the defendant knows creates a substantial risk of causing death or serious physical injury, including the use of a chokehold as "chokehold" is defined under § 607A of this title. Purposely firing a firearm or projectile weapon in the direction of another person or at a vehicle in which another person is believed to

be constitutes deadly force. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the defendant's purpose is limited to creating an apprehension that deadly force will be used if necessary, does not constitute deadly force.

(b) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being the defendant's home or place of lodging.

(c) "Force," in addition to its ordinary meaning, includes confinement.

(d) "Physical force" means force used upon or directed toward the body of another person.

(e) (1) "Reasonably believes," when applied to a defendant who is not a law-enforcement officer acting in the officer's official capacity, means holds a belief that is reasonable from the viewpoint of a reasonable person in the defendant's situation under the circumstances.

(2) "Reasonably believes," when applied to a defendant who is a law-enforcement officer acting in the officer's official capacity, means holds a belief that is reasonable from the viewpoint of a reasonable law-enforcement officer in the defendant's situation under the circumstances.

(f) "Unlawful force" means force which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or actionable tort or would constitute such offense or tort except for a defense (such as the absence of intent, negligence or mental capacity; duress; youth; or diplomatic status) not amounting to a privilege to use the force. Assent constitutes consent, within the meaning of this section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious bodily harm.

(11 Del. C. 1953, § 470; 58 Del. Laws, c. 497, § 1; 63 Del. Laws, c. 276, § 1; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 73, § 7; 84 Del. Laws, c. 525, § 2.)

§ 472. Mitigating factors and defenses based on a victim's sexual orientation, sex, gender, gender identity, or sex assigned at birth.

(a) Notwithstanding any other provision of this Criminal Code, in any prosecution or sentencing for an offense, a defendant is not justified in using force against another based on the discovery of, knowledge or belief about, or the potential or actual disclosure of the victim's actual or perceived sexual orientation, sex, gender, gender identity, or sex assigned at birth.

(b) Notwithstanding any other provision of this Criminal Code, in any prosecution or sentencing for an offense, for the purposes of determining whether there is a reasonable explanation or excuse for the existence of extreme emotional disturbance or other asserted mitigating factor or circumstance, such explanation or excuse is not reasonable if it is based on the discovery of, knowledge or belief about, or the potential or actual disclosure of the victim's actual or perceived sexual orientation, sex, gender, gender identity, or sex assigned at birth.

(c) Notwithstanding any other provision of this Criminal Code, in any prosecution or sentencing for an offense, a defendant does not, based on the discovery of, knowledge or belief about, or the potential or actual disclosure of the victim's actual or perceived sexual orientation, sex, gender, gender identity, or sex assigned at birth, suffer from a mental illness, mental defect, mental disorder, serious mental disorder, psychiatric disorder, or other impairment affecting or impacting the defendant's mental state relating to questions of any of the following:

(1) Intent.

(2) Knowledge.

(3) Capacity to appreciate the wrongfulness of the defendant's conduct.

(4) Disturbance of the defendant's thinking, feeling, or behavior.

(5) Culpability.

(6) Willpower to choose whether to do or refrain from doing an act.

(7) Ability to distinguish right from wrong.

(84 Del. Laws, c. 215, § 2; 84 Del. Laws, c. 514, § 14.)

§ 475. Immunity as an affirmative defense.

In any prosecution for an offense, it is an affirmative defense that the accused was granted immunity from prosecution for that offense by the Attorney General or a Deputy Attorney General or by court order pursuant to § 3506 of this title. It is also an affirmative defense that the accused was granted immunity from prosecution for a different offense when prosecution for the offense now charged would have been barred by prosecution for the offense as to which immunity was granted under § 208 of this title; provided, that the Attorney General or a Deputy Attorney General may, in granting immunity, stipulate that the immunity applies only to a specific offense, in which case effect shall be given to the stipulation.

(11 Del. C. 1953, § 475; 58 Del. Laws, c. 497, § 1; 63 Del. Laws, c. 271, § 1; 70 Del. Laws, c. 186, § 1.)

§ 476. Racketeering activities; excluded defenses.

(a) In any prosecution under Chapter 15 of this title where it is alleged that the offender or offenders were acting as members of a group or informal organization it shall be no defense to such prosecution or were engaged in any form of racketeering or racketeering activity, that:

(1) One or more members of the group or organization are not criminally responsible for the offense for which the prosecution is brought;

(2) One or more members of the group or organization have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense or are immune from prosecution;

(3) A different person has been charged with, acquitted or convicted of any offense set forth in Chapter 15 of this title.

(b) Once an act of racketeering has been initiated by a group and there is a subsequent change in the number or identity of persons in such group or organization, as long as 2 or more of the original members remain in such group or are involved in a continuing course of conduct constituting an offense under Chapter 15 of this title, it shall be no defense to claim that the defendant was not part of the group or organization.

(65 Del. Laws, c. 493, § 2; 70 Del. Laws, c. 186, § 1.)

§ 477. Organized crime; renunciation.

(a) It is an affirmative defense to a prosecution under § 1503 of this title, that under circumstances manifesting a voluntary and complete renunciation of the criminal objective, the defendant withdrew from the proposed or intended unlawful activity before the commission of an offense set forth in Chapter 15 of this title; and that such person took further affirmative action that, in whole or in part, prevented the commission of the offense.

(b) Renunciation is not "voluntary," if it is motivated in whole or in part:

(1) By circumstances not present or apparent at the inception of the defendant's course of conduct that increased the probability of detection or apprehension, or that made more difficult the accomplishment of the objective; or

(2) By a decision to postpone the criminal conduct until another time, or to transfer the criminal act to another (but similar) objective or victim.

(c) Evidence that the defendant withdrew from the unlawful activity before commission of an offense set forth in Chapter 15 of this title, and made substantial effort to prevent the commission of an offense under that chapter, shall be admissible as mitigation at the hearing on punishment if such person has been found guilty; and in the event of a finding of renunciation under this section, the punishment of such person shall be less than that which would otherwise be imposed. The Court shall determine the extent and genuineness of the renunciation, and determine the reduction.

(65 Del. Laws, c. 493, § 2; 70 Del. Laws, c. 186, § 1.)

Part I
Delaware Criminal Code
Chapter 5
Specific Offenses
Subchapter I
Inchoate Crimes

§ 501. Criminal solicitation in the third degree; class A misdemeanor.

A person is guilty of criminal solicitation in the third degree when, intending that another person engage in conduct constituting a misdemeanor, the person solicits, requests, commands, importunes or otherwise attempts to cause the other person to engage in conduct that would constitute the misdemeanor or an attempt to commit the misdemeanor or which would establish the other's complicity in its commission or attempted commission.

Criminal solicitation in the third degree is a class A misdemeanor.

(11 Del. C. 1953, § 501; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 502. Criminal solicitation in the second degree; class F felony.

A person is guilty of criminal solicitation in the second degree when, intending that another person engage in conduct constituting a felony, the person solicits, requests, commands, importunes or otherwise attempts to cause the other person to engage in conduct which would constitute the felony or an attempt to commit the felony, or which would establish the other's complicity in its commission or attempted commission.

Criminal solicitation in the second degree is a class F felony, unless the person is 18 years of age or older, and the other person had not yet reached his or her eighteenth birthday at the time of the crime, in which case it is a class D felony, or unless the person is more than 3 years older than the other person, and the other person had not yet reached his or her fifteenth birthday at the time of the crime, in which case it is a class D felony.

(11 Del. C. 1953, § 502; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 424, § 1.)

§ 503. Criminal solicitation in the first degree; class E felony.

A person is guilty of criminal solicitation in the first degree when, intending that another person engage in conduct constituting a class A felony, the person solicits, requests, commands, importunes or otherwise attempts to cause the other person to engage in conduct which would constitute the felony or an attempt to commit the felony, or which would establish the other's complicity in its commission or attempted commission.

Criminal solicitation in the first degree is a class E felony, unless the person is 18 years of age or older, and the other person had not yet reached his or her eighteenth birthday at the time of the crime, in which case it is a class C felony, or unless the person is more than 3 years older than the other person, and the other person had not yet reached his or her fifteenth birthday at the time of the crime, in which case it is a class C felony.

(11 Del. C. 1953, § 503; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 424, § 2.)

§§ 504-510. [Reserved.]

§ 511. Conspiracy in the third degree; class A misdemeanor.

A person is guilty of conspiracy in the third degree when, intending to promote or facilitate commission of a misdemeanor, the person:

(1) Agrees with another person or persons that they or 1 or more of them will engage in conduct constituting the misdemeanor or an attempt or solicitation to commit the misdemeanor; or

(2) Agrees to aid another person or persons in the planning or commission of the misdemeanor or an attempt or solicitation to commit the misdemeanor, and the person or another person with whom the person conspired commits an overt act in pursuance of the conspiracy.

Conspiracy in the third degree is a class A misdemeanor.

(11 Del. C. 1953, § 511; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 203, § 7; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 512. Conspiracy in the second degree; class G felony.

A person is guilty of conspiracy in the second degree when, intending to promote or facilitate the commission of a felony, the person:

(1) Agrees with another person or persons that they or 1 or more of them will engage in conduct constituting the felony or an attempt or solicitation to commit the felony; or

(2) Agrees to aid another person or persons in the planning or commission of the felony or an attempt or solicitation to commit the felony; and the person or another person with whom the person conspired commits an overt act in pursuance of the conspiracy.

Conspiracy in the second degree is a class G felony.

(11 Del. C. 1953, § 512; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 203, § 7; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 513. Conspiracy in the first degree; class E felony.

A person is guilty of conspiracy in the first degree when, intending to promote or facilitate the commission of a class A felony, the person:

(1) Agrees with another person or persons that they or 1 or more of them will engage in conduct constituting the felony or an attempt or solicitation to commit the felony; or

(2) Agrees to aid another person or persons in the planning or commission of the felony or an attempt or solicitation to commit the felony, and the person or another person with whom the person conspired commits an overt act in pursuance of the conspiracy.

Conspiracy in the first degree is a class E felony.

(11 Del. C. 1953, § 513; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 203, § 7; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§§ 514-520. [Reserved.]

§ 521. Conspiracy.

(a) If a person conspires to commit a number of crimes, the person is guilty of only 1 conspiracy, so long as the multiple crimes are the object of the same agreement of continuous conspiratorial relationship. The person may be convicted of the degree of conspiracy which includes the most serious offense which the person is found guilty of conspiring to commit.

(b) If a person guilty of conspiracy, as defined by §§ 511-513 of this title, knows that a person with whom the person conspires to commit a crime has conspired with another person or persons to commit the same crime, the first person is guilty of conspiring to commit the crime with the other person or persons, whether or not the first person knows their identity.

(c) No person may be convicted of conspiracy to commit an offense when an element of the offense is agreement with the person with whom the person is alleged to have conspired, or when the person with whom the person is alleged to have conspired is necessarily involved with the person in the commission of the offense.

(11 Del. C. 1953, § 521; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 522. Joinder and venue in conspiracy prosecutions.

(a) Subject to subsection (b) of this section, 2 or more persons charged with conspiracy to commit a crime may be prosecuted jointly if:

(1) They are charged with conspiring with one another; or

(2) The conspiracies alleged, whether they have the same or different parties, are so related that they constitute different aspects of a scheme of organized criminal conduct.

(b) In any joint prosecution under subsection (a) of this section:

(1) No defendant shall be charged with a conspiracy in any county other than one in which the defendant entered into the conspiracy or one in which an overt act pursuant to the conspiracy was done by the defendant or by a person with whom the defendant conspired; and

(2) Neither the criminal liability of any defendant nor the admissibility against a defendant of evidence of acts or declarations of another shall be enlarged by the joinder; and

(3) The court may order a severance or take a special verdict as to any defendant who so requests, if it deems such action necessary or appropriate to promote the fair determination of guilt or innocence, and the court may take any other proper measures to protect the fairness of the trial.

(11 Del. C. 1953, § 522; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 523. Criminal solicitation and conspiracy unaffected by matters relating to the complicity of other persons.

(a) It is no defense to a prosecution for criminal solicitation that the person solicited could not be guilty of the crime solicited because of irresponsibility or other legal incapacity or exemption, or because of unawareness of the criminal nature of the conduct solicited or of the defendant's criminal purpose or because of other factors precluding the mental state required for the commission of the crime in question.

(b) It is no defense to a prosecution for criminal conspiracy that, because of irresponsibility or other legal incapacity or exemption, or because of unawareness of the criminal nature of the agreement or the conduct contemplated or of the defendant's criminal purpose or because of other factors precluding the mental state required for commission of the conspiracy or the crime contemplated, 1 or more of the defendant's coconspirators could not be guilty of the conspiracy or the crime contemplated.

(11 Del. C. 1953, § 523; 58 Del. Laws, c. 497, § 1.)

§§ 524-530. [Reserved.]

§ 531. Attempt to commit a crime.

A person is guilty of an attempt to commit a crime if the person:

(1) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as the person believes them to be; or

(2) Intentionally does or omits to do anything which, under the circumstances as the person believes them to be, is a substantial step in a course of conduct planned to culminate in the commission of the crime by the person.

Attempt to commit a crime is an offense of the same grade and degree as the most serious offense which the accused is found guilty of attempting.

(11 Del. C. 1953, § 531; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 532. "Substantial step" defined.

A "substantial step" under § 531 of this title is an act or omission which leaves no reasonable doubt as to the defendant's intention to commit the crime which the defendant is charged with attempting.

(11 Del. C. 1953, § 532; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 533. Conduct intended to aid another to commit a crime.

A person who engages in conduct intended to aid another person to commit a crime is guilty of an attempt to commit the crime, although the crime is not committed or attempted by the other person, provided that the conduct would establish the person's complicity under § 271 of this title if the crime were committed by the other person.

(11 Del. C. 1953, § 533; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§§ 534-540. [Reserved.]

§ 541. Criminal solicitation, conspiracy, attempt to commit a crime; defense of renunciation.

(a) In any prosecution for criminal solicitation or conspiracy in which the crime solicited or the crime contemplated by the conspiracy was not in fact committed, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of the criminal purpose, the accused prevented the commission of the crime.

(b) In any prosecution for an attempt to commit a crime it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of the criminal purpose, the accused avoided the commission of the crime attempted by abandoning the criminal effort and, if mere abandonment was insufficient to accomplish avoidance, by taking further and affirmative steps which prevented the commission of the crime attempted.

(c) A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by:

(1) A belief that circumstances exist which increase the probability of detection or apprehension of the accused or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose; or

(2) A decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective.

(1 Del. C. 1953, § 541; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 542. Exemption of law-enforcement officers.

Nothing in this subchapter shall apply to any law-enforcement officer or the officer's agent while acting in the lawful performance of duty.

(11 Del. C. 1953, § 542; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

Subchapter II

Offenses Against the Person

A Assaults and Related Offenses

§ 601. Offensive touching; unclassified misdemeanor; class A misdemeanor.

(a) A person is guilty of offensive touching when the person:

(1) Intentionally touches another person either with a member of his or her body or with any instrument, knowing that the person is thereby likely to cause offense or alarm to such other person; or

(2) Intentionally strikes another person with saliva, urine, feces or any other bodily fluid, knowing that the person is thereby likely to cause offense or alarm to such other person.

(b) When charged with a violation of paragraph (a)(2) of this section, the defendant shall be tested for diseases transmittable through bodily fluids, the cost of such tests to be assessed as costs upon conviction. The results of such tests shall be provided only to the Attorney General, the victim of the offense, the defendant and the Department of Correction's medical care provider.

(c) Any violation of paragraph (a)(1) of this section shall be an unclassified misdemeanor. Notwithstanding the above, any violation of paragraph (a)(1) of this section shall be a class A misdemeanor when the victim is acting in the lawful performance of the victim's duty as 1 of the following: law-enforcement officer, hospital or nursing home employee, physician, medical professional, ambulance attendant, emergency medical technician, advanced emergency medical technician, paramedic, Delaware State Fire Police Officer, correctional officer, volunteer firefighter or full-time firefighter. Any violation of paragraph (a)(2) of this section shall be a class A misdemeanor.

(11 Del. C. 1953, § 601; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 382, § 1; 73 Del. Laws, c. 108, §§ 1, 2; 79 Del. Laws, c. 64, § 1.)

§ 602. Menacing; unclassified misdemeanor.

(a) A person is guilty of menacing when by some movement of body or any instrument the person intentionally places another person in fear of imminent physical injury.

Menacing is an unclassified misdemeanor.

(b) A person is guilty of aggravated menacing when by displaying what appears to be a deadly weapon that person intentionally places another person in fear of imminent physical injury. Aggravated menacing is a class E felony.

(11 Del. C. 1953, § 602; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 159, §§ 1, 2; 70 Del. Laws, c. 186, § 1.)

§ 603. Reckless endangering in the second degree; class A misdemeanor.

(a) A person is guilty of reckless endangering in the second degree when:

(1) The person recklessly engages in conduct which creates a substantial risk of physical injury to another person; or

(2) Being a parent, guardian or other person legally charged with the care or custody of a child less than 18 years old, the person knowingly, intentionally or with criminal negligence acts in a manner which contributes to or fails to act to prevent the unlawful possession and/or purchase of a firearm by a juvenile. It shall be an absolute defense to this paragraph if the person charged had a lock on the trigger and did not tell or show the juvenile where the key to the trigger lock was kept. It shall also be an absolute defense to this paragraph if the person had locked the firearm in a key or combination locked container and did not tell or show the juvenile where the key was kept or what the combination was.

(b) Reckless endangering in the second degree is a class A misdemeanor.

(11 Del. C. 1953, § 603; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 359, § 1.)

§ 604. Reckless endangering in the first degree; class E felony.

A person is guilty of reckless endangering in the first degree when the person recklessly engages in conduct which creates a substantial risk of death to another person.

Reckless endangering in the first degree is a class E felony.

(11 Del. C. 1953, § 604; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 69 Del. Laws, c. 24, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 34, § 9.)

§ 605. Abuse of a pregnant female in the second degree; class C felony.

(a) A person is guilty of abuse of a pregnant female in the second degree when in the course of or in furtherance of the commission or attempted commission of assault third degree or any violent felony against or upon a pregnant female, or while in immediate flight therefrom, the person recklessly and without her consent causes the unlawful termination of her pregnancy.

(b) It is no defense to a prosecution under this section that the person was unaware that the victim was pregnant.

(c) Prosecution under this section does not preclude prosecution under any other section of the Delaware Code. Abuse of a pregnant female in the second degree is a class C felony.

(72 Del. Laws, c. 43, § 3; 70 Del. Laws, c. 186, § 1.)

§ 606. Abuse of a pregnant female in the first degree; class B felony.

(a) A person is guilty of abuse of a pregnant female in the first degree when in the course of or in furtherance of the commission or attempted commission of assault third degree any violent felony against or upon a pregnant female, or while in immediate flight therefrom, the person intentionally and without her consent causes the unlawful termination of her pregnancy.

(b) It is no defense to a prosecution under this section that the person was unaware that the victim was pregnant.

(c) Prosecution under this section does not preclude prosecution under any other section of the Delaware Code. Abuse of a pregnant female in the first degree is a class B felony.

(72 Del. Laws, c. 43, § 4; 70 Del. Laws, c. 186, § 1.)

§ 607. Strangulation or suffocation; class B or D felony; penalty; affirmative defense.

(a) (1) A person commits the offense of strangulation if the person knowingly or intentionally impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person.

(2) A person commits the offense of suffocation if the person knowingly or intentionally prevents another person from breathing by blocking or obstructing the nose or mouth of the other person.

(b) (1) Except as provided in paragraph (b)(2) of this section, strangulation or suffocation is a class D felony.

(2) Strangulation or suffocation is a class B felony if:

a. The person used or attempted to use a dangerous instrument or a deadly weapon while committing the offense; or

b. The person caused serious physical injury to the other person while committing the offense; or

c. [Repealed]

d. The person was subject to an existing court order prohibiting contact with the victim at the time of the offense; or

e. The person committed the offense against a pregnant female; or

f. The person committed the offense against a child.

(c) Notwithstanding any provisions of this Code to the contrary, any person who commits an offense under subsection (a) of this section within 5 years of a prior conviction under either subsection (a) or (b) of this section or a substantially similar section of another state, shall receive a minimum sentence of 1 year at Level 5.

(d) The absence of visible bodily injury shall not preclude a conviction under this section.

(e) It is an affirmative defense that an act constituting strangulation was the result of a legitimate medical procedure.

(77 Del. Laws, c. 256, § 1; 83 Del. Laws, c. 392, § 1.)

§ 607A. Aggravated strangulation; penalty; defenses.

(a) As used in this section:

(1) “Chokehold” means of any of the following:

a. A technique intended to restrict another person’s airway, or prevent or restrict the breathing of another person.

b. A technique intended to constrict the flow of blood by applying pressure or force to the carotid artery, the jugular vein, or the side of the neck of another person.

(2) “Law-enforcement officer” means as defined in § 222 of this title.

(b) A person commits the offense of aggravated strangulation if all of the following conditions are satisfied:

(1) The person is a law-enforcement officer.

(2) The person knowingly or intentionally uses a chokehold on another person.

(3) The person is acting within the person’s official capacity as a law-enforcement officer.

(c) Notwithstanding §§ 462-468 of this title to the contrary, the use of a chokehold is only justifiable when the person reasonably believes that the use of deadly force is necessary to protect the life of a civilian or a law-enforcement officer.

(d) Except as provided in paragraph (e) of this section, aggravated strangulation is a class D felony.

(e) Aggravated strangulation is a class C felony if the person caused serious physical injury or death to the other person while committing the offense.

(f) A charge under this section does not limit or preclude any other charge being brought against the person.

(82 Del. Laws, c. 281, § 1; 83 Del. Laws, c. 37, § 4.)

§§ 608-610. [Reserved.]

§ 611. Assault in the third degree; class A misdemeanor.

A person is guilty of assault in the third degree when:

(1) The person intentionally or recklessly causes physical injury to another person; or

(2) With criminal negligence the person causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

Assault in the third degree is a class A misdemeanor.

(11 Del. C. 1953, § 611; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 612. Assault in the second degree; class C or D felony.

(a) A person is guilty of assault in the second degree when:

(1) The person recklessly or intentionally causes serious physical injury to another person; or

(2) The person recklessly or intentionally causes physical injury to another person by means of a deadly weapon or a dangerous instrument; or

(3) The person intentionally causes physical injury to a law-enforcement officer, a volunteer firefighter, a full-time firefighter, emergency medical technician, paramedic, fire police officer, fire marshal, correctional officer, a sheriff, a deputy sheriff, public transit operator, hospital security officer or constable, code enforcement constable, or a code enforcement officer who is acting in the lawful performance of duty. For purposes of this subsection, if a law-enforcement officer is off duty and the nature of the assault is related to that law-enforcement officer's official position, then it shall fall within the meaning of "official duties" of a law-enforcement officer; or

(4) The person intentionally causes physical injury to the operator of an ambulance, a rescue squad member, licensed practical nurse, registered nurse, paramedic, licensed medical doctor, or any person providing health-care treatment or employed by a health-care provider while such person is performing a work-related duty; or

(5) The person intentionally causes physical injury to any other person while such person is rendering emergency care; or

(6) The person recklessly or intentionally causes physical injury to another person who is 62 years of age or older; or

(7) The person intentionally assaults a law-enforcement officer while in the performance of the officer's duties, with any disabling chemical spray, or with any aerosol or hand sprayed liquid or gas with the intent to incapacitate such officer and prevent the officer from performing such duties; or

(8) The person intentionally, while engaged in commission of any crime enumerated in this chapter, assaults any other person with any disabling chemical spray, or with any aerosol or hand sprayed liquid or gas with the intent to incapacitate the victim; or

(9) The person intentionally causes physical injury to any state employee or officer when that employee or officer is discharging or attempting to discharge a duty of employment or office; or

(10) The person recklessly or intentionally causes physical injury to a pregnant female. It is no defense to a prosecution under this subsection that the person was unaware that the victim was pregnant; or

(11) A person who is 18 years of age or older and who recklessly or intentionally causes physical injury to another person who has not yet reached the age of 6 years. In any prosecution of a parent, guardian, foster parent, legal custodian or other person similarly responsible for the general care and supervision of a child victim pursuant to this paragraph, the State shall be required to prove beyond a reasonable doubt the absence of any justification offered by § 468(1) of this title. In any prosecution of a teacher or school administrator pursuant to this paragraph, the State shall be required to prove beyond a reasonable doubt the absence of any justification offered by § 468(2) of this title; or

(12) The person recklessly or intentionally causes physical injury to a law-enforcement officer, security officer, fire police officer, fire fighter, paramedic, or emergency medical technician in the lawful performance of their duties by means of an electronic control device shall be a class C felony.

(b) It is no defense, for an offense under paragraph (a)(6) of this section, that the accused did not know the person's age or that the accused reasonably believed the person to be under the age of 62.

(c) It is no defense, for an offense under paragraph (a)(11) of this section, that the accused did not know the person's age or that the accused reasonably believed the person to be 6 years of age or older.

(d) Assault in the second degree is a class D felony, unless the offense is a class C felony as described in paragraph (a)(12) of this section.

(11 Del. C. 1953, § 612; 58 Del. Laws, c. 497, § 1; 63 Del. Laws, c. 50, § 1; 63 Del. Laws, c. 237, § 1; 67 Del. Laws, c. 130, § 8; 68 Del. Laws, c. 129, §§ 1, 3; 69 Del. Laws, c. 24, §§ 3, 4; 69 Del. Laws, c. 189, § 1; 69 Del. Laws, c. 367, § 1; 70 Del. Laws, c. 128, §§ 1-5; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 307, § 1; 71 Del. Laws, c. 374, §§ 4, 5; 72 Del. Laws, c. 34, § 10; 72 Del. Laws, c. 43, § 5; 72 Del. Laws, c. 173, §§ 1, 2; 73 Del. Laws, c. 126, §§ 3, 16; 74 Del. Laws, c. 199; 76 Del. Laws, c. 270, § 3; 77 Del. Laws, c. 119, § 1; 77 Del. Laws, c. 265, § 1; 78 Del. Laws, c. 325, § 1; 80 Del. Laws, c. 287, § 1; 83 Del. Laws, c. 334, § 1; 84 Del. Laws, c. 514, § 15.)

§ 613. Assault in the first degree; class B felony.

(a) A person is guilty of assault in the first degree when:

(1) The person intentionally causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or

(2) The person intentionally disfigures another person seriously and permanently, or intentionally destroys, amputates or disables permanently a member or organ of another person's body; or

(3) The person recklessly engages in conduct which creates a substantial risk of death to another person, and thereby causes serious physical injury to another person; or

(4) While engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any felony, the person intentionally or recklessly causes serious physical injury to another person; or

(5) The person intentionally causes serious physical injury to a law-enforcement officer, a volunteer firefighter, a full-time firefighter, emergency medical technician, paramedic, fire police officer, fire marshal, public transit operator, a code enforcement constable or a code enforcement officer who is acting in the lawful performance of duty; or

(6) The person intentionally causes serious physical injury to the operator of an ambulance, a rescue squad member, licensed practical nurse, registered nurse, paramedic, licensed medical doctor or any other person while such person is rendering emergency care; or

(7) The person intentionally causes serious physical injury to another person who is 62 years of age or older.

(b) It is no defense, for an offense under paragraph (a)(7) of this section, that the accused did not know the person's age or that the accused reasonably believed the person to be under the age of 62.

(c) Assault in the first degree is a class B felony.

(11 Del. C. 1953, § 613; 58 Del. Laws, c. 497, § 1; 63 Del. Laws, c. 50, § 2; 63 Del. Laws, c. 237, § 2; 67 Del. Laws, c. 130, § 8; 68 Del. Laws, c. 129, §§ 2, 3; 69 Del. Laws, c. 24, §§ 5, 6; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 34, § 11; 73 Del. Laws, c. 126, §§ 4, 16; 74 Del. Laws, c. 106, § 1; 75 Del. Laws, c. 168, § 1; 77 Del. Laws, c. 119, § 2; 77 Del. Laws, c. 265, § 2; 78 Del. Laws, c. 325, § 2.)

§ 614. Abuse of a sports official; class G felony; class A misdemeanor.

(a) A person is guilty of abuse of a sports official whenever the person intentionally or recklessly commits the following acts against a sports official who is acting in the lawful performance of duty:

(1) Reckless endangering in the second degree, as set forth in § 603 of this title; or

(2) Assault in the third degree, as set forth in § 611 of this title; or

(3) Terroristic threatening, as set forth in § 621 of this title; or

(4) Criminal mischief, as set forth in § 811 of this title.

(b) For purposes of this section, the words "sports official" shall mean any person who serves as a registered, paid or volunteer referee, umpire, line judge or acts in any similar capacity during a sporting event. For purposes of this section, the words, "lawful performance of duty" means the time immediately prior to, during and/or immediately after the sporting event.

(c) Whoever violates subsection (a) of this section shall be guilty of a class A misdemeanor. Upon conviction for a second or subsequent offense under this section, such person shall be guilty of a class G felony. Notwithstanding Chapter 42 of this title, such person shall be fined not less than $1,000 nor more than $2,350. In addition to the fines imposed by this subsection, any person who is guilty of abuse of a sports official shall be prohibited from participating in and/or attending any organized sporting event for a period of not less than 3 months nor more than 12 months.

(d) Except as provided in § 922 of Title 10, and notwithstanding any other provision of law to the contrary, the Court of Common Pleas shall have original jurisdiction to hear, try and finally determine any violation of this section, and any other misdemeanor violation of any offense set forth in this title which was allegedly committed during the same incident. Prosecution under this section shall not preclude a separate charge, conviction and sentence for any other crime set forth in the Code.

(67 Del. Laws, c. 247, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 342, § 1.)

§ 615. Assault by abuse or neglect; class B felony [Transferred].

Transferred to § 1103B of this title by 78 Del. Laws, c. 406, § 3, effective Sept. 12, 2012.

§ 616. Gang participation.

(a) *Definitions.* — The following terms shall have the following meaning as used in this section.

(1) "Criminal street gang" means any ongoing organization, association, or group of 3 or more persons, whether formal or informal, having as 1 of its primary activities the commission of 1 or more of the criminal acts enumerated in paragraph (a)(2) of this section, having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(2) "Pattern of criminal gang activity" means the commission of attempted commission of, conspiracy to commit, solicitation of, or conviction of 2 or more of the following criminal offenses, provided that at least 1 of these offenses occurred after July 1, 2003, and that the last of those offenses occurred within 3 years after a prior offense, and provided that the offenses were committed on separate occasions, or by 2 or more persons:

a. Assault, as defined in § 612 or § 613 of this title.

b. Any criminal acts causing death as defined in §§ 632 - 636 of this title.

c. Any criminal acts relating to sexual offenses defined in §§ 768 - 780 of this title.

d. Any criminal offenses relating to unlawful imprisonment or kidnapping which are defined in §§ 782 - 783A of this title.

e. Any criminal acts of arson as defined in §§ 801 - 803 of this title.

f. Any criminal acts relating to burglary which are defined in §§ 824 - 826 of this title and [former] § 826A of this title [repealed].

g. Any criminal acts relating to robbery which are defined in §§ 831 and 832 of this title.

h. Any criminal acts relating to theft or extortion which are defined in § 841, § 849 or § 851 of this title, provided that such acts meet the requirements of felony offenses under said sections.

i. Any criminal acts relating to riot, unlawful disruption, hate crimes, stalking or bombs which are defined in § 1302, former § 1303 [repealed], § 1304, § 1312A or § 1338 of this title, provided that such acts meet the requirements of felony offenses under said sections.

j. Any criminal acts involving deadly weapons or dangerous instruments which are defined in § 1442, § 1444, §§ 1447 - 1448, § 1449, § 1450, § 1451, § 1454 or § 1455 of this title.

k. Any criminal acts involving controlled substances which are defined by §§ 4752, 4753, 4756, or 4757(c) of Title 16.

(b) *Forbidden conduct.* — A person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity and who knowingly promotes, furthers or assists in any criminal conduct by members of that gang which would constitute a felony under Delaware law, shall be guilty of illegal gang participation. Illegal gang participation is a class F felony.

(c) *Sentencing enhancements.* — (1) Any person who is convicted of a class E felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced consistent with the sentence dictated by Delaware law for a class D felony under § 4205(b)(4) of this title.

(2) Any person who is convicted of a class D felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced consistent with the sentence dictated by Delaware law for a class C felony under § 4205(b)(3) of this title.

(3) Any person who is convicted of a class C felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced consistent with the sentence dictated by Delaware law for a class B felony under § 4205(b)(2) of this title.

(74 Del. Laws, c. 115, § 1; 78 Del. Laws, c. 13, § 4; 78 Del. Laws, c. 252, § 5; 82 Del. Laws, c. 215, § 1; 82 Del. Laws, c. 217, § 19.)

§ 617. Criminal youth gangs.

(a) *Definitions.* — The following words, terms and phrases, when used in this chapter, shall have their meaning ascribed to them except where the context clearly indicates a different meaning.

(1) “Criminal youth gang” shall mean a group of 3 or more persons with a gang name or other identifier which either promotes, sponsors, assists in, participates in or requires as a condition of membership submission to group initiation that results in any felony or any class A misdemeanor set forth in this title or Title 16.

(2) “Identifier” shall mean common identifying signs, symbols, tattoos, markings, graffiti, or attire or other distinguishing characteristics or indicia of gang membership.

(3) “Student” shall mean any person enrolled in a school grades preschool through 12.

(b) *Recruitment or retention of juveniles or students for a criminal street gang or criminal youth gang; penalties.* — (1) Any person who solicits, invites, recruits, encourages or otherwise causes or attempts to cause a juvenile or student to participate in or become a member of a criminal street gang as defined in § 616(a) of this title or criminal youth gang is guilty of a class G felony.

(2) Any person who,

a. In order to encourage a juvenile or student to:

1. Join a criminal youth gang or criminal street gang,

2. Remain as a participant in or a member of a criminal youth gang or criminal street gang, or

3. Submit to a demand by a criminal youth gang or criminal street gang to commit a crime; or

b. In order to prevent a juvenile or student from withdrawing or attempting to withdraw from a criminal youth gang or criminal street gang threatens to commit any crime likely to result in death or in physical injury to the juvenile, the juvenile’s property, a member of that juvenile’s family or household, or their property; or commits a crime which results in physical injury or death to the juvenile, the juvenile’s property, a member of that juvenile’s family or household, or their property

shall be guilty of a class F felony and shall constitute a separate and distinct offense. If the acts or activities violating this section also violate another provision of law, a prosecution under this section shall not prohibit or bar any prosecution or proceeding under such other provision or the imposition of any penalties provided for thereby.

(75 Del. Laws, c. 421, § 1; 70 Del. Laws, c. 186, § 1.)

§§ 618-620. [Reserved.]

§ 621. Terroristic threatening.

(a) A person is guilty of terroristic threatening when that person commits any of the following:

(1) The person threatens to commit any crime likely to result in death or in serious injury to person or property;

(2) The person makes a false statement or statements:

a. Knowing that the statement or statements are likely to cause evacuation of a building, place of assembly, or facility of public transportation;

b. Knowing that the statement or statements are likely to cause serious inconvenience; or

c. In reckless disregard of the risk of causing terror or serious inconvenience; or

(3) The person commits an act with intent of causing an individual to believe that the individual has been exposed to a substance that will cause the individual death or serious injury.

(b) Any violation of paragraph (a)(1) of this section shall be a class A misdemeanor except where the victim is a person 62 years of age or older, in which case any violation of paragraph (a)(1) of this section shall be a class G felony. Any violation of paragraph (a)(2)a. of this section shall be a class E felony. Any violation of paragraph (a)(2)b. or c. of this section shall be a class G felony unless the place at which the risk of serious inconvenience or terror is created is a place that has the purpose, in whole or in part, of acting as a daycare facility, nursery or preschool, kindergarten, elementary, secondary or vocational-technical school, or any long-term care facility in which elderly persons are housed, in which case it shall be a class F felony. Any violation of paragraph (a)(3) of this section shall be a class F felony. Notwithstanding any provision of this subsection to the contrary, a first offense of paragraph (a)(2) of this section by a person 17 years old or younger shall be a class A misdemeanor.

(c) In addition to the penalties otherwise authorized by law, any person convicted of an offense in violation of paragraph (a)(2) of this section shall:

(1) Pay a fine of not less than $1,000 nor more than $2,500, which fine cannot be suspended; and

(2) Be sentenced to perform a minimum of 100 hours of community service.

(d) In addition to the penalties otherwise authorized by law, any person convicted of an offense in violation of paragraph (a)(3) of this section shall pay a fine of not less than $2,000, which fine cannot be suspended.

(11 Del. C. 1953, § 621; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 330, § 1; 73 Del. Laws, c. 126, §§ 5, 6; 73 Del. Laws, c. 255, § 1; 80 Del. Laws, c. 14, § 1.)

§ 622. Hoax device; class F felony.

(a) Whoever possesses, transports, uses or places or causes another to knowingly or unknowingly possess, transport, use or place any hoax device with the intent to cause anxiety, unrest, fear or personal discomfort to any person or group of persons shall be guilty of a class F felony.

(b) For the purposes of this section the following definitions shall apply:

(1) “Destructive device” means any explosive, incendiary, or chemical material or over-pressure device which will rapidly expand in a manner to project material outward at such a rate to cause injury to persons or damage to property.

(2) “Explosive” means any chemical compound, or other substance or containing oxidizing and combustible units or other ingredients in such proportions or quantities that ignition, fire, friction, concussion, percussion, or detonator may produce an explosion capable of causing injury to persons or damage to property.

(3) “Hoax device” shall mean any object or item that would cause a person to reasonably believe that such object or item is or contains a destructive device, Molotov cocktail, incendiary device, or over-pressure device which could cause injury or death.

(4) “Incendiary device” means any item designed to ignite by hand, chemical reaction, timer or by spontaneous combustion and is not designed for lawful purposes or use whatsoever, or any lawful use or purpose has been terminated.

(5) “Molotov cocktail” means a makeshift incendiary bomb made of a breakable container filled with flammable liquid and provided with a wick composed of any substance capable of bringing flame into contact with a wick composed of any substance capable of bringing flame into contact with a liquid.

(6) “Over-pressure device” means a frangible container filled with an explosive gas, chemical or combination of materials, which is designed or constructed so as to cause the container to break or fracture in a manner which is capable of causing death, bodily harm, or property damage.

(74 Del. Laws, c. 420, § 1.)

§§ 623, 624. [Reserved.]

§ 625. Unlawfully administering drugs; class A misdemeanor.

A person is guilty of unlawfully administering drugs when, for a purpose other than lawful medical or therapeutic treatment, the person intentionally causes stupor, unconsciousness or other alteration of the physical or mental condition of another person by administering to the other person, without consent, a drug.

Unlawfully administering drugs is a class A misdemeanor.

(11 Del. C. 1953, § 625; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 626. Unlawfully administering controlled substance or counterfeit substance or narcotic drugs; class G felony.

A person is guilty of unlawfully administering a controlled substance or counterfeit substance or narcotic drugs when, for a purpose other than lawful medical or therapeutic treatment, the person intentionally introduces or causes introduction into the body of another person, without consent, a controlled substance or counterfeit substance or narcotic drug.

Unlawfully administering controlled substance or counterfeit substance or narcotic drugs is a class G felony.

(11 Del. C. 1953, § 626; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 627. Prohibited acts as to substances releasing vapors or fumes; unclassified misdemeanor.

No person shall:

(1) Intentionally smell or inhale the vapors or fumes from any substance having the property of releasing vapors or fumes for the purpose of producing a condition of intoxication, inebriation, exhilaration, stupefaction or lethargy or for the purpose of dulling the brain or nervous system; provided, that nothing in this section shall prohibit the inhalation of the vapors or fumes of any anesthesia for medical or dental purposes;

(2) Sell or offer to sell to any person any material, product or article of commerce containing any substance having a property of releasing vapors or fumes, if the person has knowledge or is in the possession of such facts that the person should have knowledge that the material, product or article of commerce sold or offered will be used for the purpose of committing any of the acts proscribed in paragraph (1) of this section;

(3) Purchase or offer to purchase for the person or any other person any material, product or article of commerce containing any substance having the property of releasing vapors and fumes if such purchase or offer to purchase is made for the purpose of committing any of the acts proscribed in paragraph (1) of this section.

Any violation of this section shall be an unclassified misdemeanor.

(11 Del. C. 1953, § 627; 58 Del. Laws, c. 497, § 1; 65 Del. Laws, c. 286, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 628. Vehicular assault in the third degree; class B misdemeanor [Transferred].

A person is guilty of vehicular assault in the third degree when, while in the course of driving or operating a motor vehicle, the person's criminally negligent driving or operation of said vehicle causes physical injury to another person.

Vehicular assault in the third degree is a class B misdemeanor.

(78 Del. Laws, c. 168, § 2.)

§ 628A. Vehicular assault in the second degree; class A misdemeanor.

A person is guilty of vehicular assault in the second degree when:

(1) While in the course of driving or operating a motor vehicle, the person's criminally negligent driving or operation of said vehicle causes serious physical injury to another person; or

(2) While in the course of driving or operating a motor vehicle and under the influence of alcohol or drugs or with a prohibited alcohol or drug content, as defined by § 4177 of Title 21, the person's negligent driving or operation of said vehicle causes physical injury to another person.

Vehicular assault in the second degree is a class A misdemeanor.

(63 Del. Laws, c. 88, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 333, § 5; 75 Del. Laws, c. 315, § 7; 78 Del. Laws, c. 168, §§ 1, 2.)

§ 629. Vehicular assault in the first degree; class F felony.

A person is guilty of vehicular assault in the first degree when while in the course of driving or operating a motor vehicle and under the influence of alcohol or drugs or with a prohibited alcohol or drug content, as defined by § 4177 of Title 21, the person's negligent driving or operation of said vehicle causes serious physical injury to another person.

Vehicular assault in the first degree is a class F felony.

(63 Del. Laws, c. 88, § 2; 67 Del. Laws, c. 130, § 8; 68 Del. Laws, c. 361, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 333, § 5; 75 Del. Laws, c. 315, § 7.)

§ 630. Vehicular homicide in the second degree; class D felony; minimum sentence; juvenile offenders.

(a) A person is guilty of vehicular homicide in the second degree when:

(1) While in the course of driving or operating a motor vehicle, the person's criminally negligent driving or operation of said vehicle causes the death of another person; or

(2) While in the course of driving or operating a motor vehicle, under the influence of alcohol or drugs or with a prohibited alcohol or drug content, as defined by § 4177 of Title 21, the person's negligent driving or operation of said vehicle causes the death of another person.

Vehicular homicide in the second degree is a class D felony.

(b) The minimum sentence required by paragraph (a)(2) of this section shall be 1 year, notwithstanding § 4205(b)(6) of this title. The minimum sentence shall not be subject to suspension, and no person convicted under this section shall be eligible for probation, parole, furlough, work release or supervised custody during the first year of such sentence.

(c) Every person charged under this section after having reached his or her sixteenth birthday, shall be treated for purposes of trial or other disposition of the charge, including but not limited to sentencing, as an adult, notwithstanding any contrary provisions of statutes governing the Family Court, or any other state law, except that the mandatory minimum sentencing provisions of subsection (b) of this section and § 630A(b) of this title shall not apply to juveniles. Any such case involving a juvenile shall be subject to the transfer provisions of § 1011 of Title 10. Any period of incarceration imposed upon a juvenile by operation of this section shall be served in a juvenile correctional facility until the person attains their 18th birthday, at which time the person shall be transferred to the appropriate adult correctional institution or jail to serve any remaining portion of the sentence.

(63 Del. Laws, c. 88, § 3; 65 Del. Laws, c. 357, § 1; 67 Del. Laws, c. 130, § 8; 67 Del. Laws, c. 246, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 333, § 5; 75 Del. Laws, c. 315, § 7; 78 Del. Laws, c. 168, § 3.)

§ 630A. Vehicular homicide in the first degree; class C felony; minimum sentence; juvenile offenders.

(a) A person is guilty of vehicular homicide in the first degree when while in the course of driving or operating a motor vehicle under the influence of alcohol or drugs or with a prohibited alcohol or drug content, as defined by § 4177 of Title 21, the person's criminally negligent driving or operation of said vehicle causes the death of another person.

Vehicular homicide in the first degree is a class C felony.

(b) The minimum sentence required by this section shall be 2 years, notwithstanding § 4205(b)(5) of this title. The minimum sentence shall not be subject to suspension, and no person convicted under this section shall be eligible for probation, parole, furlough, work release or supervised custody during the first 18 months of such sentence.

(c) Every person charged under this section after having reached his or her sixteenth birthday, shall be treated for purposes of trial or other disposition of the charge, including but not limited to sentencing, as an adult, notwithstanding any contrary provisions of statutes governing the Family Court, or any other state law, except that the mandatory minimum sentencing provisions of subsection (b) of this section and § 630(b) of this title shall not apply to juveniles. Any such case involving a juvenile shall be subject to the transfer provisions of § 1011 of Title 10. Any period of incarceration imposed upon a juvenile by operation of this section shall be served in a juvenile correctional facility until the person attains his or her eighteenth birthday, at which time the person shall be transferred to the appropriate adult correctional institution or jail to serve any remaining portion of the sentence.

(63 Del. Laws, c. 88, § 4; 65 Del. Laws, c. 357, § 2; 67 Del. Laws, c. 130, § 8; 67 Del. Laws, c. 246, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 333, § 5; 75 Del. Laws, c. 315, § 7; 78 Del. Laws, c. 168, § 4.)

B Acts Causing Death

§ 631. Criminally negligent homicide; class D felony.

A person is guilty of criminally negligent homicide when, with criminal negligence, the person causes the death of another person.

Criminally negligent homicide is a class D felony.

(11 Del. C. 1953, § 631; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 168, § 5.)

§ 632. Manslaughter; class B felony.

A person is guilty of manslaughter when:

(1) The person recklessly causes the death of another person; or

(2) With intent to cause serious physical injury to another person the person causes the death of such person, employing means which would to a reasonable person in the defendant's situation, knowing the facts known to the defendant, seem likely to cause death; or

(3) The person intentionally causes the death of another person under circumstances which do not constitute murder because the person acts under the influence of extreme emotional disturbance; or

(4) [Repealed.]

(5) The person intentionally causes another person to commit suicide.

Manslaughter is a class B felony.

(11 Del. C. 1953, § 632; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 106, § 2; 83 Del. Laws, c. 200, § 1.)

§ 633. Murder by abuse or neglect in the second degree; class B felony.

(a) A person is guilty of murder by abuse or neglect in the second degree when, with criminal negligence, the person causes the death of a child:

(1) Through an act of abuse and/or neglect of such child; or

(2) When the person has engaged in a previous pattern of abuse and/or neglect of such child.

(b) For the purpose of this section:

(1) "Abuse" and "neglect" shall have the same meaning as set forth in § 1100 of this title.

(2) "Child" shall refer to any person who has not yet reached that person's fourteenth birthday.

(3) “Previous pattern” of abuse and/or neglect shall mean 2 or more incidents of conduct:

a. That constitute an act of abuse and/or neglect; and

b. Are not so closely related to each other or connected in point of time and place that they constitute a single event.

(c) A conviction is not required for an act of abuse or neglect to be used in prosecution of a matter under this section, including an act used as proof of a previous pattern as defined in paragraph (b)(3) of this section. A conviction for any act of abuse or neglect, including one which may be relied upon to establish a previous pattern of abuse and/or neglect does not preclude prosecution under this section. Prosecution under this section does not preclude prosecution under any other section of the Code.

(d) Murder by abuse or neglect in the second degree is a class B felony. Notwithstanding any provision of this title to the contrary, the minimum sentence for a person convicted of murder by abuse or neglect in the second degree in violation of this section shall be 10 years at Level V.

(70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 266, § 1; 70 Del. Laws, c. 382, § 1; 72 Del. Laws, c. 197, §§ 2-4; 78 Del. Laws, c. 406, § 1.)

§ 634. Murder by abuse or neglect in the first degree; class A felony.

(a) A person is guilty of murder by abuse or neglect in the first degree when the person recklessly causes the death of a child:

(1) Through an act of abuse and/or neglect of such child; or

(2) When the person has engaged in a previous pattern of abuse and/or neglect of such child.

(b) For the purpose of this section:

(1) “Abuse” and “neglect” shall have the same meaning as set forth in § 1100 of this title.

(2) “Child” shall refer to any person who has not yet reached that person’s fourteenth birthday.

(3) “Previous pattern” of abuse and/or neglect shall mean 2 or more incidents of conduct:

a. That constitute an act of abuse and/or neglect; and

b. Are not so closely related to each other or connected in point of time and place that they constitute a single event.

(c) A conviction is not required for an act of abuse or neglect to be used in prosecution of a matter under this section including an act used as proof of the previous pattern as defined in paragraph (b)(3) of this section. A conviction for any act of abuse or neglect including one which may be relied upon to establish the previous pattern of abuse and/or neglect does not preclude prosecution under this section. Prosecution under this section does not preclude prosecution under any other section of the Code.

(d) Murder by abuse or neglect in the first degree is a class A felony.

(70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 266, § 2; 72 Del. Laws, c. 197, §§ 5, 6; 78 Del. Laws, c. 406, § 1.)

§ 635. Murder in the second degree; class A felony.

A person is guilty of murder in the second degree when:

(1) The person recklessly causes the death of another person under circumstances which manifest a cruel, wicked and depraved indifference to human life; or

(2) While engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any felony, the person, with criminal negligence, causes the death of another person.

Murder in the second degree is a class A felony.

(11 Del. C. 1953, § 635; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 203, § 35; 67 Del. Laws, c. 130, § 8; 67 Del. Laws, c. 350, § 29; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 106, § 3; 74 Del. Laws, c. 246, § 1.)

§ 636. Murder in the first degree; class A felony.

(a) A person is guilty of murder in the first degree when:

(1) The person intentionally causes the death of another person;

(2) While engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any felony, the person recklessly causes the death of another person.

(3) The person intentionally causes another person to commit suicide by force or duress;

(4) The person recklessly causes the death of a law-enforcement officer, corrections employee, fire fighter, paramedic, emergency medical technician, fire marshal or fire police officer while such officer is in the lawful performance of duties;

(5) The person causes the death of another person by the use of or detonation of any bomb or similar destructive device;

(6) The person causes the death of another person in order to avoid or prevent the lawful arrest of any person, or in the course of and in furtherance of the commission or attempted commission of escape in the second degree or escape after conviction.

(b) Murder in the first degree is a class A felony and shall be punished:

(1) As provided in § 4209 of this title for an offense that was committed after the person had reached the person’s eighteenth birthday; and

(2) As provided in § 4209A of this title for an offense that was committed before the person had reached the person's eighteenth birthday.

(11 Del. C. 1953, § 636; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 284, § 1; 63 Del. Laws, c. 354, § 1; 66 Del. Laws, c. 269, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 285, § 2; 74 Del. Laws, c. 246, §§ 2, 3; 77 Del. Laws, c. 191, § 1; 79 Del. Laws, c. 37, § 1.)

§§ 637-640. [Reserved.]

§ 641. Extreme emotional distress.

The fact that the accused intentionally caused the death of another person under the influence of extreme emotional distress is a mitigating circumstance, reducing the crime of murder in the first degree as defined by § 636 of this title to the crime of manslaughter as defined by § 632 of this title. The fact that the accused acted under the influence of extreme emotional distress must be proved by a preponderance of the evidence. The accused must further prove by a preponderance of the evidence that there is a reasonable explanation or excuse for the existence of the extreme emotional distress. The reasonableness of the explanation or excuse shall be determined from the viewpoint of a reasonable person in the accused's situation under the circumstances as the accused believed them to be. Extreme emotional distress is not reasonably explained or excused when it is caused or occasioned by the accused's own mental disturbance for which the accused was culpably responsible, or by any provocation, event or situation for which the accused was culpably responsible, or when there is no causal relationship between the provocation, event or situation which caused the extreme emotional distress and the victim of the murder. Evidence of voluntary intoxication shall not be admissible for the purpose of showing that the accused was acting under the influence of extreme emotional distress.

(11 Del. C. 1953, § 641; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 127, § 1.)

§§ 642-644. [Reserved.]

§ 645. Promoting suicide; class F felony.

A person is guilty of promoting suicide when the person intentionally causes or aids another person to attempt suicide, or when the person intentionally aids another person to commit suicide.

Promoting suicide is a class F felony.

(11 Del. C. 1953, § 645; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§§ 646-650. [Reserved.]

C Abortion and Related Offenses

§ 651. Abortion; class F felony [Repealed].

(11 Del. C. 1953, § 651; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; repealed by 83 Del. Laws, c. 200, § 1, effective Sept. 17, 2021.)

§ 652. Self-abortion; class A misdemeanor [Repealed].

(11 Del. C. 1953, § 652; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; repealed by 83 Del. Laws, c. 200, § 1, effective Sept. 17, 2021.)

§ 653. Issuing abortional articles; class B misdemeanor [Repealed].

(11 Del. C. 1953, § 653; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; repealed by 83 Del. Laws, c. 200, § 1, effective Sept. 17, 2021.)

§ 654. "Abortion" defined [Repealed].

(11 Del. C. 1953, § 654; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1; repealed by 83 Del. Laws, c. 200, § 1, effective Sept. 17, 2021.)

§§ 655-760. [Reserved.]

D Sexual Offenses

§ 761. Definitions generally applicable to sexual offenses.

(a) "Cognitive disability" means a developmental disability that substantially impairs an individual's cognitive abilities including, but not limited to, delirium, dementia and other organic brain disorders for which there is an identifiable pathologic condition, as well as nonorganic brain disorders commonly called functional disorders. "Cognitive disability" also includes conditions of mental retardation, severe cerebral palsy, and any other condition found to be closely related to mental retardation because such condition results in the impairment of general intellectual functioning or adaptive behavior similar to that of persons who have been diagnosed with mental retardation, or such condition requires treatment and services similar to those required for persons who have been diagnosed with mental retardation.

(b) "Cunnilingus" means any oral contact with the female genitalia.

(c) “Fellatio” means any oral contact with the male genitalia.

(d) “Object” means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

(e) “Position of trust, authority or supervision over a child” includes, but is not limited to:

(1) Familial, guardianship or custodial authority or supervision; or

(2) A teacher, coach, counselor, advisor, mentor or any other person providing instruction or educational services to a child or children, whether such person is compensated or acting as a volunteer; or

(3) A babysitter, child care provider, or child care aide, whether such person is compensated or acting as a volunteer; or

(4) A health professional, meaning any person who is licensed or who holds oneself out to be licensed or who otherwise provides professional physical or mental health services, diagnosis, treatment or counseling which shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists, whether such person is compensated or acting as a volunteer; or

(5) Clergy, including but not limited to any minister, pastor, rabbi, lay religious leader, pastoral counselor or any other person having regular direct contact with children through affiliation with a church or religious institution, whether such person is compensated or acting as a volunteer; or

(6) Any law-enforcement officer, as that term is defined in § 222 of this title, and including any person acting as an officer or counselor at a correctional or counseling institution, facility or organization, whether such person is compensated or acting as a volunteer; or

(7) Any other person who because of that person’s familial relationship, profession, employment, vocation, avocation or volunteer service has regular direct contact with a child or children and in the course thereof assumes responsibility, whether temporarily or permanently, for the care or supervision of a child or children.

(f) “Semen” means fluid produced in the male reproductive organs, which may include spermatozoa.

(g) (1) “Sexual contact” means any of the following touching, if the touching, under the circumstances as viewed by a reasonable person, is intended to be sexual in nature:

a. Any intentional touching by the defendant of the anus, breast, buttocks, or genitalia of another person.

b. Any intentional touching of another person with the defendant’s anus, breast, buttocks, semen, or genitalia.

c. Intentionally causing or allowing another person to touch the defendant’s anus, breast, buttocks, or genitalia.

(2) “Sexual contact” includes touching when covered by clothing.

(h) “Sexual intercourse” means:

(1) Any act of physical union of the genitalia or anus of 1 person with the mouth, anus or genitalia of another person. It occurs upon any penetration, however slight. Ejaculation is not required. This offense encompasses the crimes commonly known as rape and sodomy; or

(2) Any act of cunnilingus or fellatio regardless of whether penetration occurs. Ejaculation is not required.

(i) “Sexual offense” means any offense defined by §§ 763 through 780, 783(4), 783(6), 783A(4), 783A(6), 787(b)(3), 787(b)(4), 1100A, 1108 through 1112B, 1335(a)(6), 1335(a)(7), 1352(2), and 1353(2), and 1361(b) of this title.

(j) “Sexual penetration” means:

(1) The unlawful placement of an object, as defined in subsection (d) of this section, inside the anus or vagina of another person; or

(2) The unlawful placement of the genitalia or any sexual device inside the mouth of another person.

(k) “Without consent” means:

(1) The defendant compelled the victim to submit by any act of coercion as defined in §§ 791 and 792 of this title, or by force, by gesture, or by threat of death, physical injury, pain or kidnapping to be inflicted upon the victim or a third party, or by any other means which would compel a reasonable person under the circumstances to submit. It is not required that the victim resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy, but the victim need resist only to the extent that it is reasonably necessary to make the victim’s refusal to consent known to the defendant; or

(2) The defendant knew that the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed; or

(3) The defendant knew that the victim suffered from a cognitive disability, mental illness or mental defect which rendered the victim incapable of appraising the nature of the sexual conduct or incapable of consenting; or

(4) Where the defendant is a health professional, as defined herein, or a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse by such person shall be deemed to be without consent of the victim where such acts are committed under the guise of providing professional diagnosis, counseling or treatment and where at the times of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested. For purposes of this paragraph, “health professional” includes all individuals who are licensed or who hold themselves out

to be licensed or who otherwise provide professional physical or mental health services, diagnosis, treatment or counseling and shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists; or

(5) The defendant had substantially impaired the victim's power to appraise or control the victim's own conduct by administering or employing without the other person's knowledge or against the other person's will, drugs, intoxicants or other means for the purpose of preventing resistance.

(*l*) A child who has not yet reached that child's sixteenth birthday is deemed unable to consent to a sexual act with a person more than 4 years older than said child. Children who have not yet reached their twelfth birthday are deemed unable to consent to a sexual act under any circumstances.

(11 Del. C. 1953, § 773; 58 Del. Laws, c. 497, § 1; 60 Del. Laws, c. 416, § 1; 61 Del. Laws, c. 56; 65 Del. Laws, c. 494, § 1; 66 Del. Laws, c. 269, §§ 27, 28; 69 Del. Laws, c. 44, § 1; 69 Del. Laws, c. 440, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 285, §§ 3-7; 71 Del. Laws, c. 467, § 6; 72 Del. Laws, c. 109, § 1; 74 Del. Laws, c. 345, § 2; 75 Del. Laws, c. 392, § 2; 76 Del. Laws, c. 66, § 1; 77 Del. Laws, c. 150, §§ 1-3; 77 Del. Laws, c. 318, § 1; 80 Del. Laws, c. 175, § 2; 82 Del. Laws, c. 150, § 1; 83 Del. Laws, c. 37, § 5; 84 Del. Laws, c. 42, § 1.)

§ 762. Provisions generally applicable to sexual offenses.

(a) *Mistake as to age.* — Whenever in the definition of a sexual offense, the criminality of conduct or the degree of the offense depends on whether the person has reached that person's sixteenth birthday, it is no defense that the actor did not know the person's age, or that the actor reasonably believed that the person had reached that person's sixteenth birthday.

(b) *Gender.* — Unless a contrary meaning is clearly required, the male pronoun shall be deemed to refer to both male and female.

(c) *Separate acts of sexual contact, penetration and sexual intercourse.* — Nothing in this title precludes a defendant from being charged with separate offenses when multiple acts of sexual contact, penetration or intercourse are committed against the same victim.

(d) *Teenage defendant.* — As to sexual offenses in which the victim's age is an element of the offense because the victim has not yet reached that victim's sixteenth birthday, where the person committing the sexual act is no more than 4 years older than the victim, it is an affirmative defense that the victim consented to the act "knowingly" as defined in § 231 of this title. Sexual conduct pursuant to this section will not be a crime. This affirmative defense will not apply if the victim had not yet reached that victim's twelfth birthday at the time of the act.

(11 Del. C. 1953, § 772; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 547, § 3; 61 Del. Laws, c. 56, § 3; 65 Del. Laws, c. 494, § 1; 66 Del. Laws, c. 269, §§ 33, 34; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 285, §§ 8, 9; 75 Del. Laws, c. 392, § 3.)

§ 763. Sexual harassment; unclassified misdemeanor.

A person is guilty of sexual harassment when:

(1) The person threatens to engage in conduct likely to result in the commission of a sexual offense against any person; or

(2) The person suggests, solicits, requests, commands, importunes or otherwise attempts to induce another person to have sexual contact or sexual intercourse or unlawful sexual penetration with the actor, knowing that the actor is thereby likely to cause annoyance, offense or alarm to that person.

Sexual harassment is an unclassified misdemeanor.

(65 Del. Laws, c. 494, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 764. Indecent exposure in the second degree; unclassified misdemeanor.

(a) A male is guilty of indecent exposure in the second degree if he exposes his genitals or buttocks under circumstances in which he knows his conduct is likely to cause affront or alarm to another person.

(b) A female is guilty of indecent exposure in the second degree if she exposes her genitals, breast or buttocks under circumstances in which she knows her conduct is likely to cause affront or alarm to another person.

Indecent exposure in the second degree is an unclassified misdemeanor.

(11 Del. C. 1953, § 768; 58 Del. Laws, c. 497, § 1; 65 Del. Laws, c. 494, § 1; 66 Del. Laws, c. 269, § 17; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 765. Indecent exposure in the first degree; class A misdemeanor.

(a) A male is guilty of indecent exposure in the first degree if he exposes his genitals or buttocks to a person who is less than 16 years of age under circumstances in which he knows his conduct is likely to cause affront or alarm.

(b) A female is guilty of indecent exposure in the first degree if she exposes her genitals, breast or buttocks to a person who is less than 16 years of age under circumstances in which she knows her conduct is likely to cause affront or alarm.

Indecent exposure in the first degree is a class A misdemeanor.

(11 Del. C. 1953, § 768; 58 Del. Laws, c. 497, § 1; 65 Del. Laws, c. 494, § 1; 66 Del. Laws, c. 269, § 18; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 766. Incest; class A misdemeanor.

(a) A person is guilty of incest if the person engages in sexual intercourse with another person with whom the person has 1 of the following relationships:

A male and his child.

A male and his parent.

A male and his brother.

A male and his sister.

A male and his grandchild.

A male and his niece or nephew.

A male and his father's sister or brother.

A male and his mother's sister or brother.

A male and his father's wife.

A male and his wife's child.

A male and the child of his wife's son or daughter.

A female and her parent.

A female and her child.

A female and her brother.

A female and her sister.

A female and her grandchild.

A female and her niece or nephew.

A female and her father's sister or brother.

A female and her mother's sister or brother.

A female and her mother's husband.

A female and her husband's child.

A female and the child of her husband's son or daughter.

(b) The relationships referred to herein include blood relationships without regard to legitimacy and relationships by adoption.

Incest is a class A misdemeanor and is an offense within the original jurisdiction of the Family Court.

(11 Del. C. 1953, § 771; 58 Del. Laws, c. 497, § 1; 65 Del. Laws, c. 494, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 767. Unlawful sexual contact in the third degree; class A misdemeanor.

A person is guilty of unlawful sexual contact in the third degree when the person has sexual contact with another person or causes the victim to have sexual contact with the person or a third person and the person knows that the contact is either offensive to the victim or occurs without the victim's consent.

Unlawful sexual contact in the third degree is a class A misdemeanor.

(11 Del. C. 1953, § 761; 58 Del. Laws, c. 497, § 1; 65 Del. Laws, c. 494, § 1; 66 Del. Laws, c. 269, § 19; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 768. Unlawful sexual contact in the second degree; class F felony.

A person is guilty of unlawful sexual contact in the second degree when the person intentionally has sexual contact with another person who is less than 18 years of age or causes the victim to have sexual contact with the person or a third person.

Unlawful sexual contact in the second degree is a class F felony.

(11 Del. C. 1953, §§ 761, 762; 58 Del. Laws, c. 497, § 1; 65 Del. Laws, c. 494, § 1; 66 Del. Laws, c. 269, § 20; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 364, § 1; 77 Del. Laws, c. 148, § 33.)

§ 769. Unlawful sexual contact in the first degree; class D felony.

(a) A person is guilty of unlawful sexual contact in the first degree when:

(1) In the course of committing unlawful sexual contact in the third degree or in the course of committing unlawful sexual contact in the second degree, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury to the victim or the person displays what appears to be a deadly weapon or dangerous instrument; or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument.

(2) [Repealed.]

(3) The person intentionally has sexual contact with another person who is less than 13 years of age or causes the victim to have sexual contact with the person or a third person.

(b) Unlawful sexual contact in the first degree is a class D felony.

(11 Del. C. 1953, § 767; 58 Del. Laws, c. 497, § 1; 61 Del. Laws, c. 56, § 2; 65 Del. Laws, c. 494, § 1; 66 Del. Laws, c. 269, § 21; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 93, § 3; 75 Del. Laws, c. 392, § 1; 76 Del. Laws, c. 364, § 2; 77 Del. Laws, c. 148, § 34; 77 Del. Laws, c. 318, § 7.)

§ 770. Rape in the fourth degree; class C felony.

(a) A person is guilty of rape in the fourth degree when the person:

(1) Intentionally engages in sexual intercourse with another person, and the victim has not yet reached that victim's sixteenth birthday; or

(2) Intentionally engages in sexual intercourse with another person, and the victim has not yet reached that victim's eighteenth birthday, and the person is 30 years of age or older, except that such intercourse shall not be unlawful if the victim and person are married at the time of such intercourse; or

(3) Intentionally engages in sexual penetration with another person under any of the following circumstances:

a. The sexual penetration occurs without the victim's consent; or

b. The victim has not reached that victim's sixteenth birthday.

(4) [Repealed.]

(b) Paragraph (a)(3) of this section does not apply to a licensed medical doctor or nurse who places 1 or more fingers or an object inside a vagina or anus for the purpose of diagnosis or treatment or to a law-enforcement officer who is engaged in the lawful performance of his or her duties.

Rape in the fourth degree is a class C felony.

(71 Del. Laws, c. 285, § 10; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 318, §§ 7, 9.)

§ 771. Rape in the third degree; class B felony.

(a) A person is guilty of rape in the third degree when the person:

(1) Intentionally engages in sexual intercourse with another person, and the victim has not reached that victim's sixteenth birthday and the person is at least 10 years older than the victim, or the victim has not yet reached that victim's fourteenth birthday and the person has reached that person's nineteenth birthday and is not otherwise subject to prosecution pursuant to § 772 or § 773 of this title; or

(2) Intentionally engages in sexual penetration with another person under any of the following circumstances:

a. The sexual penetration occurs without the victim's consent and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury or serious mental or emotional injury to the victim; or

b. The victim has not reached that victim's sixteenth birthday and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury or serious mental or emotional injury to the victim.

(3) [Repealed.]

(b) Paragraph (a)(2) of this section does not apply to a licensed medical doctor or nurse who places 1 or more fingers or an object inside a vagina or anus for the purpose of diagnosis or treatment, or to a law-enforcement officer who is engaged in the lawful performance of his or her duties.

(c) Notwithstanding any law to the contrary, in any case in which a violation of subsection (a) of this section has resulted in the birth of a child who is in the custody and care of the victim or the victim's legal guardian or guardians, the court shall order that the defendant, as a condition of any probation imposed pursuant to a conviction under this section, timely pay any child support ordered by the Family Court for such child.

(d) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

Rape in the third degree is a class B felony.

(71 Del. Laws, c. 285, § 11; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 271, §§ 4-6; 77 Del. Laws, c. 318, §§ 7, 8.)

§ 772. Rape in the second degree; class B felony.

(a) A person is guilty of rape in the second degree when the person:

(1) Intentionally engages in sexual intercourse with another person, and the intercourse occurs without the victim's consent; or

(2) Intentionally engages in sexual penetration with another person under any of the following circumstances:

a. The sexual penetration occurs without the victim's consent and during the commission of the crime, or during the immediate flight following the commission of the crime, or during an attempt to prevent the reporting of the crime, the person causes serious physical injury to the victim; or

b. The sexual penetration occurs without the victim's consent, and was facilitated by or occurred during the course of the commission or attempted commission of:

1. Any felony; or

2. Any of the following misdemeanors: reckless endangering in the second degree; assault in the third degree; terroristic threatening; unlawfully administering drugs; unlawful imprisonment in the second degree; coercion or criminal trespass in the first, second or third degree; or

c. The victim has not yet reached that victim's sixteenth birthday and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes serious physical injury to the victim; or

d. The sexual penetration occurs without the victim's consent and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person displays what appears to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument; or

e. The victim has not yet reached that victim's sixteenth birthday and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person displays what appears to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument; or

f. The sexual penetration occurs without the victim's consent, and a principal-accomplice relationship within the meaning set forth in § 271 of this title existed between the defendant and another person or persons with respect to the commission of the crime; or

g. The victim has not yet reached that victim's twelfth birthday, and the defendant has reached that defendant's eighteenth birthday.

h. [Repealed.]

(b) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(c) Notwithstanding any provision of this title to the contrary, the minimum sentence for a person convicted of rape in the second degree in violation of this section shall be 10 years at Level V.

Rape in the second degree is a class B felony.

(71 Del. Laws, c. 285, § 12; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 93, § 3; 77 Del. Laws, c. 318, § 7.)

§ 773. Rape in the first degree; class A felony.

(a) A person is guilty of rape in the first degree when the person intentionally engages in sexual intercourse with another person and any of the following circumstances exist:

(1) The sexual intercourse occurs without the victim's consent and during the commission of the crime, or during the immediate flight following the commission of the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury or serious mental or emotional injury to the victim; or

(2) The sexual intercourse occurs without the victim's consent and it was facilitated by or occurred during the course of the commission or attempted commission of:

a. Any felony; or

b. Any of the following misdemeanors: reckless endangering in the second degree; assault in the third degree; terroristic threatening; unlawfully administering drugs; unlawful imprisonment in the second degree; coercion; or criminal trespass in the first, second or third degree; or

(3) In the course of the commission of rape in the second, third or fourth degree, or while in the immediate flight therefrom, the defendant displayed what appeared to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument; or

(4) The sexual intercourse occurs without the victim's consent, and a principal-accomplice relationship within the meaning set forth in § 271 of this title existed between the defendant and another person or persons with respect to the commission of the crime; or

(5) The victim has not yet reached that victim's twelfth birthday, and the defendant has reached that defendant's eighteenth birthday.

(6) [Repealed.]

(b) Nothing contained in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(c) Notwithstanding any law to the contrary, a person convicted of rape in the first degree shall be sentenced to life imprisonment without benefit of probation, parole or any other reduction if:

(1) The victim had not yet reached that victim's sixteenth birthday at the time of the offense and the person inflicts serious physical injury on the victim; or

(2) The person intentionally causes serious and prolonged disfigurement to the victim permanently, or intentionally destroys, amputates or permanently disables a member or organ of the victim's body; or

(3) The person is convicted of rape against 3 or more separate victims; or

(4) The person has previously been convicted of unlawful sexual intercourse in the first degree, rape in the second degree or rape in the first degree, or any equivalent offense under the laws of this State, any other state or the United States.

Rape in the first degree is a class A felony.

(71 Del. Laws, c. 285, § 13; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 93, § 3; 77 Del. Laws, c. 318, § 7.)

§ 774. Sexual extortion; class E felony; class B felony.

(a) A person is guilty of sexual extortion when the person intentionally:

(1) Compels or induces another person to do 1 or more of the following:

a. Engage in any sexual act involving contact, penetration, or intercourse with the defendant or another person.

b. Produce a visual depiction of the victim or another person who is nude, or who is engaging in sexual conduct, with the victim or another person.

(2) By means of instilling in the victim a fear that, if the sexual act or production is not performed, the defendant or another person will do 1 or more of the following:

a. Cause physical injury to anyone.

b. Cause damage to property.

c. Engage in other conduct constituting a crime.

d. Accuse anyone of a crime or cause criminal charges to be instituted against anyone.

e. Expose a secret or publicize an asserted fact, whether true or false, intending to subject anyone to hatred, contempt, or ridicule.

f. Falsely testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

g. Reproduce, distribute, exhibit, publish, transmit, or otherwise disseminate a visual depiction of any person who is nude, or who is engaging in sexual conduct.

h. Perform any other act which is calculated to materially harm another person with respect to the other person's health, safety, business, calling, career, financial condition, reputation, or personal relationships.

(b) Except as provided in subsection (c) of this section, sexual extortion is a class E felony.

(c) Sexual extortion is a class B felony under any of the following circumstances:

(1) The defendant is an adult and the victim is 1 of the following:

a. A "child," as defined in § 1100 of this title.

b. A "vulnerable adult," as defined in § 1105 of this title.

(2) A violation of subsection (a) of this section causes the victim to suffer serious physical injury or death.

(68 Del. Laws, c. 379, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 318, §§ 2, 6; 83 Del. Laws, c. 406, § 1; 85 Del. Laws, c. 223, § 1.)

§ 775. Bestiality.

A person is guilty of bestiality when the person intentionally engages in any sexual act involving sexual contact, penetration or intercourse with the genitalia of an animal or intentionally causes another person to engage in any such sexual act with an animal for purposes of sexual gratification.

Bestiality is a class D felony.

(69 Del. Laws, c. 91, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 318, § 6.)

§ 776. Continuous sexual abuse of a child; class B felony.

(a) A person is guilty of continuous sexual abuse of a child when, either residing in the same home with the minor child or having recurring access to the child, the person intentionally engages in 3 or more acts of sexual conduct with a child under the age of 18 years of age over a period of time, not less than 3 months in duration.

(b) Sexual conduct under this section is defined as any of those criminal sexual acts defined under § 768, § 769, § 770, § 771, § 772, § 773, 777A, § 778, § 778A or § 1108 of this title.

(c) To convict under this section, the trier of fact, if a jury, need unanimously agree only that the requisite number of acts occurred, not on which acts constitute the requisite number.

(d) Continuous sexual abuse of a child is a class B felony.

(69 Del. Laws, c. 442, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 392, § 4; 77 Del. Laws, c. 318, §§ 3, 4, 6.)

§ 777. Dangerous crime against a child, definitions, sentences.

(a) A "dangerous crime against a child" means any criminal sexual conduct against a minor under the age of 14 years as defined in §§ 770-773, § 777A, §§ 778 through 778A, or §§ 1108 through 1112B of this title. For purposes of this section only, and § 762(a) of this title to the contrary notwithstanding, the defendant may use as an affirmative defense that the defendant believed that the victim of the crime was over the age of 16 years of age.

(b) Except as otherwise provided in this title, a person who is at least 18 years of age, or who has been tried as an adult and who is convicted of a dangerous crime against a child as defined in subsection (a) of this section, shall be guilty of a class B felony. For a second offense under this section, the Court shall impose a mandatory sentence of life imprisonment.

(c) A person sentenced pursuant to this section shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the sentence imposed by the Court has been served.

(70 Del. Laws, c. 124, § 1; 71 Del. Laws, c. 467, § 7; 77 Del. Laws, c. 318, §§ 5, 6; 80 Del. Laws, c. 175, § 3.)

§ 777A. Sex offender unlawful sexual conduct against a child.

(a) A sex offender who knowingly commits any sexual offense against a child is guilty of sex offender unlawful sexual conduct against a child.

(b) For purposes of this section, "sex offender" means as defined in § 4121 of this title.

(c) For purposes of this section, the term "sexual offense" shall mean any offense designated as a sexual offense by § 761(i) of this title.

(d) For purposes of this section, "child" means any individual who has not reached that child's eighteenth birthday. If the underlying sexual offense involves an offense defined by §§ 1108 through 1112B of this title, "child" also means any individual who is intended by the defendant to appear to be 14 years of age or less. A sex offender who knowingly possesses any material prohibited by § 1111 of this title is committing an offense against a child for purposes of this section.

(e) Sex offender unlawful sexual conduct against a child shall be punished as follows:

(1) If the underlying sexual offense is a misdemeanor, the crime of sex offender unlawful sexual conduct against a child shall be a class G felony except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class C felony;

(2) If the underlying sexual offense is a class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony 1 grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony;

(3) If the underlying sexual offense is a misdemeanor and the victim is under 18 years of age and has a cognitive disability, the crime of sex offender unlawful sexual conduct against a child shall be a class C felony;

(4) If the underlying sexual offense is a class C, D, E, F, or G felony and the victim is under 18 years of age and has a cognitive disability, the crime of sex offender unlawful sexual conduct against a child shall be a class B felony;

(5) If the underlying sexual offense is a class A or B felony, the crime of sex offender unlawful sexual conduct against a child shall be the same grade as the underlying offense, and the minimum sentence of imprisonment required for the underlying offense shall be doubled.

(f) The provisions of this section shall not apply if the defendant is also a child.

(76 Del. Laws, c. 66, § 2; 77 Del. Laws, c. 149, §§ 1, 2; 77 Del. Laws, c. 150, § 4; 77 Del. Laws, c. 318, § 6; 80 Del. Laws, c. 175, § 4; 82 Del. Laws, c. 150, § 1.)

§ 778. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree; penalties.

A person is guilty of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree when the person:

(1) Intentionally engages in sexual intercourse with a child who has not yet reached that child's own sixteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(2) Intentionally engages in sexual penetration with a child who has not yet reached that child's own sixteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(3) Intentionally engages in sexual intercourse or sexual penetration with a child who has reached that child's own sixteenth birthday but has not yet reached that child's own eighteenth birthday when the person is at least 4 years older than the child and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(4) Intentionally engages in sexual intercourse or sexual penetration with a child and the victim has reached that child's own sixteenth birthday but has not yet reached that child's own eighteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(5) Engages in an act of sexual extortion, as defined in § 774 of this title, against a child who has not yet reached that child's own sixteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(6) a. 1. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in paragraph (1) of this section is a class A felony.

2. Notwithstanding any law to the contrary, a person convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in this paragraph (6) shall be sentenced to life imprisonment without benefit of probation, parole or any other reduction if:

A. At the time of the offense the person inflicts serious physical injury on the victim; or

B. The person intentionally causes serious and prolonged disfigurement to the victim permanently, or intentionally destroys, amputates or permanently disables a member or organ of the victim's body; or

C. The person is convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in this paragraph (6) against 3 or more separate victims; or

D. The person has previously been convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree, unlawful sexual intercourse in the first degree, rape in the second degree or rape in the first degree, or any equivalent offense under the laws of this State, any other state or the United States.

b. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in paragraph (2) of this section is a class B felony. Notwithstanding any provision of this title to the contrary, the minimum sentence for a person convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in paragraph (2) of this section shall be 10 years at Level V.

c. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in paragraph (3) of this section is a class B felony.

d. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in paragraph (4) of this section is a class C felony.

e. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in paragraph (5) of this section is a class D felony.

(7) Nothing contained in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(77 Del. Laws, c. 318, § 6; 70 Del. Laws, c. 186, § 1.)

§ 778A. Sexual abuse of a child by a person in a position of trust, authority, or supervision in the second degree; penalties.

(a) A person is guilty of sexual abuse of a child by a person in a position of trust, authority, or supervision in the second degree when the person:

(1) Intentionally has sexual contact with a child who has not yet reached that child's sixteenth birthday or causes the child to have sexual contact with the person or a third person and the person stands in a position of trust, authority, or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority, or supervision over the child.

(2) a. Is a male who intentionally exposes his genitals or buttocks to a child who has not yet reached that child's sixteenth birthday under circumstances in which he knows his conduct is likely to cause annoyance, affront, offense, or alarm when the person is at least 4 years older than the child and he stands in a position of trust, authority, or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority, or supervision over the child.

b. Is a female who intentionally exposes her genitals, breast or buttocks to a child who has not yet reached that child's sixteenth birthday under circumstances in which she knows her conduct is likely to cause annoyance, affront, offense, or alarm when the person is at least 4 years older than the child and she stands in a position of trust, authority, or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority, or supervision over the child.

(3) Suggests, solicits, requests, commands, importunes, or otherwise attempts to induce a child who has not yet reached that child's sixteenth birthday to have sexual contact or sexual intercourse or unlawful sexual penetration with the person or a third person, knowing that the person is thereby likely to cause annoyance, affront, offense, or alarm to the child or another when the person is at least 4 years older than the child and the person stands in a position of trust, authority, or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority, or supervision over the child.

(b) (1) Sexual abuse of a child by a person in a position of trust, authority, or supervision in the second degree as set forth in paragraph (a)(1) of this section is a class D felony.

(2) Sexual abuse of a child by a person in a position of trust, authority, or supervision in the second degree as set forth in paragraph (a)(2) of this section is a class F felony.

(3) Sexual abuse of a child by a person in a position of trust, authority, or supervision in the second degree as set forth in paragraph (a)(3) of this section is a class G felony.

(c) Nothing contained in this section shall preclude a separate charge, conviction, and sentence for any other crime set forth in this title, or in the Delaware Code.

(77 Del. Laws, c. 318, § 6; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 283, § 9.)

§§ 779, 779A. Dangerous crime against a child, definitions, sentences; sex offender unlawful conduct against a child [Transferred].

Transferred to §§ 777 and 777A of this title by 77 Del. Laws, c. 318, § 6, effective June 30, 2010.

§ 780. Female genital mutilation.

(a) A person is guilty of female genital mutilation when:

(1) A person knowingly circumcises, excises or infibulates the whole or any part of the labia majora, labia minora or clitoris of a female minor; or

(2) A parent, guardian or other person legally responsible or charged with the care or custody of a female minor allows the circumcision, excision or infibulation, in whole or in part, of such minor's labia majora, labia minora or clitoris.

(b) Female genital mutilation is a class E felony.

(c) It is not a defense to a violation that the conduct described in subsection (a) of this section above is required as a matter of custom, ritual or standard practice, or that the minor on whom it is performed or the minor's parent or legal guardian consented to the procedure.

(d) A surgical procedure is not a violation of this section if the procedure is:

(1) Necessary to the health of the minor on whom it is performed and is performed by a licensed physician under § 1720 of Title 24 or a physician-in-training under the supervision of a licensed physician; or

(2) Performed on a minor who is in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a licensed physician under § 1720 of Title 24 or a physician-in-training under the supervision of a licensed physician, or a licensed midwife under § 3336 of Title 18.

(70 Del. Laws, c. 438, § 1; 70 Del. Laws, c. 186, § 1.)

§ 780A. Sexual intercourse or penetration with a person in custody; class F felony.

(a) It is unlawful for a law-enforcement officer, an employee working at a detention facility, a contractor or employee of a contractor working at a detention facility, or a volunteer working at a detention facility to engage in sexual intercourse or sexual penetration with a person who is in custody, as defined in § 1258 of this title.

(b) Subsection (a) of this section does not apply to a licensed medical doctor or nurse when the penetration occurs for the purpose of diagnosis or treatment or to a law-enforcement officer who is lawfully performing job duties.

(c) Consent of the person in custody is not a defense to an act in violation of subsection (a) of this section.

(d) A violation of subsection (a) of this section is a class F felony.

(81 Del. Laws, c. 389, § 1.)

§ 780B. Unlawful sexual contact with a person in custody; class G felony.

(a) It is unlawful for a law-enforcement officer, an employee working at a detention facility, a contractor or employee of a contractor working at a detention facility, or a volunteer working at a detention facility to intentionally have sexual contact with a person in custody, as defined in § 1258 of this title.

(b) Subsection (a) of this section does not apply to a licensed medical doctor or nurse when the contact occurs for the purpose of diagnosis or treatment or to a law-enforcement officer who is lawfully performing job duties.

(c) Consent of the person in custody is not a defense to an act in violation of subsection (a) of this section.

(d) A violation of subsection (a) of this section is a class G felony.

(81 Del. Laws, c. 389, § 1.)

E Kidnapping and Related Offenses

§ 781. Unlawful imprisonment in the second degree; class A misdemeanor.

A person is guilty of unlawful imprisonment in the second degree when the person knowingly and unlawfully restrains another person.

Unlawful imprisonment in the second degree is a class A misdemeanor.

(11 Del. C. 1953, § 781; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 782. Unlawful imprisonment in the first degree; class G felony.

A person is guilty of unlawful imprisonment in the first degree when the person knowingly and unlawfully restrains another person under circumstances which expose that person to the risk of serious physical injury.

Unlawful imprisonment in the first degree is a class G felony.

(11 Del. C. 1953, § 782; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 783. Kidnapping in the second degree; class C felony.

A person is guilty of kidnapping in the second degree when the person unlawfully restrains another person with any of the following purposes:

(1) To hold the victim for ransom or reward; or

(2) To use the victim as a shield or hostage; or

(3) To facilitate the commission of any felony or flight thereafter; or

(4) To inflict physical injury upon the victim, or to violate or abuse the victim sexually; or

(5) To terrorize the victim or a third person; or

(6) To take or entice any child less than 18 years of age from the custody of the child's parent, guardian or lawful custodian;

and the actor voluntarily releases the victim alive, unharmed and in a safe place prior to trial.

Kidnapping in the second degree is a class C felony.

(11 Del. C. 1953, § 783; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 547, § 5; 66 Del. Laws, c. 398, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 148, § 35.)

§ 783A. Kidnapping in the first degree; class B felony.

A person is guilty of kidnapping in the first degree when the person unlawfully restrains another person with any of the following purposes:

(1) To hold the victim for ransom or reward; or

(2) To use the victim as a shield or hostage; or

(3) To facilitate the commission of any felony or flight thereafter; or

(4) To inflict physical injury upon the victim, or to violate or abuse the victim sexually; or

(5) To terrorize the victim or a third person; or

(6) To take or entice any child less than 18 years of age from the custody of the child's parent, guardian or lawful custodian;

and the actor does not voluntarily release the victim alive, unharmed and in a safe place prior to trial.

Kidnapping in the first degree is a class B felony.

(59 Del. Laws, c. 547, § 5; 66 Del. Laws, c. 398, § 2; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 148, § 36.)

§ 784. Defense to unlawful imprisonment and kidnapping.

In any prosecution for unlawful imprisonment or kidnapping it is an affirmative defense that the accused was a relative of the victim, and the accused's sole purpose was to assume custody of the victim. In that case, the liability of the accused, if any, is governed by § 785 of this title, and the accused may be convicted under § 785 when indicted for unlawful imprisonment or kidnapping.

(11 Del. C. 1953, § 784; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 785. Interference with custody; class G felony; class A misdemeanor.

A person is guilty of interference with custody when:

(1) Being a relative of a child less than 16 years old, intending to hold the child permanently or for a prolonged period and knowing that the person has no legal right to do so, the person takes or entices the child from the child's lawful custodian; or

(2) Knowing that the person has no legal right to do so, the person takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or an institution.

Interference with custody is a class A misdemeanor except that if the person who interferes with the custody of a child thereafter causes the removal of said child from Delaware, it is a class G felony.

(11 Del. C. 1953, § 785; 58 Del. Laws, c. 497, § 1; 63 Del. Laws, c. 268, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 786. Kidnapping and related offenses; definitions.

(a) "Harm" to a kidnap victim, in addition to its ordinary meaning, includes rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, even if such rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact is not accompanied by physical violence.

(b) "Relative" means a parent, ancestor, brother, sister, uncle or aunt.

(c) "Restrain" means to restrict another person's movements intentionally in such a manner as to interfere substantially with the person's liberty by moving the person from 1 place to another, or by confining the person either in the place where the restriction commences or in a place to which the person has been moved, without consent. A person is moved or confined "without consent" when the movement or confinement is accomplished by physical force, intimidation or deception, or by any means, including acquiescence of the victim, if the victim is a child less than 16 years old or an incompetent person and the parent, guardian or other person or institution having lawful control or custody of the person has not acquiesced in the movement or confinement.

(11 Del. C. 1953, § 786; 58 Del. Laws, c. 497, § 1; 66 Del. Laws, c. 269, § 2; 70 Del. Laws, c. 186, § 1.)

§ 787. Trafficking an individual, forced labor and sexual servitude; class D felony; class C felony; class B felony; class A felony.

(a) For the purposes of this section:

(1) “Adult” has the meaning ascribed in § 302 of Title 1;

(2) “Adult entertainment establishment” means as defined in § 1602 of Title 24.

(3) “Along a major highway” means abutting Interstate 95, Interstate 295, Interstate 495, Route 1, Route 9, Route 13, Route 40, Route 113, Route 141, or Route 202.

(4) “Bar” means “cabaret,” “taproom,” or “tavern,” as defined in § 101 of Title 4.

(5) “Casino” means “video lottery agent,” as defined in § 4803 of Title 29.

(6) “Coercion” means:

a. The use or threat of force against, abduction of, serious harm to, or physical restraint of an individual;

b. The use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of an individual;

c. The abuse or threatened abuse of law or legal process;

d. Controlling or threatening to control an individual’s access to a controlled substance enumerated in § 4714, § 4716, § 4718, § 4720 or § 4722 of Title 16;

e. The destruction of, taking of, or the threat to destroy or take an individual’s identification document or other property;

f. Use of debt bondage;

g. The use of an individual’s physical, cognitive disability or mental impairment, where such impairment has substantial adverse effects on the individual’s cognitive or volitional functions; or

h. The commission of civil or criminal fraud;

(7) “Commercial sexual activity” means any sexual activity for which anything of value is given, promised to, or received by any person;

(8) “Debt bondage” means inducing an individual to provide:

a. Commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

b. Labor or services in payment toward or satisfaction of a real or purported debt if:

1. The reasonable value of the labor or services is not applied toward the liquidation of the debt; or

2. The length of the labor or services is not limited and the nature of the labor or services is not defined;

(9) “Department” as used in subsection (*l*) of this section, means the Department of Labor, unless a different Department is specified by name.

(10) “Establishment” means an individual, partnership, limited liability company, corporation, firm, trust, association, society, or other entity engaged in a business, industry, profession, trade, or other enterprise, including a nonprofit entity, with a physical premises open to employees or the public in the State of Delaware.

(11) “Forced labor or services” means labor, as defined in this section, or services, as defined in this section, that are performed or provided by another person and are obtained or maintained through coercion as enumerated in paragraph (b)(1) of this section;

(12) “Hotel” means “hotel,” “motel,” or “tourist home,” as defined in § 2301 of Title 30.

(13) “Human trafficking” means the commission of any of the offenses created in subsection (b) of this section;

(14) “Identification document” means a passport, driver’s license, immigration document, travel document, or other government-issued identification document, including a document issued by a foreign government, whether actual or purported;

(15) “Labor or services” means activity having economic or financial value, including commercial sexual activity. Nothing in this definition should be construed to legitimize or legalize prostitution;

(16) “Maintain” means in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type of service;

(17) “Massage establishment” means as defined in § 5302 of Title 24.

(18) “Minor” has the meaning ascribed in § 302 of Title 1;

(19) “Obtain” means in relation to labor or services, to secure performance thereof;

(20) “Public awareness sign” as used in subsection (*l*) of this section, means the sign created under paragraph (k)(3)e. of this section or a sign created by an establishment that meets all of the following requirements:

a. Is at least 8 inches wide by 11 inches long.

b. Contains at least all of the information required to be in a sign under paragraph (k)(3)e. of this section.

c. Meets any other requirements established by regulation.

(21) "Residential child care facility" means as defined in the Office of Child Care Licensing regulations promulgated under Chapter 30A of Title 14.

(22) "Restaurant with a liquor license" means a "restaurant," as defined in § 101 of Title 4, with a "license," as defined in § 101 of Title 4.

(23) "Serious harm" means harm, whether physical or nonphysical, including psychological, economic, or reputational, to an individual which would compel a reasonable individual of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm;

(24) "Sexual activity" means any of the sex-related acts enumerated in § 761 of this title, or in § 1342, § 1351, § 1352(1), § 1353(1), § 1354 or § 1355 of this title or sexually-explicit performances;

(25) "Sexually explicit performance" means a live public act or show, production of pornography, or the digital transfer of any of such, intended to arouse or satisfy the sexual desires or appeal to the prurient interest of viewers;

(26) "Shopping mall" means an enclosed indoor retail complex containing a variety of shops and restaurants, whether contained in a series of connected or adjacent buildings or in a single large building, and usually anchored by department stores.

(27) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by state; and

(28) "Victim" means a person who is subjected to the practices set forth in subsection (b) of this section or to conduct that would have constituted a violation of subsection (b) of this section had 79 Del. Laws, c. 276 been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted or convicted.

(29) "Wellness center" means an urgent care clinic, walk-in health clinic, "school-based health center," as defined in § 3571G of Title 18, substance abuse treatment clinic, psychiatric treatment facility, family planning clinic, or community health clinic.

(b) *Prohibited activities.* — (1) *Trafficking an individual.* — A person is guilty of trafficking an individual if the person knowingly recruits, transports, harbors, receives, provides, obtains, isolates, maintains, advertises, solicits, or entices an individual in furtherance of forced labor in violation of paragraph (b)(2) of this section or sexual servitude in violation of paragraph (b)(3) of this section. Trafficking an individual is a class C felony unless the individual is a minor, in which case it is a class B felony.

(2) *Forced labor.* — A person is guilty of forced labor if the person knowingly uses coercion to compel an individual to provide labor or services, except where such conduct is permissible under federal law or law of this State other than 79 Del. Laws, c. 276. Forced labor is a class C felony unless the individual is a minor, in which case it is a class B felony.

(3) *Sexual servitude.* — a. A person commits the offense of sexual servitude if the person knowingly:

1. Maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity; or

2. Uses coercion or deception to compel an adult to engage in commercial sexual activity.

b. Sexual servitude is a class C felony unless the individual is a minor, in which case it is a class B felony.

c. It is not a defense in a prosecution under paragraph (b)(3)a.1. of this section that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.

(4) *Patronizing a victim of sexual servitude.* — A person is guilty of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that the person may engage in commercial sexual activity with another person and the person knows that the other person is a victim of sexual servitude. Patronizing a victim of sexual servitude is a class D felony unless the victim of sexual servitude is a minor, in which case it is a class C felony. It is not a defense in a prosecution when the victim of sexual servitude is a minor that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.

(5) *Trafficking of persons for use of body parts.* — A person is guilty of trafficking of persons for use of body parts when a person knowingly:

a. Recruits, entices, harbors, provides or obtains by any means, another person, intending or knowing that the person will have body parts removed for sale; or

b. Benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of this section. Such person shall be guilty of a class A felony. Nothing contained herein shall be construed as prohibiting the donation of an organ by an individual at a licensed medical facility after giving an informed voluntary consent.

(6) *Aggravating circumstance.* — An aggravating circumstance during the commission of an offense under paragraphs (b)(1)-(3) of this section occurs when:

a. The person recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless; or

b. The person used or threatened use of force against, abduction of, serious harm to, or physical restraint of the victim.

If an aggravating circumstance occurred, the classification of the offense under paragraphs (b)(1)-(3) of this section is elevated by 1 felony grade higher than the underlying offense.

(c) *Organizational liability.* — (1) An organization may be prosecuted for an offense under this section pursuant to § 281 of this title (Criminal liability of organizations).

(2) The court may consider the severity of an organization's offense under this section and order penalties in addition to those otherwise provided for the offense, including:

a. A fine of not more than $25,000 per offense;

b. Disgorgement of profit from illegal activity in violation of this section; and

c. Debarment from state and local government contracts.

(d) *Restitution is mandatory under this section.* — (1) In addition to any other amount of loss identified, the court shall order restitution, including the greater of:

a. The gross income or value to the defendant of the victim's labor or services; or

b. The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) (29 U.S.C. § 201 et seq.) or of Title 19, whichever is greater.

(2) The court shall order restitution under this subsection (d) even if the victim is unavailable to accept payment of restitution.

(3) If the victim is unavailable for 5 years from the date of the restitution order, the restitution ordered under this subsection (d) must be paid to the Victim Compensation Fund established under § 9016 of this title.

(e) *Forfeiture.* — (1) On motion, the court shall order a person convicted of an offense under paragraphs (b)(1) through (b)(5) of this section to forfeit any interest in real or personal property that was used or intended to be used to commit or facilitate the commission of the offense or that constitutes or derives from proceeds that the person obtained, directly or indirectly, as a result of the offense.

(2) In any proceeding against real or personal property under this section, the owner may assert a defense, and has the burden of establishing, by a preponderance of the evidence, that the forfeiture is manifestly disproportional to the seriousness of the offense.

(3) Proceeds from the public sale or auction of property forfeited under this subsection must be distributed in the manner otherwise provided for the distribution of proceeds of judicial sales.

(f) *Admissibility of certain evidence.* — In a prosecution or civil action for damages under this section, evidence of a specific instance of the alleged victim's past sexual behavior, or reputation or opinion evidence of past sexual behavior of the alleged victim, is not admissible unless the evidence is:

(1) Admitted in accordance with §§ 3508 and 3509 of this title; or

(2) Offered by the prosecution in a criminal case to prove a pattern of trafficking by the defendant.

(g) *Special provisions regarding a minor.* — (1) A minor who has engaged in commercial sexual activity is presumed to be a neglected or abused child under § 901 et seq. of Title 10. Whenever a police officer has probable cause to believe that a minor has engaged in commercial sexual activity, the police officer shall make an immediate report to the Department of Services for Children, Youth and Their Families pursuant to § 901 et seq. of Title 16.

(2) A party to a juvenile delinquency proceeding in which a minor is charged with loitering, or an attorney guardian ad litem or court-appointed special advocate appointed in a proceeding under § 901 et seq. of Title 10, may file a motion on behalf of a minor in a juvenile delinquency proceeding seeking to stay the juvenile delinquency proceedings. Such motion may be opposed by the Attorney General. The Family Court may consider such a motion and, in its discretion, may stay the juvenile delinquency proceeding indefinitely. Upon such motion, the Department of Services for Children, Youth and Their Families and/or the Family Court may identify and order available specialized services for the minor that, in the opinion of the Department of Services for Children, Youth and Their Families or Family Court, are best suited to the needs of the juvenile. So long as the minor substantially complies with the requirement of services identified by the Department of Services for Children, Youth and Their Families and/or ordered by the Family Court, the Attorney General shall, upon motion, nolle prosequi the stayed charges no earlier than 1 year after the stay was imposed. Upon motion of the Attorney General that the minor has not substantially complied with the requirement of services identified by the Department of Services for Children, Youth and Their Families and/or ordered by the Family Court, the Family Court shall lift the stay for further proceedings in accordance with the regular course of such proceedings.

(h) *Defense to charge of prostitution or loitering.* — An individual charged with prostitution or loitering committed as a direct result of being a victim of human trafficking may assert as an affirmative defense that the individual is a victim of human trafficking.

(i) *Civil action.* — (1) A victim may bring a civil action against a person that commits an offense under subsection (b) of this section for compensatory damages, punitive damages, injunctive relief, and any other appropriate relief.

(2) In an action under this subsection, the court shall award a prevailing victim reasonable attorneys' fees and costs, including reasonable fees for expert witnesses.

(3) An action under this subsection must be commenced not later than 5 years after the later of the date on which the victim:

a. Was freed from the human trafficking situation; or

b. Attained 18 years of age.

(4) Damages awarded to the victim under this subsection for an item must be offset by any restitution paid to the victim pursuant to subsection (d) of this section for the same item.

(5) This subsection does not preclude any other remedy available to the victim under federal law or law of this State other than this section.

(j) *Application for pardon and petition to expunge; motion to vacate adjudication of delinquency or conviction and expungement record.* — (1) Notwithstanding any provision of Chapter 43 of this title or any other law to the contrary, a person arrested or convicted of any crime, except those deemed to be violent felonies pursuant to § 4201 of this title committed as a direct result of being a victim of human trafficking may file an application for a pardon pursuant to article VII of the Delaware Constitution and § 4361 et seq. of this title and may file a petition requesting expungement of such criminal record pursuant to § 4371 et seq. of this title.

(2) A person convicted or adjudicated delinquent of any crime, except those deemed to be violent felonies pursuant to § 4201 of this title, committed as a direct result of being a victim of human trafficking may file a motion in the court in which the adjudication of delinquency or conviction was obtained to vacate the adjudication or judgment of conviction. A motion filed under this paragraph must:

a. Be in writing;

b. Be sent to the Delaware Department of Justice;

c. [Repealed.]

d. Describe the evidence and provide copies of any official documents showing that the person is entitled to relief under this paragraph.

If the motion satisfies the foregoing requirements, the court shall hold a hearing on a motion, provided that the court may dismiss a motion without a hearing if the court finds that the motion fails to assert grounds on which relief may be granted. Official documentation of the person's status as a victim of this section, "trafficking in persons", or "a severe form of trafficking" from a federal, state, or local government agency shall create a presumption that the person's participation in any crime, except those deemed to be violent felonies pursuant to § 4201 of this title, committed was a direct result of having been a victim of human trafficking but shall not be required for the court to grant a petition under this paragraph. If the petitioner can show to the satisfaction of the court that such petitioner is entitled to relief in a proceeding under this paragraph, the court shall grant the motion and, pursuant to this paragraph, enter an order vacating the adjudication of delinquency or judgment of conviction and dismissing the accusatory pleading, and may take such additional action as is appropriate in the circumstances or as justice requires.

(3) Notwithstanding any provisions of Chapter 43 of this title, Chapter 9 of Title 10, or any other law to the contrary, any person filing a motion under paragraph (j)(2) of this section in Superior Court or Family Court may also seek in that motion expungement of the criminal or juvenile record related to such conviction. If the court grants the motion to vacate the adjudication of delinquency or conviction under paragraph (j)(2) of this section and the movant also requested expungement, the court's order shall require expungement of the police and court records relating to the charge and conviction or adjudication of delinquency. This order must contain a statement that the expungement is ordered under this paragraph (j)(3) and, notwithstanding any limitations to the contrary, that the provisions of §§ 4372(e), 4376, and 4377 of this title and § 1019 of Title 10 apply to the order.

(4) Notwithstanding any provision of Chapter 43 of this title or any other law to the contrary, upon granting the motion, the Court of Common Pleas shall provide Superior Court with the certified order granting the motion to vacate. Upon finding that the Court of Common Pleas entered an order under paragraph (j)(2) of this section, the Superior Court shall enter an order requiring expungement of the police and court records relating to the charge and conviction. This order must contain a statement that the expungement is ordered under this paragraph (j)(4) and, notwithstanding any limitations to the contrary, that the provisions of §§ 4372(e), 4376, and 4377 of this title apply to the order.

(k) (1) The Human Trafficking Interagency Coordinating Council is renamed as the Delaware Anti-Trafficking Action Council (Council). The Council shall administer and implement this subsection, and perform such other responsibilities as may be entrusted to it by law.

(2) The Council consists of the following 25 members:

a. Three representatives of the Judicial Branch, as appointed by the Chief Justice.

b. A representative of the Department of Justice to be appointed by the Attorney General.

c. A representative of the Office of Defense Services to be appointed by the Chief Defender.

d. A representative of the law-enforcement community to be appointed by the Speaker of the Delaware House of Representatives.

e. A representative of the health-care community to be appointed by the President Pro Tempore of the Delaware State Senate.

f. A representative of the Department of Health and Social Services to be appointed by the Secretary of the Department of Health and Social Services.

g. A representative of the Department of Labor to be appointed by the Secretary of Labor.

h. A representative of the Department of Services for the Children, Youth and Their Families to be appointed by the Secretary of the Department of Services for the Children, Youth and Their Families.

i. Four members who are advocates or persons who work with victims of human trafficking to be appointed by the Governor for a 3-year term and shall be eligible for reappointment. Members shall include representation from all 3 counties of the State.

j. [Repealed.]

k. A representative of the Delaware Department of Education to be appointed by the Secretary of the Department of Education.

l. A representative of the Division of Professional Regulation to be appointed by the Director of the Division of Professional Regulation.

m. Two members of the House of Representatives to be appointed by the Speaker of the House, 1 of which must be a member of the minority caucus.

n. Two members of the Senate to be appointed by the President Pro Tempore of the Senate, 1 of which must be a member of the minority caucus.

o. A representative of the Department of Transportation to be appointed by the Secretary of the Department of Transportation.

p. A representative from the Criminal Justice Council to be appointed by the Executive Director of the Criminal Justice Council.

q. A person who has been a victim of human trafficking to be appointed by the Governor for a 3-year term and shall be eligible for reappointment.

r. A resident of any county who has prior experience in working with victims of human trafficking in a legal or advocacy capacity to be appointed by the Chair of the Council with approval of a quorum of all members of the Council.

s. A retired judicial officer with knowledge of human trafficking to be appointed by the Speaker of the Delaware House of Representatives.

(3) The Council shall do all of the following:

a. Develop a comprehensive plan to provide victims of human trafficking with services.

b. Effectuate coordination between agencies, departments, and the courts with victims of human trafficking.

c. Collect and evaluate data on human trafficking in this State.

d. Promote public awareness about human trafficking, victim remedies and services, and trafficking prevention.

e. Create a public-awareness sign that contains centralized human trafficking hotline information.

f. Coordinate training on human trafficking prevention and victim services for individuals who may have recurring contact with victims or perpetrators, including government employees, health-care workers, business owners, potential victims of human trafficking, and private sector employees.

g. Pursue funding opportunities, including federal grants, through the Criminal Justice Council.

h. Conduct other appropriate activities.

i. Receive quarterly updates and annual reports from the Child Protection Accountability Commission on the Commission's efforts regarding suspected human trafficking of a child.

(4) *Meetings; quorum; officers; committees; procedure. —*

a. The Council shall meet at least 4 times per year. Ten members constitute a quorum. Except as set forth under paragraph (k)(5) of this section, the Council may take action upon the affirmative vote of a majority of Council members present at a meeting.

b. A Chair and Vice Chair must be elected annually from among the members of the Council.

c. The Chair shall convene and preside over meetings of the Council and prepare an agenda for meetings.

d. The Vice Chair shall act as Chair in the absence of the Chair.

e. The Council shall establish committees composed of Council members and other knowledgeable individuals, as it deems advisable, to assist in planning, policy, goal and priority recommendations, and developing implementation plans to carry out the statutory duties of the Council.

f. 1. The Council shall submit an annual written report of its activities and recommendations to the Governor, General Assembly, the Chief Justice of the Supreme Court, and the Executive Director of the Criminal Justice Council on or before September 15.

2. For purposes of submitting the report to the General Assembly, the Council shall submit the report to the Secretary of the Senate, Chief Clerk of the House, the Chair of the Joint Finance Committee, and the Vice Chair of the Joint Finance Committee, who shall distribute the report to the General Assembly and the Joint Finance Committee.

3. The Council shall include in the annual report an explanation of the spending of any state, federal, or other funds received. For purposes of this paragraph (k)(4)f.3., "state funds" means any state money allocated to the Council other than funding for staff positions.

4. [Repealed.]

g. The Council may hold a virtual meeting in compliance with § 10006A of Title 29, except that the Council is permitted to have a staff member present at an anchor location in lieu of or in addition to having a member of the council present.

(5) a. The Council shall employ an Executive Director to be appointed by the Chair with approval of a majority of the full membership of the Council. The Executive Director will serve at the pleasure of a majority of the full membership of the Council. A vacant position is not counted for purposes of calculating full membership of the Council under this paragraph (k)(5).

b. The Executive Director of the Council shall support the Council in carrying out its duties under this subsection.

c. Within the limits of any appropriation made by the General Assembly or available funding from another funding source, the Executive Director of the Council shall employ staff and contract for services as necessary to carry out the functions of the Council.

d. The Executive Director of the Council shall report to the Council. For matters involving anything that may affect the Criminal Justice Council's budget, the Executive Director of the Council shall also report to the Executive Director of the Criminal Justice Council. The Executive Director of the Criminal Justice Council has final approval over matters involving anything that may affect the Criminal Justice Council's budget.

(*l*) *Display of public awareness sign; civil penalty for failure to display. —*

(1) a. *Display of a public awareness sign in State of Delaware facilities. —*

The Department of Transportation shall display a public awareness sign in every State-of-Delaware-operated transportation station, rest area, and welcome center which is open to the public.

b. The Department of Health and Social Services shall display a public awareness sign in every State of Delaware service center and wellness center that is operated by the Department of Health and Social Services.

c. The Department of Services for Children, Youth and Their Families shall display a public awareness sign in every residential child care facility that is operated by the Department of Services for Children, Youth and Their Families.

(2) a. A public awareness sign must be displayed in an establishment within a category designated by the Delaware Anti-Trafficking Action Council (Council) and within all of the following categories:

1. Adult entertainment establishment.

2. Entity found to be maintaining a criminal nuisance involving prostitution under § 7104 of Title 10.

3. Job recruitment center.

4. Hospital.

5. [Repealed.]

6. Wellness center other than those covered in paragraph (*l*)(1)b. of this section.

7. Shelter or residential service designed to serve victims of domestic violence or sexual assault, or individuals experiencing homelessness or food insecurity.

8. Residential child care facility other than those covered in paragraph (*l*)(1)c. of this section.

9. Independent and transitional living service provider for youth aging out of foster care.

10. Hotel.

11. Convenience store along a major highway.

12. Gas station along a major highway.

13. Casino.

14. Restaurant with a liquor license.

15. Poultry processing plant.

16. Bus or train station other than those covered in paragraph (*l*)(1)a. of this section.

17. Bar.

18. Massage establishment.

19. Shopping mall.

b. 1. The Council may promulgate regulations to designate a category of establishments that must display a public awareness sign in addition to those categories identified in paragraph (*l*)(2)a. of this section.

2. The Council may promulgate regulations to designate a specific location on the premises for a category of establishments where a public awareness sign must be displayed. If the Council designates a specific location, the Council shall include the specific location requirement within the list under paragraph (*l*)(2)d. of this section.

c. The Council may promulgate regulations to change the requirements as to what constitutes a public awareness sign so long as the regulations are consistent with paragraph (k)(3)e. of this section and subsection (a) of this section. If the Council promulgates regulations under this paragraph (*l*)(2)c., the Executive Director of the Council, or their designee, shall inform the Director of the Department's Division of Industrial Affairs, Office of Labor Law Enforcement of the changes.

d. The Council shall publish a list of categories of establishments that must display a public awareness sign on an annual basis for notification and outreach purposes. The publication must occur in all of the following:

1. A newspaper with statewide circulation.

2. The Register of Regulations.

3. Department website.

e. 1. Except as otherwise provided in paragraphs (*l*)(2)e.2. through (*l*)(2)e.8. of this section, an establishment shall display a public awareness sign in a place that is clearly conspicuous and visible to employees and the public. To comply with the requirement that a public awareness sign be clearly conspicuous and visible to employees and the public, an establishment may need to display a public awareness sign at more than 1 location on its premises.

2. An establishment with a location on its premises designated by the Council through promulgation of regulations under paragraph (*l*)(2)b.2. of this section shall comply with the specific location requirement. If the establishment does not have that specific location on its premises, then the establishment shall display the public awareness sign as described in paragraph (*l*)(2)e.1. of this section unless the regulations state otherwise.

3. An establishment that is a hotel may not be required to display a public awareness sign in guest bedrooms. However, a public awareness sign must be displayed in a manner that is clearly conspicuous and visible in all public restrooms, all staff breakrooms, and at least 1 of the following publicly accessible locations that is present on the premises:

A. All lobbies.

B. All elevators.

C. All stairwells.

D. All vending machine or ice machine areas.

4. An establishment that is a restaurant with a liquor license must display a public awareness sign in a manner that is clearly conspicuous and visible in all staff breakrooms, or if no staff breakrooms, where clearly conspicuous and visible to employees.

5. An establishment that is a poultry processing plant must display a public awareness sign in a manner that is clearly conspicuous and visible in all staff breakrooms, or if no staff breakrooms, where clearly conspicuous and visible to employees.

6. An establishment that is a casino must display a public awareness sign in a manner that is clearly conspicuous and visible in all public restrooms, all staff breakrooms, and all lobbies.

7. An establishment that is a massage establishment must display a public awareness sign in a manner that is clearly conspicuous and visible in all staff breakrooms, or if no staff breakrooms, where clearly conspicuous and visible to employees.

8. An establishment that is a shopping mall must display a public awareness sign in a manner that is clearly conspicuous and visible in all food courts and all public restrooms provided by the management of the shopping mall.

f. The Executive Director of the Council, or their designee, shall oversee the distribution of public awareness signs to State of Delaware facilities and establishments. The public awareness signs must be provided free of cost to all State of Delaware facilities and establishments that request them.

(3) The Department may enforce the public awareness sign requirements in paragraphs (*l*)(2)a. and (*l*)(2)e. of this section, as well as determine whether a sign not distributed by the Council satisfies the definition of "public awareness sign" under subsection (a) of this section, using the rules and procedures of the Administrative Procedures Act, Chapter 101 of Title 29.

(4) a. The Department may conduct an inspection of an establishment following receipt of a complaint alleging that the establishment is noncompliant with public awareness sign requirements. If the Department conducts an inspection and confirms that the establishment has failed to comply with 1 or more public awareness sign requirements, the Department shall provide the establishment with public awareness signs, if needed, and written notice of all the following:

1. What noncompliance has occurred, including a citation to the specific law or regulation with which the establishment has not complied.

2. The date the Department inspected and determined there was noncompliance.

3. The possible civil penalties for noncompliance.

4. A prominently displayed statement that this notice serves as a warning.

b. If, within 3 years from the postmark date or date of hand delivery of the warning notice under paragraph (*l*)(4)a. of this section, the Department determines the establishment is exhibiting the same, or a substantially similar, noncompliance that was identified in the warning notice under paragraph (*l*)(4)a. of this section, then the Department shall assess a civil penalty against the noncompliant establishment. The Department shall provide the noncompliant establishment with public awareness signs, if needed, and written notice of all the following:

1. What noncompliance has occurred, including a citation to the specific law or regulation with which the establishment has not complied.

2. The dates the Department inspected and determined there was noncompliance.

3. The postmark or hand delivery date of the warning notice under paragraph (*l*)(4)a. of this section.

4. Whether this is a first or subsequent violation.

5. The civil penalty assessed.

6. That the owner of the establishment may file an appeal, including instructions on how to request a hearing.

c. 1. A request for a hearing must be made in writing, addressed to the Secretary of the Department (Secretary), and made within 10 business days from the postmark date or the date of hand delivery of the notice under paragraph (*l*)(4)b. of this section.

2. If a hearing is not requested under paragraph (*l*)(4)c.1. of this section, the determination made by the Department under paragraph (*l*)(4)b. of this section is final.

3. The Department shall review a request for a hearing under paragraph (*l*)(4)c.1. of this section to determine if the dispute can be resolved at an informal settlement conference. If the Department determines a dispute cannot be resolved at an informal settlement

conference or if the Department holds an informal settlement conference and a settlement is not reached, the Department shall forward the hearing request to the Secretary to schedule a hearing.

4. The Secretary shall issue a final case decision at the conclusion of a hearing held under paragraph (*l*)(4)c. of this section as required under Chapter 101 of Title 29.

5. An establishment owner may seek judicial review of the Secretary's final case decision by commencing an action in Superior Court within 30 days of the date of the final decision under paragraph (*l*)(4)c.4. of this section.

d. The notices required under paragraphs (*l*)(4)a. and (*l*)(4)b. of this section may be hand delivered or mailed to the noncomplying establishment.

e. The notice under paragraph (*l*)(4)a. of this section is not a case decision for purposes of the Administrative Procedures Act, Chapter 101 of Title 29.

f. All civil penalties collected under this subsection must be paid to the State of Delaware General Fund.

g. If the Council becomes aware of potential noncompliance with the public awareness sign requirements, the Executive Director of the Council, or their designee, shall report the potential noncompliance to the Director of the Department's Division of Industrial Affairs, Office of Labor Law Enforcement and the Department may conduct an inspection.

h. The Department has the same authority under this subsection as in § 107 of Title 19.

i. Nothing in this subsection may be interpreted to prevent the Department from initiating its own inspections into an establishment's compliance with the public awareness sign requirements independent of a report from the Council or a complaint.

(5) The civil penalties for noncompliance with the public awareness sign requirements in paragraphs (*l*)(2)a. and (*l*)(2)e. of this section or for failure to use a sign that satisfies the definition of "public awareness sign" under subsection (a) of this section are as follows:

a. If an establishment does not correct the same, or a substantially similar, noncompliance identified in the warning notice under paragraph (*l*)(4)a. of this section, the establishment owner is subject to a civil penalty of not more than $500.

b. On a second or subsequent failure by an establishment to correct the same, or a substantially similar, noncompliance identified in the warning notice under paragraph (*l*)(4)a. of this section, the establishment owner is subject to a civil penalty of not more than $2,500.

(6) a. The Department shall submit to the General Assembly and the Council an annual written report that contains all of the following information:

1. Number of inspections conducted by the Department to check compliance with the public awareness sign requirements in paragraphs (*l*)(2)a. and (*l*)(2)e. of this section, as well as determine whether a sign not distributed by the Council satisfies the definition of "public awareness sign" under subsection (a) of this section.

2. Number of warning notices under paragraph (*l*)(4)a. of this section issued by the Department, disaggregated by category of establishments.

3. Number of noncompliance notices under paragraph (*l*)(4)b. of this section issued by the Department, disaggregated by first, second, and subsequent violations and further disaggregated by category of establishments.

4. Total amount of civil penalties collected by the Department from enforcement of this subsection.

b. For purposes of submitting the report to the General Assembly, the Department shall submit the report to the Secretary of the Senate, Chief Clerk of the House, the Director and the Librarian of the Division of Legislative Services, and the Controller General of the Office of the Controller General.

c. The Department shall submit its report by December 1 of each year, beginning December 1, 2023. If the deadline falls on a weekend or Delaware state holiday, then the report is due by the State of Delaware's next following business day.

(m) Eligibility for services. (1) A victim of human trafficking is eligible for a benefit or service, which is available through the State and identified in the plan developed under paragraph (k)(3)a. of this section, including compensation under § 9009 of this title, regardless of immigration status.

(2) A minor engaged in commercial sexual activity is eligible for a benefit or service, which is available through the State and identified in the plan developed under paragraph (k)(3)a. of this section, regardless of immigration status.

(3) As soon as practicable after a first encounter with an individual who reasonably appears to a police officer to be a victim or a minor engaged in commercial sexual activity, the police officer shall notify the appropriate state or local agency, as identified in the plan developed under paragraph (k)(3)a. of this section, that the individual may be eligible for a benefit or service under this section.

(n) *Law-enforcement agency protocol.* — (1) On request from an individual who a police officer or prosecutor reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. § 1101(a)(15)(T), as amended from time to time, or 8 U.S.C. § 1101(a)(15)(U), as amended from time to time, or for continued presence, under 22 U.S.C. § 7105(c)(3), as amended from time to time, the police officer or prosecutor, as soon as practicable after receiving the request, shall request that a certifying official in that police officer's or prosecutor's law-enforcement agency complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website, and ask a federal law-enforcement officer to request continued presence.

(2) If the law-enforcement agency having responsibility under paragraph (n)(1) of this section determines that an individual does not meet the requirements for such agency to comply with paragraph (n)(1) of this section, that agency shall inform the individual of the reason and that the individual may make another request under paragraph (n)(1) of this section and submit additional evidence satisfying the requirements.

(o) Nothing contained in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(76 Del. Laws, c. 125, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 276, § 1; 80 Del. Laws, c. 26, § 3; 81 Del. Laws, c. 110, § 1; 81 Del. Laws, c. 174, § 1; 81 Del. Laws, c. 211, § 1; 82 Del. Laws, c. 60, § 1; 82 Del. Laws, c. 83, § 8; 83 Del. Laws, c. 44, § 1; 83 Del. Laws, c. 45, § 1; 83 Del. Laws, c. 283, § 8; 83 Del. Laws, c. 389, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 211, § 1; 84 Del. Laws, c. 255, § 6; 85 Del. Laws, c. 13, § 1; 85 Del. Laws, c. 15, § 1; 85 Del. Laws, c. 128, § 1.)

§§ 788-790. [Reserved.]

F Coercion

§ 791. Acts constituting coercion; class A misdemeanor.

A person is guilty of coercion when the person compels or induces a person to engage in conduct which the victim has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which the victim has a legal right to engage, by means of instilling in the victim a fear that, if the demand is not complied with, the defendant or another will:

(1) Cause physical injury to a person; or

(2) Cause damage to property; or

(3) Engage in other conduct constituting a crime; or

(4) Accuse some person of a crime or cause criminal charges to be instituted against a person; or

(5) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

(6) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(7) Use or abuse the defendant's position as a public servant by performing some act within or related to the defendant's official duties, or by failing or refusing to perform an official duty in such manner as to affect some person adversely; or

(8) Perform any other act which is calculated to harm another person materially with respect to that person's health, safety, business, calling, career, financial condition, reputation or personal relationships.

Coercion is a class A misdemeanor.

(11 Del. C. 1953, § 791; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 792. Coercion; truth and proper motive as a defense.

In any prosecution for coercion committed by instilling in the victim a fear that the victim or another person would be charged with a crime, it is a defense that the defendant believed the threatened charge to be true and that the defendant's sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of the threatened charge.

(11 Del. C. 1953, § 792; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

Subchapter III

Offenses Involving Property

A Arson and Related Offenses

§ 801. Arson in the third degree; affirmative defense; class G felony.

(a) A person is guilty of arson in the third degree when the person recklessly damages a building by intentionally starting a fire or causing an explosion.

(b) In any prosecution under this section it is an affirmative defense that no person other than the accused had a possessory or proprietary interest in the building.

Arson in the third degree is a class G felony.

(11 Del. C. 1953, § 801; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 802. Arson in the second degree; affirmative defense; class D felony.

(a) A person is guilty of arson in the second degree when the person intentionally damages a building by starting a fire or causing an explosion.

(b) In any prosecution under this section it is an affirmative defense that:

(1) No person other than the accused had a possessory or proprietary interest in the building, or if other persons had such interests, all of them consented to the accused's conduct; and

(2) The accused's sole intent was to destroy or damage the building for a lawful purpose; and

(3) The accused had no reasonable ground to believe that the conduct might endanger the life or safety of another person or damage another building.

Arson in the second degree is a class D felony.

(11 Del. C. 1953, § 802; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 803. Arson in the first degree; class C felony.

A person is guilty of arson in the first degree when the person intentionally damages a building by starting a fire or causing an explosion and when:

(1) The person knows that another person not an accomplice is present in the building at the time; or

(2) The person knows of circumstances which render the presence of another person not an accomplice therein a reasonable possibility.

Arson in the first degree is a class C felony.

(11 Del. C. 1953, § 803; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 804. Reckless burning or exploding; class A misdemeanor.

(a) A person is guilty of reckless burning or exploding when the person intentionally starts a fire or causes an explosion, whether on the person's own property or on another's, and thereby recklessly places a building or other real or personal property of another in danger of destruction or damage or places another person in danger of physical injury.

(b) Reckless burning or exploding shall be punished as follows:

(1) Where the total amount of pecuniary loss caused by the burning or exploding, when totaled for all victims, is less than $1,500, such burning or exploding shall be a class A misdemeanor.

(2) Where the total amount of pecuniary loss caused by the burning or exploding, when totaled for all victims, is $1,500 or more, such burning or exploding shall be a class G felony.

(11 Del. C. 1953, § 804; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 344, §§ 1, 2.)

§ 805. Cross or religious symbol burning; class A misdemeanor [Transferred].

Transferred to § 1306 of this title by 83 Del. Laws, c. 477, § 3, effective Oct. 21, 2022.

§§ 806-810. [Reserved.]

§ 811. Criminal mischief; classification of crime; defense.

(a) A person is guilty of criminal mischief when the person intentionally or recklessly:

(1) Damages tangible property of another person; or

(2) Tampers with tangible property of another person so as to endanger person or property; or

(3) Tampers or makes connection with tangible property of a gas, electric, steam or waterworks corporation, telegraph or telephone corporation or other public utility, except that in any prosecution under this subsection it is an affirmative defense that the accused engaged in the conduct charged to constitute an offense for a lawful purpose.

(b) Criminal mischief is punished as follows:

(1) Criminal mischief is a class G felony if the actor intentionally causes pecuniary loss of $5,000 or more, or if the actor intentionally causes a substantial interruption or impairment of public communication, transportation, supply of water, gas or power, or other public service;

(2) Criminal mischief is a class A misdemeanor if the actor intentionally or recklessly causes pecuniary loss in excess of $1,000;

(3) Otherwise criminal mischief is an unclassified misdemeanor;

(4) If an actor commits an act of criminal mischief of any degree on or along a Delaware byway, as defined in §101 of Title 17, the court shall impose a minimum mandatory fine of at least $500.

(c) It is a defense that the defendant has a reasonable ground to believe that the defendant has a right to engage in the conduct set forth in subsection (a) of this section.

(11 Del. C. 1953, § 811; 58 Del. Laws, c. 497, § 1; 60 Del. Laws, c. 590, § 6; 65 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 211, § 1; 77 Del. Laws, c. 133, § 14; 77 Del. Laws, c. 350, § 1.)

§ 811A. Aggravated criminal mischief; knowingly damaging critical utility infrastructure; class D felony.

(a) A person is guilty of aggravated criminal mischief when the person knowingly damages or tampers with critical utility infrastructure with the intent to interrupt or impair utility operations or the delivery, supply, or receipt of utility services.

(b) As used in this section, "critical utility infrastructure" means:

(1) Electric generation, transmission, or distribution facilities; substations; transformers; switching stations; power lines; and related infrastructure (other than a drop line servicing a single family residence).

(2) Natural gas, propane, compressed natural gas (CNG), liquid natural gas (LNG), or renewable natural gas (RNG) processing, transmission, or distribution facilities; pipelines; compressor stations; city gates; metering stations; regulator stations; cleaning, processing, and upgrading facilities; storage facilities or terminals; and related infrastructure.

(3) Drinking water sources; water transmission lines; water treatment plants; water distribution systems; groundwater monitoring wells; wastewater treatment plants; wastewater collection systems; and related infrastructure.

(4) Wireline or wireless telecommunications or internet infrastructure; fiber optic and cable lines and wires (other than a drop line or wire servicing a single family residence); cell towers; antennae; receivers; and related infrastructure.

(5) Any crude oil or refined petroleum product storage and distribution facilities; valve sites; pipelines or pipeline interconnections; pump stations or metering stations; loading or offloading facilities; and related infrastructure.

(c) The provisions of this section shall not apply to an employee or contractor acting in the scope of their employment providing services or maintenance to critical utility infrastructure.

(d) Aggravated criminal mischief is a class D felony.

(84 Del. Laws, c. 247, § 1.)

§ 812. Graffiti and possession of graffiti implements; class G felony; class A misdemeanor; class B misdemeanor.

(a) (1) A person is guilty of the act of graffiti when the person intentionally, knowingly or recklessly draws, paints, etches or makes any significant mark or inscription upon any public or private, real or personal property of another without the permission of the owner.

(2) Graffiti is a class A misdemeanor, unless the property damage caused thereby exceeds $1500, in which case it is a class G felony. The penalty for graffiti shall include a minimum fine of not less than $1000 which shall not be subject to suspension, restitution for damages to the property and 250 hours of community service, at least $^1/_2$ of which shall be served removing graffiti on public property. The minimum fine and community service hours shall be doubled for a second or subsequent conviction of an act of graffiti. The minimum fine shall also be doubled, and may not be suspended, for a first, second, or subsequent conviction of an act of graffiti which is performed on or along a "Delaware byway," as defined in § 101 of Title 17.

(b) (1) A person is guilty of possession of graffiti implements when the person possesses any tool, instrument, article, substance, solution or other compound designed or commonly used to etch, paint, cover, draw upon or otherwise place a mark upon a piece of property which that person has no permission or authority to etch, paint, cover, draw upon or otherwise mark, under circumstances evidencing an intent to use the same in order to commit an act of graffiti or damage such property.

(2) Possession of graffiti implements is a class B misdemeanor. The penalty for possession of graffiti implements shall include a minimum fine of not less than $500 which shall not be subject to suspension, restitution for damages to the property and 100 hours of community service, at least $^1/_2$ of which shall be served removing graffiti on public property. The minimum fine and community service hours shall be doubled for a second or subsequent conviction of possession of graffiti implements.

(71 Del. Laws, c. 464, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 68, § 1; 76 Del. Laws, c. 377, § 1; 77 Del. Laws, c. 181, §§ 1, 2; 77 Del. Laws, c. 350, § 2.)

§ 813. Theft of property from a cemetery.

A person commits theft of property from a cemetery when, with the intent as prescribed in § 841 of this title, the person exercises control over flowers, burial mounds, mementos or any other property left by its owner in a cemetery for purposes of honoring the dead; provided, however, that this section shall not be applicable to employees of a cemetery who remove property from a grave site pursuant to cemetery regulations. Whoever commits theft of property from a cemetery shall be guilty of a class A misdemeanor.

(78 Del. Laws, c. 125, § 1.)

§§ 814-819. [Reserved.]

B Criminal Trespass and Burglary

§ 820. Trespassing with intent to peer or peep into a window or door of another; class B misdemeanor.

A person is guilty of trespassing with intent to peer or peep into a window or door of another when the person knowingly enters upon the occupied property or premises of another utilized as a dwelling, with intent to peer or peep into the window or door of such property or premises and who, while on such property or premises, otherwise acts in a manner commonly referred to as "Peeping Tom." Any person violating this section may be referred by the court to the Delaware Psychiatric Center for examination and for treatment. Justices of the peace shall have concurrent jurisdiction of violations of this section.

Trespassing with intent to peer or peep into a window or door of another is a class B misdemeanor.

(11 Del. C. 1953, § 820; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, § 1.)

§ 821. Criminal trespass in the third degree; a violation.

A person is guilty of criminal trespass in the third degree when the person knowingly enters or remains unlawfully upon real property.

Criminal trespass in the third degree is a violation.

(11 Del. C. 1953, § 821; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 822. Criminal trespass in the second degree; unclassified misdemeanor.

A person is guilty of criminal trespass in the second degree when the person knowingly enters or remains unlawfully in a building or upon real property which is fenced or otherwise enclosed in a manner manifestly designed to exclude intruders.

Criminal trespass in the second degree is an unclassified misdemeanor.

(11 Del. C. 1953, § 822; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 823. Criminal trespass in the first degree; class A misdemeanor.

A person is guilty of criminal trespass in the first degree when the person knowingly enters or remains unlawfully in a dwelling or building used to shelter, house, milk, raise, feed, breed, study or exhibit animals.

Criminal trespass in the first degree is a class A misdemeanor.

(11 Del. C. 1953, § 823; 58 Del. Laws, c. 497, § 1; 65 Del. Laws, c. 482, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 824. Burglary in the third degree; class F felony.

A person is guilty of burglary in the third degree when the person knowingly enters or remains unlawfully in a building with intent to commit a crime therein.

Burglary in the third degree is a class F felony.

(11 Del. C. 1953, § 824; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 82 Del. Laws, c. 215, § 1.)

§ 825. Burglary in the second degree; class D felony.

(a) A person is guilty of burglary in the second degree when the person knowingly enters or remains unlawfully in a dwelling with intent to commit a crime therein.

(b) A person is guilty of burglary in the second degree when the person knowingly enters or remains unlawfully in a building with intent to commit a crime therein and where the person is armed with explosives or a deadly weapon or where the person causes physical injury to any other person who is not a participant in the crime.

Burglary in the second degree is class D felony.

(c) [Repealed.]

(11 Del. C. 1953, § 825; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 126, § 7; 74 Del. Laws, c. 106, § 4; 74 Del. Laws, c. 345, § 4; 82 Del. Laws, c. 215, § 1.)

§ 826. Burglary in the first degree; class C or B felony.

(a) A person is guilty of burglary in the first degree when the person knowingly enters or remains unlawfully in an occupied dwelling with intent to commit a crime therein.

(b) A person is guilty of home invasion burglary first degree if the elements of subsection (a) of this section are met and in effecting entry or when in the dwelling or immediate flight therefrom, the person or another participant in the crime engages in the commission of, or attempts to commit, any of the following felonies:

(1) Robbery in the first or second degree;

(2) Assault in the first or second degree;

(3) Murder in the first or second degree;

(4) Manslaughter;

(5) Rape in any degree;

(6) Kidnapping in the first or second degree;

(c) Burglary in the first degree is a class C felony. A person convicted of burglary in the first degree shall receive a minimum sentence of 1 year at Level V.

(d) Notwithstanding any provision of this section or Code to the contrary, where a person is convicted of burglary in the first degree pursuant to subsection (a) of this section and who either (1) is armed with explosives or a deadly weapon; or (2) causes physical injury to any person who is not a participant in the crime, burglary in the first degree is a class B felony.

(e) Notwithstanding any provision of this section or Code to the contrary, any person convicted of home invasion burglary first degree as defined in subsection (b) of this section, shall receive a minimum sentence of 6 years at Level V.

(f) The sentencing provisions applicable to this section apply to the attempted burglary in the first degree as well as attempted home invasion burglary in the first degree.

(g) It is no defense that the accused did not know that the dwelling was occupied at the time of entry.

(11 Del. C. 1953, § 826; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 126, § 8; 74 Del. Laws, c. 106, § 5; 74 Del. Laws, c. 345, § 5; 82 Del. Laws, c. 215, § 1.)

§ 826A. Home invasion; class B felony [Repealed].

(78 Del. Laws, c. 252, § 1; repealed by 82 Del. Laws, c. 215, § 1, effective Sept. 16, 2019.)

§ 827. Multiple offenses.

A person may be convicted both of burglary and of the offense which it was the purpose of the person's unlawful entry to commit or for an attempt to commit that offense. A person may be convicted both of home invasion burglary first degree and any of the underlying offenses designated in § 826(b) of this title.

(11 Del. C. 1953, § 827; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 252, § 6; 82 Del. Laws, c. 215, § 1; 83 Del. Laws, c. 37, § 6.)

§ 828. Possession of burglar's tools or instruments facilitating theft; class F felony.

(a) A person is guilty of possession of burglar's tools or instruments facilitating theft when, under circumstances evidencing an intent to use or knowledge that some other person intends to use the same in the commission of an offense of such character, the person possesses any tool, instrument, or other thing adapted, designed, or commonly used for committing or facilitating:

(1) Offenses involving unlawful entry into or upon premises,

(2) Offenses involving the unlocking, overriding, or disabling of a security device without authorization,

(3) Offenses involving forcible breaking or opening of safes, vending machines, automatic teller machines, lock boxes, gates, doors or any container or depositories of property, or

(4) The offense of identity theft, such as a credit card, driver license or other document issued in a name other than the name of the person who possesses the document.

(b) Possession of burglar's tools or instruments facilitating theft is a class F felony.

(11 Del. C. 1953, § 828; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 478, §§ 1, 2; 72 Del. Laws, c. 297, § 2; 75 Del. Laws, c. 162, § 1; 82 Del. Laws, c. 215, § 1.)

§ 829. Definitions relating to criminal trespass, burglary and home invasion.

(a) "Burglar's tool or instruments" includes the term "bump key" which is a type of key used for a specific lock picking technique called lock bumping.

(b) "Dwelling" means a building which is usually occupied by a person lodging therein at night including a building that has been adapted or is customarily used for overnight accommodation.

(c) "Occupied dwelling" means a dwelling, and a person is lawfully present on the property at the time of the offense.

(d) A person "enters" upon premises when the person introduces any body part or any part of any instrument, by whatever means, into or upon the premises.

(e) A person "enters or remains unlawfully" in or upon premises when the person is not licensed or privileged to do so. A person who, regardless of intent, enters or remains upon premises which appear at the time to be open to the public does so with license and privilege unless the person defies a lawful order not to enter or remain, personally communicated by the owner of the premises or another authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public.

(f) The "intent to commit a crime therein" may be formed prior to the unlawful entry, be concurrent with the unlawful entry or such intent may be formed after the entry while the person remains unlawfully.

(g) "Night" means a period between 30 minutes after sunset and 30 minutes before sunrise.

(h) "Premises" include the term "building" as defined in § 222 of this title, and any real property.

(i) "Security device" includes any lock, whether mechanical or electronic; or any warning device designed to alert a person or the general public of a possible attempt to gain unlawful entry into or upon premises or a possible attempt to unlock, bypass or otherwise disable a lock.

(j) A person possesses burglar tools or instruments facilitating theft "under circumstances evincing an intent to use or knowledge that some other person intends to use" such when the person possesses the tools or instruments at a time and a place proximate to the commission or attempt to commit a trespass, burglary, home invasion, or theft-related offense or otherwise under circumstances not manifestly appropriate for what lawful uses the tools or instruments may have.

(11 Del. C. 1953, § 829; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 478, § 3; 76 Del. Laws, c. 267, § 1; 76 Del. Laws, c. 310, § 1; 78 Del. Laws, c. 252, §§ 7, 8; 82 Del. Laws, c. 215, § 1.)

§ 830. [Reserved.]

C Robbery

§ 831. Robbery in the second degree; class E or D felony.

(a) A person is guilty of robbery in the second degree when, in the course of committing theft, the person uses or threatens the immediate use of force upon another person with intent to:

(1) Prevent or overcome resistance to the taking of the property or to the retention thereof immediately after the taking; or

(2) Compel the owner of the property or another person to deliver up the property or to engage in other conduct which aids in the commission of the theft.

(b) Except as provided in paragraph (d) of this section, robbery second degree is a class E felony.

(c) In addition to its ordinary meaning, the phrase "in the course of committing theft" includes any act which occurs in an attempt to commit theft or in immediate flight after the attempt or commission of the theft.

(d) Robbery in the second degree is a class D felony when, in the course of committing an offense under subsection (a) of this section, the person takes possession of a motor vehicle, and while in possession or control of such vehicle, the person does any of the following:

(1) Commits or attempts to commit a class D or greater felony.

(2) Drives or operates the vehicle in violation of § 4177 of Title 21.

(3) Commits any offense set forth in Chapter 47 of Title 16.

(4) Engages in conduct which causes or creates a substantial risk of physical injury to another person.

(e) *Definitions relating to subsection (d) of this section. —*

(1) "Another person" means and includes the owner of the motor vehicle or any operator, occupant, passenger of the motor vehicle or any other person who has an interest in the use of the motor vehicle which the offender is not privileged to infringe.

(2) "Motor vehicle" or "vehicle," means its ordinary meaning and includes any watercraft.

(11 Del. C. 1953, § 831; 58 Del. Laws, c. 497, § 1; 65 Del. Laws, c. 517, § 1; 67 Del. Laws, c. 130, § 8; 68 Del. Laws, c. 129, § 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 47, § 1; 82 Del. Laws, c. 216, § 1.)

§ 832. Robbery in the first degree; class B felony.

(a) A person is guilty of robbery in the first degree when the person commits the crime of robbery in the second degree and when, in the course of the commission of the crime or of immediate flight therefrom, the person or another participant in the crime:

(1) Causes physical injury to any person who is not a participant in the crime; or

(2) Displays what appears to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon; or

(3) Is armed with and uses or threatens the use of a dangerous instrument; or

(4) Commits said crime against a person who is 65 years of age or older; or

(5) Threatens death upon another.

Robbery in the first degree is a class B felony.

(b) Notwithstanding any provisions of this section or Code to the contrary, any person convicted of robbery in the first degree shall receive a minimum sentence of:

(1) Three years at Level V; or

(2) Five years at Level V, if the conviction was either of the following:

a. For an offense that was committed pursuant to paragraph (a)(2) of this section and the deadly weapon was a firearm or projectile weapon, and within 7 years of the date of a previous conviction for robbery in the first degree or if the conviction is for an offense that was committed within 7 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for robbery in the first degree, whichever is the later date.

b. For an offense committed within 2 years of the date of a previous conviction for robbery in the first degree or if the conviction is for an offense that was committed within 2 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for robbery in the first degree, whichever is the later date.

(c) The sentencing provisions of this section apply to attempted robbery in the first degree as well as robbery in the first degree.

(11 Del. C. 1953, § 832; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 547, § 6; 60 Del. Laws, c. 240, §§ 1, 2; 63 Del. Laws, c. 329, § 1; 67 Del. Laws, c. 130, §§ 8, 13; 68 Del. Laws, c. 129, § 5; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 126, § 9; 74 Del. Laws, c. 93, § 1; 74 Del. Laws, c. 106, § 6; 74 Del. Laws, c. 345, § 6; 80 Del. Laws, c. 358, § 1; 82 Del. Laws, c. 216, § 1; 84 Del. Laws, c. 514, § 16; 84 Del. Laws, c. 525, § 3.)

§§ 833,834. [Reserved.]

§ 835. Carjacking in the second degree; class E felony; class D felony [Repealed].

(72 Del. Laws, c. 34, § 1; repealed by 82 Del. Laws, c. 216, § 1, effective Sept. 16, 2019.)

§ 836. Carjacking in the first degree; class C felony; class B felony [Repealed].

(72 Del. Laws, c. 34, § 2; 74 Del. Laws, c. 93, § 2; repealed by 82 Del. Laws, c. 216, § 1, effective Sept. 16, 2019.)

§ 837. Definitions relating to carjacking [Repealed].

(72 Del. Laws, c. 34, § 3; repealed by 82 Del. Laws, c. 216, § 1, effective Sept. 16, 2019.)

§§ 838,839. [Reserved.]

D Theft and Related Offenses

§ 840. Shoplifting; class G felony; class A misdemeanor.

(a) A person is guilty of shoplifting if, while in a mercantile establishment in which goods, wares or merchandise are displayed for sale, the person:

(1) Removes any such goods, wares or merchandise from the immediate use of display or from any other place within the establishment, with intent to appropriate the same to the use of the person so taking, or to deprive the owner of the use, the value or possession thereof without paying to the owner the value thereof; or

(2) Obtains possession of any goods, wares or merchandise by charging the same to any person without the authority of such person or to a fictitious person with a like intent; or

(3) Conceals any such goods, wares or merchandise with like intent; or

(4) Alters, removes or otherwise disfigures any label, price tag or marking upon any such goods, wares or merchandise with a like intent; or

(5) Transfers any goods, wares or merchandise from a container in which same shall be displayed or packaged to any other container with like intent; or

(6) Uses any instrument whatsoever, credit slips or chose in action to obtain any goods, wares or merchandise with intent to appropriate the same to the use of the person so taking or to deprive the owner of the use, the value or the possession thereof without paying to the owner the value thereof.

(b) Any person wilfully concealing unpurchased merchandise of any store or other mercantile establishment, inside or outside the premises of such store or other mercantile establishment, shall be presumed to have so concealed such merchandise with the intention of converting the same to the person's own use without paying the purchase price thereof within the meaning of subsection (a) of this section, and the finding of such merchandise concealed upon the person or among the belongings of such person, outside of such store or other mercantile establishment, shall be presumptive evidence of intentional concealment; and if such person conceals or causes to be concealed such merchandise upon the person or among the belongings of another, the finding of the same shall also be presumptive evidence of intentional concealment on the part of the person so concealing such merchandise.

(c) A merchant, a store supervisor, agent or employee of the merchant 18 years of age or older, who has probable cause for believing that a person has intentionally concealed unpurchased merchandise or has committed shoplifting as defined in subsection (a) of this section, may, for the purpose of summoning a law-enforcement officer, take the person into custody and detain the person in a reasonable manner on the premises for a reasonable time.

(d) A merchant, a store supervisor, agent or employee of the merchant 18 years of age or older who detains, or a merchant, a store supervisor, agent or employee of the merchant who causes or provides information leading to the arrest of any person under subsection (a), (b) or (c) of this section, shall not be held civilly or criminally liable for such detention or arrest provided they had, at the time of such detention or arrest, probable cause to believe that the person committed the crime of shoplifting as defined in subsection (a) of this section.

Shoplifting is a class G felony when the goods, wares or merchandise shoplifted are of the value of $1,500 or more, or when the goods, wares or merchandise shoplifted are from 3 or more separate mercantile establishments and were shoplifted in the same or continuing course of conduct and the aggregate value of the goods is $1,500 or more. When the goods, wares or merchandise shoplifted are of the value of less than $1,500, it is a class A misdemeanor.

(11 Del. C. 1953, § 840; 58 Del. Laws, c. 497, § 1; 60 Del. Laws, c. 590, § 1; 61 Del. Laws, c. 35, § 1; 61 Del. Laws, c. 482, § 1; 65 Del. Laws, c. 497, § 2; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 211, § 2; 72 Del. Laws, c. 222, § 1; 77 Del. Laws, c. 133, § 1.)

§ 840A. Use of illegitimate retail sales receipt or Universal Product Code Label.

(a) A person who, with intent to cheat or defraud another, possesses, uses, transfers, makes, alters, counterfeits or reproduces a retail sales receipt or Universal Product Code Label is guilty of an offense under this section.

(b) A person convicted of violating this section shall be guilty of a class A misdemeanor, unless the person is convicted of possessing 15 or more illegitimate retail sales receipts or Universal Product Code Labels or the aggregate value of the money, property or services illegally obtained or credited to an account is $1,500 or more, in which case it is a class F felony.

(73 Del. Laws, c. 31, § 1; 77 Del. Laws, c. 133, § 2.)

§ 841. Theft; class B felony; class D felony; class F felony; class G felony; class A misdemeanor; restitution.

(a) A person is guilty of theft when the person takes, exercises control over or obtains property of another person intending to deprive that person of it or appropriate it. Theft includes the acts described in this section, as well as those described in §§ 841A-846 of this title.

(b) A person is guilty of theft if the person, in any capacity, legally receives, takes, exercises control over or obtains property of another which is the subject of theft, and fraudulently converts same to the person's own use.

(c) (1) Except where a victim is 62 years of age or older, or an "adult who is impaired" as defined in § 3902 of Title 31, or a "person with a disability" as defined in § 3901(a)(2) of Title 12, theft is a class A misdemeanor unless the value of the property received, retained or disposed of is $1,500 or more, in which case it is a class G felony.

(2) Where a victim is 62 years of age or older, or an "adult who is impaired" as defined in § 3902 of Title 31, or a "person with a disability" as defined in § 3901(a)(2) of Title 12, theft is a class G felony unless the value of the property received, retained or disposed of is $1,500 or more, in which case it is a class F felony.

(3) Notwithstanding paragraphs (c)(1) and (2) of this section:

a. Where the value of the property received, retained or disposed of is more than $50,000 but less than $100,000, theft is a class D felony;

b. Where the value of the property received, retained or disposed of is $100,000 or more, theft is a class B felony.

(d) Upon conviction, the sentencing judge shall require full restitution to the victim for any monetary losses suffered and shall consider the imposition of community service and/or an appropriate curfew for a minor.

(11 Del. C. 1953, § 841; 58 Del. Laws, c. 497, § 1; 60 Del. Laws, c. 590, § 2; 65 Del. Laws, c. 497, § 3; 67 Del. Laws, c. 130, § 8; 69 Del. Laws, c. 315, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 209, § 1; 70 Del. Laws, c. 364, §§ 1, 2; 73 Del. Laws, c. 126, §§ 10, 11; 76 Del. Laws, c. 98, § 3; 77 Del. Laws, c. 133, § 3; 78 Del. Laws, c. 179, §§ 83-91, 371; 78 Del. Laws, c. 353, §§ 1, 2; 84 Del. Laws, c. 529, § 2.)

§ 841A. Theft of a motor vehicle; class G felony.

(a) A person is guilty of theft of a motor vehicle when the person takes, exercises control over or obtains a motor vehicle of another person intending to deprive the other person of it or appropriate it.

(b) As used in this section "motor vehicle" means an automobile, motorcycle, van, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle which is self-propelled, which is designed to be operated primarily on a roadway as defined in § 101 of Title 21, and in, upon or by which any person or property is or may be transported. "Motor vehicle" as used in this section shall not include any device that is included within the definitions of "moped," "off-highway (OHV)," "triped," "motorized scooter or skateboard," "motorized wheelchair" or "electric personal assistive mobility device (EPAMD)" as defined in § 101 of Title 21.

(c) Theft of a motor vehicle is a class G felony.

(75 Del. Laws, c. 290, § 1.)

§ 841B. Theft: Organized retail crime; class A misdemeanor; class E felony.

(a) A person is guilty of "theft: organized retail crime" when the person takes, exercises control over, or obtains retail merchandise of another person intending to deprive that person of it, or receives stolen property in violation of § 851 of this title, in quantities that would not normally be purchased for personal use or consumption, with the intent to appropriate or to resell or reenter the merchandise into commerce.

(b) For purposes of this section, a series of organized retail crime thefts committed by a person or group of persons may be aggregated into 1 count or charge, with the sum of the value of all the retail merchandise being the value considered in determining the degree of theft: organized retail crime.

(c) In addition to the provisions of § 841(c) and (d) of this title, if a defendant has 2 or more times been convicted of theft: organized retail crime, the offense of theft: organized retail crime is a class E felony.

(76 Del. Laws, c. 98, § 4.)

§ 841C. Possession or theft of a prescription form or a pad.

(a) A person in possession of a blank prescription form or pad who is not a practitioner as defined in this section shall be guilty of a class G felony. "Possession" in addition to its ordinary meaning, includes location on or about the defendant's person, premises, belongings, vehicle or otherwise within the defendant's reasonable control.

(b) A person is guilty of theft of a blank prescription form or pad when the person is not a practitioner as defined in this section and takes, exercises control over, obtains or receives, produces or reproduces any facsimile or counterfeit version of, or transfers, uses, gives, or sells any copies, facsimiles or counterfeit versions, a prescription form or pad of a practitioner with the intent to deprive the practitioner of the use thereof or to facilitate the commission of drug diversion.

(1) A "practitioner" means:

a. A physician, dentist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled or noncontrolled substance in the course of professional practice or research in this State.

b. A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled or noncontrolled substance in the course of professional practice or research in this State.

(2) Theft of a blank prescription form or pad is a class F felony.

(77 Del. Laws, c. 161, § 1.)

§ 841D. Wage theft; class E felony.

(a) A person is guilty of wage theft when the person violates § 1102A(a)(1), (a)(4), (a)(5), or (a)(6) of Title 19.

(b) For purposes of this section, a series of wage thefts committed by a person or group of persons may be aggregated into 1 count or charge, with the sum of the aggregate loss to employees and this State being the value considered in determining the degree of wage theft.

(c) Wage theft is punishable under § 841(c) and (d) of this title, except that if the person has 2 or more convictions for wage theft, wage theft is a class E felony.

(83 Del. Laws, c. 443, § 1.)

§ 842. Theft; lost or mislaid property; mistaken delivery.

A person commits theft when, with the intent prescribed in § 841 of this title, the person exercises control over property of another person which the person knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or the nature or value of the property, without taking reasonable measures to return the property to its owner.

(11 Del. C. 1953, § 842; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 843. Theft; false pretense.

A person commits theft when, with the intent prescribed in § 841 of this title, the person obtains property of another person by intentionally creating or reinforcing a false impression as to a present or past fact, or by preventing the other person from acquiring information which would adversely affect the other person's judgment of a transaction.

(11 Del. C. 1953, § 843; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 844. Theft; false promise.

A person commits theft when, with the intent prescribed in § 841 of this title, the person obtains property of another person by means of a representation, express or implied, that the person or a third person will in the future engage in particular conduct, and when the person does not intend to engage in such conduct or, as the case may be, does not believe the third person intends to engage in such conduct. The accused's intention or belief that a promise would not be performed may not be established by or inferred from the fact alone that the promise was not performed.

(11 Del. C. 1953, § 844; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 845. Theft of services.

(a) A person commits theft when, with the intent specified in § 841 of this title, the person obtains services which the person knows are available only for compensation by deception, threat, false token, false representation or statement or by installing, rearranging or tampering with any facility or equipment or by any other trick, contrivance or any other device to avoid payment for the services.

(b) In any prosecution for theft of services where services have been obtained from a public utility by the installation of, rearrangement of or tampering with any facility or equipment owned or used by the public utility to provide such services, without the consent or permission of the public utility, or by any other trick or contrivance, it shall be a rebuttable presumption that the person to whom the services are being furnished has created, caused or knows of the condition which is a violation of this section.

(c) A person who has obtained services from a public utility by installing, rearranging or tampering with any facility or equipment owned or used by the public utility to provide such services, or by any other trick or contrivance, is presumed to have done so with an intent to avoid, or to enable others to avoid, payment for the services involved.

(d) The rebuttable presumptions referred to in subsections (b) and (c) of this section shall not apply to any person to whom such services have been furnished for less than 31 days or until there has been at least 1 meter reading.

(11 Del. C. 1953, § 845; 58 Del. Laws, c. 497, § 1; 61 Del. Laws, c. 227, §§ 1, 2; 70 Del. Laws, c. 186, § 1.)

§ 846. Extortion; class E felony.

A person commits extortion when, with the intent prescribed in § 841 of this title, the person compels or induces another person to deliver property to the person or to a third person by means of instilling in the victim a fear that, if the property is not so delivered, the defendant or another will:

(1) Cause physical injury to anyone; or

(2) Cause damage to property; or

(3) Engage in other conduct constituting a crime; or

(4) Accuse anyone of a crime or cause criminal charges to be instituted against anyone; or

(5) Expose a secret or publicize an asserted fact, whether true or false, tending to subject anyone to hatred, contempt or ridicule; or

(6) Falsely testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(7) Use or abuse the defendant's position as a public servant by performing some act within or related to the defendant's official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

(8) Perform any other act which is calculated to harm another person materially with respect to the person's health, safety, business, calling, career, financial condition, reputation or personal relationships.

Extortion is a class E felony, except where the victim is a person 62 years of age or older, in which case any violation of this section shall be a class D felony.

(11 Del. C. 1953, § 846; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 126, § 12.)

§ 847. Theft, extortion; claim of right as an affirmative defense.

(a) In any prosecution for theft or extortion it is an affirmative defense that the property was appropriated by the actor under a claim of right, made in good faith, to do substantially what the actor did in the manner in which it was done.

(b) In any prosecution for extortion where the facts are as described in § 846(4) of this title, it is an affirmative defense that the accused believed the threatened criminal charge to be true and that the accused's sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of the threatened charge.

(11 Del. C. 1953, § 847; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 848. Misapplication of property; class G felony; class A misdemeanor.

A person is guilty of misapplication of property when, knowingly possessing personal property of another pursuant to an agreement that it will be returned to the owner at a future time, the person sells, loans, leases, pledges, pawns or otherwise encumbers the property without the consent of the owner thereof in such a manner as to create a risk that the owner will be unable to recover it or will suffer pecuniary loss.

Misapplication of property is a class A misdemeanor, unless the value of the property received, retained or disposed of is $1,500 or more, in which case it is a class G felony.

(11 Del. C. 1953, § 848; 58 Del. Laws, c. 497, § 1; 60 Del. Laws, c. 590, § 3; 65 Del. Laws, c. 497, § 4; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 211, § 4; 77 Del. Laws, c. 133, § 4.)

§ 849. Theft of rented property; class A misdemeanor or class G felony.

(a) A person is guilty of theft of rental property if the person, with the intent specified in § 841 of this title, takes, destroys, converts, wrongfully withholds or appropriates by fraud, deception, threat, false token, false representation or statement, or by any trick, contrivance or other device to avoid payment for or to otherwise appropriate rental property entrusted to said person. For purposes of this section, "property" shall include the use of vehicles or other movable property.

(b) If the finder of fact shall find:

(1) That one who has leased or rented the personal property of another, failed to return or make arrangements acceptable to the rentor (lessor) to return the property to the rentor or the rentor's agent within 10 days after proper notice, following the expiration of the rental (lease) contract; and/or

(2) That one who has leased or rented the personal property of another and has returned such property, failed to make payment, at the agreed rental rate, for the full period which the property was rented or leased, except when said person has a good faith dispute with the owner of the rental property as to whether any payment, or additional payment, is due to the owner of the rental property; and/or

(3) That the rentee (lessee) presented identification to the rentor which was materially false, fictitious or not current with respect to name, address, place of employment or other appropriate items,

then the finder of fact shall be permitted, but not required, to presume intent to commit theft.

(c) As used in subsection (b) of this section, "proper notice" shall consist of a written demand by the rentor made after the expiration of the rental period mailed by certified or registered mail to the rentee at:

(1) The address the rentee gave when the rental contract was made; or

(2) The rentee's last known address if later furnished in writing by the rentee or the rentee's agent.

(d) The reasonable and fair market value of the property obtained shall be utilized in determining the amount involved in the theft.

(e) The following 3 factors, if established by the rentee by a preponderance of the evidence, shall constitute an affirmative defense to prosecution for theft, that the rentee:

(1) Accurately stated the rentee's name, address and other material items of identification at the time of the rental;

(2) Failed to receive the rentor's notice personally due in no significant part to the fault of the rentee; and

(3) Returned the personal property to the rentor or the rentor's agent within 48 hours of the commencement of the prosecution, together with any charges for the overdue period and the value of damages (if any) to the property.

Theft of rented property is a class A misdemeanor, unless the value of the property is $1,500 or more, in which case it is a class G felony.

(69 Del. Laws, c. 110, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 211, § 5; 70 Del. Laws, c. 260, §§ 1-3; 77 Del. Laws, c. 133, § 5.)

§ 850. Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices.

(a) *Prohibited acts.* — A person is guilty of a violation of this section if the person knowingly:

(1) Manufactures, assembles, distributes, possesses with intent to distribute, transfers, sells, promotes, offers or advertises for sale, use or distribution any unlawful telecommunication device or modifies, alters, programs or reprograms a telecommunication device:

a. For the unauthorized acquisition or theft of any telecommunication service or to receive, disrupt, transmit, decrypt, acquire or facilitate the receipt, disruption, transmission, decryption or acquisition of any telecommunication service without the express consent or express authorization of the telecommunication service provider; or

b. To conceal, or to assist another to conceal from any telecommunication service provider or from any lawful authority, the existence or place of origin or destination, or the originating and receiving telephone numbers, of any telecommunication under circumstances evincing an intent to use the same in the commission of any offense.

(2) Manufacturers, assembles, distributes, possesses with intent to distribute, transfers, sells, offers, promotes or advertises for sale, use or distribution any unlawful access device;

(3) Prepares, distributes, possesses with intent to distribute, sells, gives, transfers, offers, promotes or advertises for sale, use or distribution:

a. Plans or instructions for the manufacture or assembly of an unlawful telecommunication or access or device under circumstances evincing an intent to use or employ the unlawful telecommunication access device, or to allow the unlawful telecommunication or access device to be used, for a purpose prohibited by this section, or knowing or having reason to believe that the unlawful telecommunication or access device is intended to be so used, or that the plan or instruction is intended to be used for the manufacture of assembly of the unlawful telecommunication or access device; or

b. Material, including hardware, cables, tools, data, computer software or other information or equipment, knowing that the purchaser or a third person intends to use the material in the manufacture of an unlawful telecommunication or access device.

(b) *Criminal penalties.* — (1) Except as provided for in paragraph (b)(2) or (3) of this section, an offense under this section is an unclassified misdemeanor with a sentence up to 1 year incarceration at Level V, and a fine of up to $10,000 for all violations of this section.

(2) A person shall be guilty of a class F felony if:

a. The defendant has been convicted previously under this section or convicted of any similar crime in this or any Federal or other state jurisdiction; or

b. The violation of this section involves at least 10, but not more than 50, unlawful telecommunication or access devices.

(3) A person shall be guilty of a class D felony if:

a. The defendant has been convicted previously on 2 or more occasions for offenses under this section or for any similar crime in this or any federal or other state jurisdiction; or

b. The violation of this section involves more than 50 unlawful telecommunication or access devices.

(4) For purposes of grading an offense based upon a prior conviction under this section or for any similar crime pursuant to paragraphs (b)(2)a. and (3)a. of this section, a prior conviction shall consist of convictions upon separate indictments or criminal complaints for offenses under this section or any similar crime in this or any federal or other state jurisdiction.

(5) As provided for in paragraphs (b)(2)a. and (3)a. of this section, in grading an offense under this section based upon a prior conviction, the term "any similar crime" shall include, but not be limited to, offenses involving theft of service or fraud, including violations of the Cable Communications Policy Act of 1984 (Public Law 98-549, 98 Stat. 2779).

(6) *Separate offenses.* — For purposes of all criminal fines established for violations of this section, the prohibited activity established herein as it applies to each unlawful telecommunication or access device shall be deemed a separate offense.

(7) *Fines.* — For purposes of imposing fines upon conviction of a defendant for an offense under this section, all fines shall be imposed for each unlawful telecommunication or access device involved in the violation.

(8) *Restitution.* — The court shall, in addition to any other sentence authorized by law, sentence a person convicted of violating this section to make restitution in the manner provided in § 4106 of this title.

(9) *Forfeiture of unlawful telecommunication or access devices.* — Upon conviction of a defendant under this section, the court may, in addition to any other sentence authorized by law, direct that the defendant forfeit any unlawful telecommunication or access devices in the defendant's possession or control which were involved in the violation for which the defendant was convicted.

(c) *Venue.* — An offense under this section may be deemed to have been committed at either the place where the defendant manufactures or assembles an unlawful telecommunication or access device, or assists others in doing so, or the places where the unlawful telecommunication or access device is sold or delivered to a purchaser or recipient. It shall be no defense to a violation of this section that some of the acts constituting the offense occurred outside of this State.

(d) *Civil action.* — (1) Any person aggrieved by a violation of this section may bring a civil action in any court of competent jurisdiction.

(2) The court may:

a. Grant preliminary and final injunctions to prevent or restrain violations of this section;

b. At any time while an action is pending, order the impounding, on such terms as it deems reasonable, of any unlawful telecommunication or access device that is in the custody or control of the violator and that the court has reasonable cause to believe was involved in the alleged violation of this section;

c. Award damages as described in paragraph (d)(3) of this section;

d. In its discretion, award reasonable attorney fees and costs, including, but not limited to, costs for investigation, testing and expert witness fees, to an aggrieved party who prevails; and

e. As part of a final judgment or decree finding a violation of this section, order the remedial modification or destruction of any unlawful telecommunication or access device involved in the violation that is in the custody or control of the violator or has been impounded under subsection (b) of this section.

(3) *Types of damages recoverable.* — Damages awarded by a court under this section shall be computed as either of the following:

a. Upon the complaining party's election of such damages at any time before final judgment is entered, the complaining party may recover the actual damages suffered by the complaining party as a result of the violation of this section and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages. In determining the violator's profits, the complaining party shall be required to prove only the violator's gross revenue, and the violator shall be required to prove the violator's own deductible expenses and the elements of profit attributable to factors other than the violation; or

b. Upon election by the complaining party at any time before final judgment is entered, that party may recover in lieu of actual damages an award of statutory damages of between $250 to $10,000 for each unlawful telecommunication or access device involved in the action, with the amount of statutory damages to be determined by the court as the court considers just. In any case where the court finds that any of the violations of this section were committed wilfully and for purposes of commercial advantage or private financial gain, the court in its discretion may increase the award of statutory damages by an amount of not more than $50,000 for each unlawful telecommunication or access device involved in the action.

(4) For purposes of all civil remedies established for violations of this section, the prohibited activity established in this section applies to each unlawful telecommunication or access device and shall be deemed a separate violation.

(e) *Definitions.* — As used in this section, the following words and phrases shall have the meanings given to them in this subsection.

(1) *"Manufacture or assembly of any unlawful access device"*. — To make, produce or assemble an unlawful access device or modify, alter, program or reprogram any instrument, device, machine, equipment, technology or software so that it is capable of defeating or circumventing any technology, device or software used by the provider, owner or licensee of a telecommunication service, or of any data, audio or video programs or transmissions, to protect any such telecommunication, data, audio or video services, programs or transmissions from unauthorized receipt, acquisition, access, decryption, disclosure, communication, transmission or retransmission, or to knowingly assist others in those activities.

(2) *"Manufacture or assembly of unlawful telecommunications device"*. — To make, produce or assemble an unlawful telecommunication device or to modify, alter, program or reprogram a telecommunication device to be capable of acquiring, disrupting, receiving, transmitting, decrypting or facilitating the acquisition, disruption, receipt, transmission or decryption of a telecommunication service without the express consent or express authorization of the telecommunication service provider, or to knowingly assist others in those activities.

(3) *"Telecommunications device"*. — Any type of instrument, device, machine, equipment, technology or software which is capable of transmitting, acquiring, decrypting or receiving any telephonic, electronic, data, Internet access, audio, video, microwave or radio transmissions, signals, communications or services, including the receipt, acquisition, transmission or decryption of all such communications, transmissions, signals or services provided by or through any cable television, fiber optic, telephone, satellite, microwave, data transmission, radio, Internet-based or wireless distribution network, system or facility, or any part, accessory or components thereof, including any computer circuit, security module, smart card, software, computer chip, electronic mechanism or other component, accessory or part of any telecommunication device which is capable of facilitating the transmission, decryption, acquisition or reception of all such communications, transmissions, signals or services.

(4) *"Telecommunication service"*. — Any service provided for a charge or compensation to facilitate the origination, transmission, emission or reception of signs, signals, data, writing, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, wireless, radio, electromagnetic, photelectronic or photo-optical system, network, facility or technology; and any service provided by any radio, telephone, fiber optic, cable television, satellite, microwave, data transmission, wireless or Internet-based distribution system, network, facility or technology, including, but not limited to, any and all electronic, data, video, audio, Internet access, telephonic, microwave and radio communications, transmissions, signals and services, and any such communications, transmissions, signals and services provided directly or indirectly by or through any of the aforementioned systems, networks, facilities or technologies.

(5) *"Telecommunication service provider"*. — a. A person or entity providing a telecommunication service, whether directly or indirectly as a reseller, including, but not limited to, a cellular, paging or other wireless communications company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office or other equipment or telecommunication service;

b. Any person or entity owning or operating any cable television, satellite, Internet-based, telephone, wireless, microwave, data transmission or radio distribution system, network or facility; and

c. Any person or entity providing any telecommunication service directly or indirectly by or through any such distribution systems, networks or facilities.

(6) "*Unlawful access device*". — Any type of instrument, device, machine, equipment, technology or software which is primarily designed, assembled, manufactured, sold, distributed, possessed, used or offered, promoted or advertised for the purpose of defeating or circumventing any technology, device or software, or any component or part thereof, used by the provider, owner or licensee of any telecommunication service or of any data, audio or video programs or transmissions, to protect any such telecommunication, data, audio or video services, programs or transmissions from unauthorized receipt, acquisition, access, decryption, disclosure, communication, transmission or retransmission.

(7) "*Unlawful telecommunication device*". — Any electronic serial number, mobile identification number, personal identification number or any telecommunication device that is capable of acquiring or facilitating the acquisition of a telecommunication service without the express consent or express authorization of the telecommunication service provider, or that has been altered, modified, programmed or reprogrammed alone or in conjunction with another telecommunication device or other equipment to so acquire or facilitate the unauthorized acquisition of a telecommunication service. "Unlawful telecommunication device" also means:

a. Phones altered to obtain service without the express consent or express authorization of the telecommunication service provider, tumbler phones, counterfeit or clone phones, tumbler microchips, counterfeit or clone microchips, and other instruments capable of disguising their identity or location or of gaining unauthorized access to a telecommunications system, network or facility operated by a telecommunication service provider; and

b. Any telecommunication device which is capable of, or has been altered, designed, modified, programmed or reprogrammed, alone or in conjunction with another telecommunication device, so as to be capable of facilitating the disruption, acquisition, receipt, transmission or decryption of a telecommunication service without the express consent or express authorization of the telecommunication service provider, including, but not limited to, any device, technology, product, service, equipment, computer software, or component or part thereof, primarily distributed, sold, designed, assembled, manufactured, modified, programmed, reprogrammed or used for the purpose of providing the unauthorized receipt of, transmission of, disruption of, decryption of, access to, or acquisition of any telecommunication service provided by any telecommunication service provider.

(11 Del. C. 1953, § 850; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 203, § 21; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 475, § 1; 73 Del. Laws, c. 106, § 1.)

§ 851. Receiving stolen property; class G felony; class A misdemeanor.

A person is guilty of receiving stolen property if the person intentionally receives, retains or disposes of property of another person with intent to deprive the owner of it or to appropriate it, knowing that it has been acquired under circumstances amounting to theft, or believing that it has been so acquired.

Receiving stolen property is a class A misdemeanor unless the value of the property received, retained or disposed of is $1,500 or more, or unless the receiver has twice before been convicted of receiving stolen property, in which case it is a class G felony.

(11 Del. C. 1953, § 851; 58 Del. Laws, c. 497, § 1; 60 Del. Laws, c. 590, § 4; 65 Del. Laws, c. 497, § 5; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 211, § 6; 77 Del. Laws, c. 133, § 6.)

§ 852. Receiving stolen property; presumption of knowledge.

Knowledge that property has been acquired under circumstances amounting to theft may be presumed in the case of a person who acquires it for a consideration which the person knows is substantially below its reasonable value, or that a person possesses property whose affixed identification or serial number is altered, removed, defaced or falsified. In addition, knowledge that property has been acquired under circumstances amounting to theft shall be presumed in the case of a person or dealer who acquires it for a consideration, when such property consists of traffic signs, other traffic control devices or historical markers and the acquisition is not accompanied by a written authorization for the property's disposition from the Department of Transportation, Department of State or other entity which owns the property.

(11 Del. C. 1953, § 852; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 203, § 27; 67 Del. Laws, c. 238, § 1; 69 Del. Laws, c. 408, § 1; 70 Del. Laws, c. 186, § 1.)

§ 852A. Selling stolen property; class A misdemeanor; class G felony.

A person is guilty of selling stolen property if, after the person receives stolen property pursuant to § 851 of this title, the person sells some or all of the stolen property received. A person may be convicted of both receiving stolen property and selling stolen property. Selling stolen property is a class A misdemeanor, unless the value of the resold property is $1,500 or more, or unless the seller has been convicted 2 or more times of selling stolen property, in which cases it is a class G felony.

(76 Del. Laws, c. 147, § 1; 77 Del. Laws, c. 133, § 7.)

§ 853. Unauthorized use of a vehicle; class A misdemeanor.

A person is guilty of unauthorized use of a vehicle when:

(1) Knowing that the person does not have the consent of the owner the person takes, operates, exercises control over, rides in or otherwise uses a vehicle;

(2) Having custody of a vehicle pursuant to an agreement between the person or another and the owner thereof whereby the person or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of the vehicle, the person intentionally uses or operates it, without the consent of the owner, for the person's own purposes in a manner constituting a gross deviation from the agreed purpose;

(3) Having custody of a vehicle pursuant to an agreement with its owner whereby it is to be returned to the owner at a specified time, the person intentionally retains or withholds possession thereof, without the consent of the owner, for so lengthy a period beyond the specified time as to render the retention or possession a gross deviation from the agreement; or

(4) Such person obtains possession or control over a vehicle, knowing of the existence of a creditor or creditors who are entitled to receive payments on a debt where such vehicle is the only security or represents the major portion of the creditor's security, and such person transfers or purports to transfer the vehicle and responsibility for making payments on such vehicle to a third party, whether or not such third party continues or resumes payment to the creditor or creditors.

Unauthorized use of a vehicle is a class A misdemeanor.

(11 Del. C. 1953, § 853; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 68 Del. Laws, c. 333, §§ 1, 2; 70 Del. Laws, c. 186, § 1.)

§ 854. Identity theft; class D felony.

(a) A person commits identity theft when the person knowingly or recklessly obtains, produces, possesses, uses, sells, gives or transfers personal identifying information belonging or pertaining to another person without the consent of the other person and with intent to use the information to commit or facilitate any crime set forth in this title.

(b) A person commits identity theft when the person knowingly or recklessly obtains, produces, possesses, uses, sells, gives or transfers personal identifying information belonging or pertaining to another person without the consent of the other person, thereby knowingly or recklessly facilitating the use of the information by a third person to commit or facilitate any crime set forth in this title.

(c) For the purposes of this section, "personal identifying information" includes name, address, birth date, Social Security number, driver's license number, telephone number, financial services account number, savings account number, checking account number, payment card number, identification document or false identification document, electronic identification number, educational record, health care record, financial record, credit record, employment record, e-mail address, computer system password, mother's maiden name or similar personal number, record or information.

(d) Identity theft is a class D felony.

(e) When a person is convicted of or pleads guilty to identity theft, the sentencing judge shall order full restitution for monetary loss, including documented loss of wages and reasonable attorney fees, suffered by the victim.

(f) Prosecution under this section does not preclude prosecution or sentencing under any other section of this Code.

(72 Del. Laws, c. 297, § 1; 74 Del. Laws, c. 425, § 1; 79 Del. Laws, c. 260, § 7.)

§ 854A. Identity theft passport; application; issuance.

(a) The Office of the Attorney General, in cooperation with any law-enforcement agency, may issue an identity theft passport to a person who is a victim of identity theft in this State and who has filed a police report citing that such person is a victim of a violation of § 854 of this title. A person who has filed with a law-enforcement agency a police report alleging identity theft may apply for an identity theft passport through any law-enforcement agency. The agency shall send a copy of the application and the supporting police report to the Office of the Attorney General. After processing the application and police report, the Office of the Attorney General may issue to the victim an identity theft passport in the form of a card or certificate which may include photo identification.

(b) A victim of identity theft may present that victim's identity theft passport issued under subsection (a) of this section to the following:

(1) A law-enforcement agency to help prevent the victim's arrest or detention for an offense committed by someone other than the victim who is using the victim's identity;

(2) Any of the victim's creditors to aid in a creditor's investigation and establishment of whether fraudulent charges were made against accounts in the victim's name or whether accounts were opened using the victim's identity;

(3) A consumer reporting agency, as defined in § 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), which must accept the passport as an official notice of a dispute and must include notice of the dispute in all future reports that contain disputed information caused by the identity theft.

(c) Acceptance or rejection of an identity theft passport presented by the victim to a law-enforcement agency or creditor pursuant to paragraph (b)(1) or (2) of this section is at the discretion of the law-enforcement agency or creditor. In making a decision for acceptance or rejection, a law-enforcement agency or creditor may consider the surrounding circumstances and available information regarding the offense of identity theft pertaining to the victim.

(d) An application made with the Office of the Attorney General pursuant to subsection (a) of this section, including any supporting documentation, is confidential criminal justice information, is not a public record, and is specifically exempted from public disclosure

under the Freedom of Information Act, Chapter 100 of Title 29. However, the Office of the Attorney General may provide access to applications and supporting documentation filed pursuant to this section to other criminal justice agencies in this or another State.

(e) The Office of the Attorney General shall adopt regulations to implement this section. The regulations must include a procedure by which the Office of the Attorney General is reasonably assured that an identity theft passport applicant has an identity theft claim that is legitimate and adequately substantiated.

(75 Del. Laws, c. 338, § 1; 70 Del. Laws, c. 186, § 1.)

§ 855. Theft; indictment and proof.

(a) Every prosecution for theft shall be based upon § 841 of this title.

(b) The defendant may be found guilty of theft if the defendant's conduct falls within any of the sections defining theft. Proof of any conduct constituting theft is sufficient to support an indictment or information charging theft, provided that the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case the accused must meet.

(c) When theft or any related offense is committed in violation of this title pursuant to 1 scheme or continuous course of conduct, whether from the same or several sources, the conduct may be considered as 1 offense and the value of the property or services aggregated in determining whether the theft is a felony or misdemeanor. For purposes of this subsection, related offenses shall include, but are not limited to, violations of §§ 861, 900 and 903 of this title.

(11 Del. C. 1953, § 855; 58 Del. Laws, c. 497, § 1; 66 Del. Laws, c. 251, § 1; 70 Del. Laws, c. 186, § 1.)

§ 856. Theft, receiving stolen property no defense; receiving stolen property, theft no defense; conviction of both offenses.

(a) In any prosecution for theft or theft of a firearm, it is no defense that the accused is in fact guilty of receiving stolen property or receiving a stolen firearm. A person may be convicted of the crime which the person has in fact committed.

(b) In any prosecution for receiving stolen property or receiving a stolen firearm, it is no defense that the accused is in fact guilty of theft or theft of a firearm. A person may be convicted of the crime which the person has in fact committed.

(c) A person may not be convicted of both theft and receiving stolen property, or both theft of a firearm and receiving a stolen firearm, with regard to property appropriated in the same transaction or series of transactions. A person may be charged with the crime the person seems most likely to have committed and may be convicted as provided in subsections (a) and (b) of this section.

(11 Del. C. 1953, § 856; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 260, §§ 1-3.)

§ 857. Theft and related offenses; definitions.

For purposes of §§ 841-856, 1450 and 1451 of this title:

(1) "Appropriate" means to exercise control, or to aid a third person to exercise control, over property of another person permanently or for so extended a period or under such circumstances as to acquire a major portion of its economic value or benefit, or to dispose of property for the benefit of the actor or a third person.

(2) "Dealer" means a person in the business of buying, selling or lending on the security of goods.

(3) "Deprive" means to withhold property of another person permanently or for so extended a period or under such circumstances as to withhold a major portion of its economic value or benefit, or with intent to restore it only upon payment of a reward or other compensation, or to dispose of property of another person so as to make it unlikely that the owner will recover it.

(4) "Obtain" means to bring about or receive a transfer or purported transfer of any interest in property, whether to the defendant or to another person.

(5) "Owner" means a person who has an interest in property which the defendant is not privileged to infringe, as described in paragraph (5) of this section.

(6) "Property" means anything of value except land, and includes things growing on, affixed to or found in land such as topsoil, sand, minerals, gravel and the like, documents although the rights represented thereby have no physical location, contract rights, trade secrets, choses in action and other interests in or claims to admission or transportation tickets, captured or domestic animals, food, drink and electric or other power.

(7) "Property of another person" includes property in which any person other than the defendant has an interest which the defendant is not privileged to infringe, regardless of the fact that the defendant also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

(8) "Services" include labor, professional service, transportation, telephone, gas, electricity or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions and use of vehicles or other movable property.

(9) "Trade secret" shall mean "trade secret" as defined in § 2001 of Title 6.

(11 Del. C. 1953, § 857; 58 Del. Laws, c. 497, § 1; 63 Del. Laws, c. 218, §§ 2, 3; 64 Del. Laws, c. 134, § 1.)

§ 858. Unlawful operation of a recording device.

(a) (1) Any person who knowingly operates the audiovisual recording function of any device in a motion picture theater while the motion picture is being exhibited, for the purpose of distributing or transmitting a still photographic image of the motion picture, without the consent of the motion picture theater owner, is guilty of a class B misdemeanor.

(2) Any person who knowingly operates the audiovisual recording function of any device in a motion picture theater for the purpose of recording a motion picture, while the motion picture is being exhibited, without the consent of the motion picture theater owner, is guilty of a is guilty of a class A misdemeanor which notwithstanding any law to the contrary, may also include a fine of up to $50,000.

(b) The term "audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology now known or later developed.

(c) The term "motion picture theater" means a movie theater, screening room, or other public venue that is being utilized primarily for the exhibition of a motion picture at the time of the offense.

(d) A motion picture theater owner, a supervisor, agent or employee, 18 years of age or older, who has probable cause to believe that a person has recorded or transmitted a substantial portion of a motion picture and has intentionally violated paragraph (a)(2) of this section, may, for the purpose of summoning a law-enforcement officer, take the person into custody and detain the person in a reasonable manner on the premises for a reasonable time.

(e) A motion picture theater owner, a supervisor, agent or employee, 18 years of age or older who detains a person pursuant to subsection (d) of this section, or who causes or provides information leading to the arrest of any person under subsection (a) of this section, shall not be held civilly or criminally liable for such detention or arrest provided they had, at the time of such detention or arrest, probable cause to believe that the person committed a crime defined in subsection (a) of this section.

(f) A motion picture theater owner, a supervisor, agent or employee, 18 years of age or older, who has probable cause to believe that a person has committed a crime defined in subsection (a) of this section may eject such person from the premises and shall not be held civilly or criminally liable for such ejection.

(g) This section does not prevent any lawfully authorized investigative, law-enforcement protective, or intelligence gathering employee or agent, of the local, state or federal government, from operating any audiovisual recording device in a motion picture theater, as part of lawfully authorized investigative, protective, law-enforcement, or intelligence-gathering activities.

(75 Del. Laws, c. 316, § 1.)

§ 859. Larceny of livestock; penalty.

(a) Whoever feloniously steals, takes and carries away any cow, steer, bull, calf, heifer or swine is guilty of larceny and a class G felony.

(b) The minimum sentence of imprisonment required by subsection (a) of this section shall not be subject to suspension and no person convicted under this section shall be eligible for probation or parole during the first 6 months of the sentence.

(11 Del. C. 1953, § 859; 59 Del. Laws, c. 60, § 1; 67 Del. Laws, c. 130, § 8; 67 Del. Laws, c. 350, § 7; 70 Del. Laws, c. 186, § 1.)

§ 860. Possession of shoplifter's tools or instruments facilitating theft; class F felony.

(a) A person is guilty of possession of shoplifter's tools or instruments facilitating theft when the person possesses any tool, instrument or other thing adapted, designed or commonly used for committing or facilitating:

(1) Offenses involving shoplifting; or

(2) Offenses involving the overriding, disabling or evading of a security device without authorization.

(3) [Deleted.]

(b) "Security device" includes any lock, whether mechanical or electronic, or any warning device designed to alert a person or the general public of a possible attempt to shoplift any goods, wares or merchandise that are displayed for sale. "Security device" specifically includes, but is not limited to, any electronic or other device that is attached or affixed to any goods, wares or merchandise on display for sale in a mercantile establishment.

(c) A person possesses shoplifting tools or instruments facilitating theft "under circumstances evincing an attempt to use or knowledge that some other person intends to use such" when the person possesses the tools or instruments at a time and a place proximate to the commission or attempt to commit a shoplifting offense or otherwise under circumstances not manifestly appropriate for what lawful uses the tools or instruments may have.

(d) Possession of shoplifters tools or instruments facilitating theft is a class F felony.

(72 Del. Laws, c. 222, § 2; 75 Del. Laws, c. 162, § 2.)

E Forgery and Related Offenses

§ 861. Forgery; class F felony; class G felony; class A misdemeanor; restitution required.

(a) A person is guilty of forgery when, intending to defraud, deceive or injure another person, or knowing that the person is facilitating a fraud or injury to be perpetrated by anyone, the person:

(1) Alters any written instrument of another person without the other person's authority; or

(2) Makes, completes, executes, authenticates, issues or transfers any written instrument which purports to be the act of another person, whether real or fictitious, who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case or to be a copy of an original when no original existed; or

(3) Possesses a written instrument, knowing that it was made, completed or altered under circumstances constituting forgery.

(b) Forgery is classified and punished as follows:

(1) Forgery is forgery in the first degree if the written instrument is or purports to be:

a. Part of an issue of money, stamps, securities or other valuable instruments issued by a government or a governmental instrumentality; or

b. Part of an issue of stock, bonds or other instruments representing interests in or claims against a corporation, business enterprise or other organization or its property.

Forgery in the first degree is a class F felony.

(2) Forgery is forgery in the second degree if the written instrument is or purports to be any of the following:

a. A deed, will, codicil, contract, release, assignment, commercial instrument, check, or other instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status.

b. A public record, or an instrument filed or required to be filed in or with a public office or public servant.

c. A written instrument officially issued or created by a public office, public servant, or governmental instrumentality.

d. Part of an issue of tokens, tickets, public transportation transfers, certificates, or other articles manufactured and designed for use as symbols of value usable in place of money for the purchase of property or services.

e. A prescription of a duly licensed physician or other person authorized to issue the same for any drug or any instrument or device for which a prescription is required by law.

Forgery in the second degree is a class G felony.

(3) All other forgery is forgery in the third degree, a class A misdemeanor.

(4) If the written instrument is or purports to be provided to an individual by a vaccine provider documenting that an individual has been vaccinated, which bears a government logo or other indication that the written instrument is created by a governmental instrumentality and includes information such as the date an individual received a vaccination and the type of vaccine and lot number, forgery is classified and punished as follows:

a. A first offense by an individual involving a single written instrument under this paragraph (b)(4) is forgery in the third degree, a class A misdemeanor.

b. All other forgery under this paragraph (b)(4) is forgery in the second degree, a class G felony.

(c) In addition to any other penalty provided by law for violation of this section, the court shall require a person convicted of a violation of this section to make restitution to the party or parties who suffered loss as a result of such forgery.

(11 Del. C. 1953, § 861; 58 Del. Laws, c. 497, § 1; 62 Del. Laws, c. 241, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 498, § 1.)

§ 862. Possession of forgery devices; class G felony.

A person is guilty of possession of forgery devices when:

(1) The person makes or possesses with knowledge of its character and intending to use it unlawfully any plate, die or other device, apparatus, equipment or article specifically designed for use in counterfeiting or otherwise forging written instruments; or

(2) The person makes or possesses any device, apparatus, equipment or article capable of or adaptable to use for purposes of forgery, intending to use it unlawfully.

Possession of forgery devices is a class G felony.

(11 Del. C. 1953, § 862; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 203, § 22; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 863. Forgery and related offenses; definition.

"Written instrument" means any instrument or article containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification.

(11 Del. C. 1953, § 863; 58 Del. Laws, c. 497, § 1.)

§§ 864-870. [Reserved.]

F Offenses Involving Falsification of Records

§ 871. Falsifying business records; class A misdemeanor.

(a) For purposes of this section, "medical record" means a record that pertains to a person's medical history, evaluations, tests, diagnoses, prognoses, laboratory reports, medical imaging, treatments, prescriptions, or any other information used in assessing a person's physical, mental, or emotional condition.

(b) A person is guilty of falsifying business records when, with intent to defraud, the person:

(1) Makes or causes a false entry in the business records of an enterprise; or

(2) Alters, erases, obliterates, deletes, removes or destroys a true entry in the business records of an enterprise; or

(3) Omits to make a true entry in the business records of an enterprise in violation of a duty to do so which the person knows to be imposed by law or by the nature of the person's position; or

(4) Prevents the making of a true entry or causes the omission thereof in the business records of an enterprise; or

(5) Alters or modifies, or causes the alteration or modification of the medical record of any person; or

(6) Creates or causes to be created any false medical record.

(c) Falsifying business records is a class A misdemeanor.

(11 Del. C. 1953, § 871; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 275, § 1.)

§ 872. Falsifying business records; defense.

In any prosecution for falsifying business records it is an affirmative defense that the defendant was a clerk, bookkeeper or other employee who, without personal benefit, merely executed the orders of the employer or of a superior officer or employee generally authorized to direct the defendant’s activities.

(11 Del. C. 1953, § 872; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 873. Tampering with public records in the second degree; class A misdemeanor.

A person is guilty of tampering with public records in the second degree when, knowing that the person does not have the authority of anyone entitled to grant it, the person knowingly removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any record or other written instrument filed with, deposited in or otherwise constituting a record of a public office or public servant.

Tampering with public records in the second degree is a class A misdemeanor.

(11 Del. C. 1953, § 873; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§§ 874,875. [Reserved.]

§ 876. Tampering with public records in the first degree; class E felony.

A person is guilty of tampering with public records in the first degree when, with intent to defraud, and knowing that the person does not have the authority of anyone entitled to grant it, the person knowingly removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any record or other written instrument filed with, deposited in or otherwise constituting a record of a public office or public servant.

Tampering with public records in the first degree is a class E felony.

(11 Del. C. 1953, § 876; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 877. Offering a false instrument for filing; class A misdemeanor.

A person is guilty of offering a false instrument for filing when, knowing that a written instrument contains a false statement or false information, and intending to defraud the State, a political subdivision thereof or another person, the person offers or presents it to a public office or a public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of the public office or public servant.

Offering a false instrument for filing is a class A misdemeanor.

(11 Del. C. 1953, § 877; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 878. Issuing a false certificate; class G felony.

A person is guilty of issuing a false certificate when, being a public servant authorized by law to make or issue official certificates or other official written instruments, and with intent to defraud, deceive or injure another person, the person issues such an instrument, or makes the same with intent that it be issued, knowing that it contains a false statement or false information.

Issuing a false certificate is a class G felony.

(11 Del. C. 1953, § 878; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§§ 879,880. [Reserved.]

G Bribery Not Involving Public Servants

§ 881. Bribery; class A misdemeanor.

A person is guilty of bribing when:

(1) The person offers, confers or agrees to confer any benefit upon any employee, agent or fiduciary without the consent of the latter’s employer or principal, with intent to influence the latter to take some action with regard to the latter’s employer’s or principal’s affairs which would not be warranted upon reasonable consideration of the factors which that person should have taken into account; or

(2) The person offers, confers or agrees to confer any benefit upon duly appointed representative of a labor organization or duly appointed trustee or representative of an employee welfare trust fund, with intent to influence the latter in respect to any of that person's acts, decisions or duties as a representative or trustee; or

(3) The person offers, confers or agrees to confer any benefit upon a participant in a sports contest, with intent to influence that the participant not to give the best effort in a sports contest; or

(4) The person offers, confers or agrees to confer any benefit upon an official in a sports contest, with intent to influence the official to perform duties improperly.

Bribing is a class A misdemeanor.

(11 Del. C. 1953, § 881; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 882. Bribe receiving; class A misdemeanor.

A person is guilty of bribe receiving if:

Being an employee, agent or fiduciary and, without the consent of the employer or principal, the person solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that the benefit will influence the person to take some action with regard to the employer's or principal's affairs which would not be warranted upon reasonable consideration of the factors which the person should have taken into account; or

Being a duly appointed representative of a labor organization or a duly appointed trustee or representative of an employee welfare trust fund, the person solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that the benefit will influence the person in respect to any of the person's acts, decisions or duties as representative or trustee; or

Being a participant in a sports contest, the person solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that the person will thereby be influenced not to give the best effort in a sports contest; or

Being an official in a sports contest, the person solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that the person will perform duties improperly.

Bribe receiving is a class A misdemeanor.

(11 Del. C. 1953, § 882; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§§ 883-890. [Reserved.]

H Frauds on Creditors

§ 891. Defrauding secured creditors; class A misdemeanor.

A person is guilty of defrauding secured creditors if the person destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest, intending to defeat enforcement of that interest.

Defrauding secured creditors is a class A misdemeanor.

(11 Del. C. 1953, § 891; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 892. Fraud in insolvency; class A misdemeanor.

A person is guilty of fraud in insolvency when, with intent to defraud any creditor and knowing that a receiver or other person entitled to administer property for the benefit of creditors has been appointed, or that any other composition or liquidation for the benefit of creditors has been made, the person:

(1) Conveys, transfers, removes, conceals, destroys, encumbers or otherwise disposes of any part of or any interest in the debtor's estate; or

(2) Obtains any substantial part of or interest in the debtor's estate; or

(3) Presents to any creditor or to the receiver or administrator any writing or record relating to the debtor's estate knowing the same to contain a false material statement; or

(4) Misrepresents or fails or refuses to disclose to the receiver or administrator the existence, amount or location of any part of or any interest in the debtor's estate, or any other information which the person is legally required to furnish to the administrator.

Fraud in insolvency is a class A misdemeanor.

(11 Del. C. 1953, § 892; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 893. Interference with levied-upon property; class A misdemeanor.

A person is guilty of interference with levied-upon property when the person hides, destroys or removes from the county in which it is situated when levied upon or seized any property which the person knows has been levied upon or seized under execution, attachment process or distress for rent.

Interference with levied-upon property is a class A misdemeanor.

(11 Del. C. 1953, § 893; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§§ 894-899. [Reserved.]

I Other Frauds and Cheats

§ 900. Issuing a bad check; class A misdemeanor; class G felony.

(a) A person is guilty of issuing a bad check when the person issues or passes a check knowing that it will not be honored by the drawee. For the purpose of this section, as well as in any prosecution for theft committed by means of a bad check, it is prima facie evidence of knowledge that the check (other than a postdated check) would not be honored that:

(1) The issuer had no account with the drawee at the time the check was issued; or

(2) Payment was refused by the drawee upon presentation because the issuer had insufficient funds or credit, and the issuer failed to make good within 10 days after receiving notice of that refusal.

Issuing a bad check is a class A misdemeanor unless the amount of the check is $1,500 or more, in which case it is a class G felony.

(b) The failure of any business or other commercial entity, prior to the completion of a transaction (other than a transaction by mail) for which a check is accepted in person by the payee as consideration for goods or services provided by the payee, to:

(1) Request and inspect the person's valid driver's license or other photo identification card, which lists the person's name, address, date of birth and approximate height and weight, to validate the identity of the person presenting the check; and

(2) Record on the check being presented the person's name, driver's license number, if such person has a driver's license, date of birth and address,

may result in the refusal of a law-enforcement agency to investigate violations of subsection (a) of this section.

(11 Del. C. 1953, § 900; 58 Del. Laws, c. 497, § 1; 64 Del. Laws, c. 125, § 1; 65 Del. Laws, c. 497, § 6; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 211, § 7; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 501, § 1; 77 Del. Laws, c. 133, § 8.)

§ 900A. Conditional discharge for issuing a bad check as first offense.

(a) Whenever any person who has not previously been convicted of issuing or passing a bad check under § 900 of this title or under any statute of the United States or of any state relating to the issuing or passing of bad checks pleads guilty to issuing or passing a bad check in violation of § 900 of this title in an amount under $1,500 at the time of arraignment, the court without entering a judgment of guilt and with the consent of the accused may defer further proceedings and place the accused on probation upon terms and conditions, which terms and conditions shall include payment of full restitution in the amount of the check plus any reasonable service fee in connection therewith to the victim of the offense and payment to the State of any court costs associated with the offense. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

(b) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person and shall simultaneously with said discharge and dismissal submit to the State Bureau of Identification pursuant to Chapter 85 of this title the disposition specifying the name of the person and the nature of the proceedings which dispositional information shall be retained by the State Bureau of Identification in accordance with its standard operating procedures.

(c) Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. There may be only 1 discharge and dismissal under this section with respect to any person and no person who is charged with multiple violations of § 900 of this title is eligible for treatment as a first offender under this section.

(66 Del. Laws, c. 252, § 1; 70 Del. Laws, c. 211, § 8; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 133, § 9.)

§ 901. Definition of "issues" and "passes."

(a) *"Issues."* — A person issues a check when, as drawer thereof or as a person who signs a check as drawer in a representative capacity or as agent of the person whose name appears thereon as the principal drawer or obligor, the person delivers it or causes it to be delivered to a person who thereby acquires a right against the drawer with respect to the check. One who draws a check with intent that it be so delivered is deemed to have issued it if the delivery occurs.

(b) *"Passes."* — A person passes a check when, being a payee, holder or bearer of a check which previously has been or purports to have been drawn and issued by another, the person delivers it, for a purpose other than collection to a third person who thereby acquires a right with respect thereto.

(11 Del. C. 1953, § 901; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 902. Issuance of bad check by employee as affirmative defense.

In any prosecution for issuing a bad check, it is an affirmative defense that the accused, in acting as drawer in a representative capacity or as agent of the person whose name appears on the check as principal drawer or obligor, did so as an employee who, without personal benefit, merely executed the orders of the employer or of a superior officer or employee generally authorized to direct the accused's activities.

(11 Del. C. 1953, § 902; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 903. Unlawful use of payment card; class G felony; class A misdemeanor.

(a) A person is guilty of unlawful use of a payment card when the person uses or knowingly permits or encourages another to use a payment card for the purpose of obtaining money, goods, services, or anything of value knowing that:

(1) The card is stolen, forged or fictitious; or

(2) The card belongs to another person who has not authorized its use; or

(3) The card has been revoked or canceled; or

(4) For any other reason use of the card is unauthorized by the issuer.

(b) A person is guilty of unlawful use of a payment card where such person knowingly:

(1) Makes, possesses, sells, gives or otherwise transfers to another, or offers or advertises a payment card with the intent that it be used or with the knowledge or reason to believe that it will be used to obtain money, goods, services, or anything of value without payment of the lawful charges therefor or without authorization of the card holder; or

(2) Publishes a payment card or code of an existing, canceled, revoked, expired or nonexistent payment card, or the numbering or coding which is employed in the issuance of payment cards, with the intent that it be used or with knowledge or reason to believe that it will be used either: to avoid the payment for any money, goods, services, or anything of value; or without authorization of the card holder. As used in this section "publishes" means the communication of information to any 1 or more persons, either orally, in person or by telephone, radio or television, or in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper or magazine article or book.

(c) (1) Except where the victim of any violation of this section is a person 62 years of age or older, unlawful use of a payment card is a class A misdemeanor unless the value of the money, goods, services, or anything of value secured or sought to be secured by means of the payment card is $1,500 or more, in which case it is a class G felony.

(2) Where the victim of any violation of this section is a person 62 years of age or older, unlawful use of a payment card is a class G felony unless the value of the money, goods, services, or anything of value secured or sought to be secured by means of the payment card is $1,500 or more, in which case it is a class F felony.

(d) Amounts involved in unlawful use of a payment card pursuant to 1 scheme or course of conduct, whether from the same issuer or several issuers, may be aggregated in determining whether such unlawful use constitutes a class A misdemeanor or a class G felony under this section.

(e) A person may be prosecuted and convicted under this section in such county or counties within Delaware where the money, goods, services, or anything of value giving rise to the prosecution were solicited, were received, or were attempted to be received, or where the charges for the money, goods, services, or anything of value were billable in the normal course of business.

(11 Del. C. 1953, § 903; 58 Del. Laws, c. 497, § 1; 60 Del. Laws, c. 590, § 5; 65 Del. Laws, c. 497, § 7; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 211, § 9; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 126, § 13; 77 Del. Laws, c. 133, § 10; 79 Del. Laws, c. 260, § 2.)

§ 903A. Reencoder and scanning devices.

(a) Any person who knowingly, wilfully, and with the intent to defraud, possesses a scanning device, or who knowingly, wilfully, and with intent to defraud, uses a scanning device to access, read, obtain, memorize or store, temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card is guilty of a class D felony.

(b) Any person who knowingly, wilfully, and with the intent to defraud, possesses a reencoder, or who knowingly, wilfully, and with intent to defraud, uses a reencoder to place encoded information on the computer chip or magnetic strip or stripe of a payment card or any electronic medium that allows an authorized transaction to occur, without the permission of the authorized user of the payment card from which the information is being reencoded is guilty of a class D felony.

(c) Any scanning device or reencoder described in subsection (e) of this section allegedly possessed or used in violation of subsection (a) or (b) of this section shall be seized and upon conviction shall be forfeited.

(d) Any computer, computer system, computer network, or any software or data, owned by the defendant, which is used during the commission of any public offense described in this section or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of this section shall be subject to forfeiture.

(e) As used in this section, the following definitions apply:

(1) "Reencoder" means an electronic device that places encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or magnetic strip or stripe of a different payment card or any electronic medium that allows an authorized transaction to occur.

(2) "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card.

(f) Nothing in this section shall preclude prosecution under any other provision of law.

(74 Del. Laws, c. 248, § 1; 79 Del. Laws, c. 260, § 3.)

§ 904. Definition of “payment card”.

“Payment card” includes any instrument or device, whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, electronic benefits transfer (“EBT”) card, or debit card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit, by the withdrawing of funds from a deposit account, or through the use of value stored on the card. “Payment card” also includes the number that is assigned to the card even if the physical card, instrument or device is not used or presented.

(11 Del. C. 1953, § 904; 58 Del. Laws, c. 497, § 1; 79 Del. Laws, c. 260, § 1.)

§ 905. Intention and ability to meet obligations as affirmative defense.

In any prosecution for unauthorized use of a payment card under § 903(a)(4) of this title it is an affirmative defense that the accused had the intention and ability to meet all obligations to the issuer arising out of the use of the card.

(11 Del. C. 1953, § 905; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 260, § 4.)

§ 906. Deceptive business practices; class A misdemeanor.

A person is guilty of deceptive business practices when in the course of business the person knowingly or recklessly:

(1) Uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or

(2) Sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service; or

(3) Takes or attempts to take more than the represented quantity of any commodity or service; or

(4) Sells, offers or exposes for sale adulterated or mislabeled commodities. “Adulterated” means varying from the standard of composition or quality prescribed by or pursuant to any statute providing criminal penalties for such variance, or set by established commercial usage. “Mislabeled” means varying from the standard of truth or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for such variance, or set by established commercial usage; or

(5) Makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof intending to promote the sale or increase the consumption of property or services; or

(6) Makes a false or misleading written statement for the purpose of promoting the sale of securities, or omits information required by law to be disclosed in written documents relating to securities; or

(7) Notifies any other person that the other person has won a prize, received an award or has been selected or is eligible to receive anything of value if the other person is required to respond through the use of a 900 service telephone number or similar service number.

This section shall not apply to publishers, broadcasters, printers or other persons engaged in the dissemination of information or reproduction of printed or pictorial matter who publish, broadcast or reproduce material without knowledge of its deceptive character.

Deceptive business practices are a class A misdemeanor.

(11 Del. C. 1953, § 906; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 68 Del. Laws, c. 240, § 1; 70 Del. Laws, c. 186, § 1.)

§ 907. Criminal impersonation; class A misdemeanor.

A person is guilty of criminal impersonation when the person:

(1) Impersonates another person and does an act in an assumed character intending to obtain a benefit or to injure or defraud another person; or

(2) Pretends to be a representative of some person or organization and does an act in a pretended capacity with intent to obtain a benefit or to injure or defraud another person; or

(3) Pretends to be a public servant, or wears or displays without authority any identification, uniform or badge by which a public servant is lawfully distinguished or identified.

Criminal impersonation is a class A misdemeanor.

(11 Del. C. 1953, § 907; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 907A. Criminal impersonation, accident related; class G felony.

A person is guilty of criminal impersonation, accident related, when after being in a motor vehicle accident involving serious physical injury or death to any person:

(1) A driver knowingly pretends to have been someone other than the driver of the vehicle the person was operating; or

(2) Any person knowingly pretends to have been a driver of 1 of the vehicles involved in the accident.

Criminal impersonation, accident related, is a class G felony. The driving privileges of anyone convicted of violating paragraph (1) of this section shall be suspended by the Division of Motor Vehicles for a period of 2 years.

(68 Del. Laws, c. 195, § 1; 70 Del. Laws, c. 186, § 1.)

§ 907B. Criminal impersonation of a law-enforcement official; class D felony, class C felony.

(a) A person is guilty of criminal impersonation of a law-enforcement official when the person, intending to facilitate the commission of a crime or while in immediate flight therefrom does either of the following:

(1) Intentionally and without lawful authority impersonates or otherwise pretends to be a law-enforcement official.

(2) Without lawful authority does any act intended to create or reinforce a false impression that the person is a law-enforcement official.

(b) Criminal impersonation of a law-enforcement official is a class D felony, unless during the course of the commission of the crime, or while in immediate flight therefrom, the person or another participant in the crime does either of the following, in which case it is a class C felony:

(1) Causes physical injury to any person who is not a participant in the crime.

(2) Commits a class A felony or class B felony as defined by this title or any sexual offense as defined by § 761(i) of this title.

(c) Nothing in this section precludes a separate charge, conviction, or sentence for any other crime.

(d) For purposes of this section:

(1) “Federal officer” means an officer or agent of the federal government who has the power to make arrests under federal law.

(2) “Law-enforcement official” means a police officer, firefighter, emergency medical technician (EMT), paramedic, fire police, or federal officer.

(71 Del. Laws, c. 97, § 1; 76 Del. Laws, c. 68, § 1; 82 Del. Laws, c. 150, § 1; 85 Del. Laws, c. 73, § 1.)

§ 907C. Impersonation as a member or veteran of the United States Armed Forces, class A misdemeanor.

(a) A person is guilty of criminal impersonation of a member or veteran of the United States Armed Forces when that person intentionally, and without lawful authority, impersonates or otherwise holds oneself out to be a veteran or member of the United States Armed Forces or to hold oneself out to have an unearned rank in the United States Armed Forces with the purpose of obtaining money, property, or other tangible benefit.

(b) Any person found guilty of criminal impersonation of a member or veteran of the United States Armed Forces shall be guilty of a class A misdemeanor and receive a minimum fine of not less than $1000, which shall not be subject to suspension.

(80 Del. Laws, c. 368, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1.)

§ 908. Unlawfully concealing a will; class G felony.

A person is guilty of unlawfully concealing a will when, with intent to defraud, the person conceals, secretes, suppresses, mutilates or destroys a will, codicil or other testamentary instrument.

Unlawfully concealing a will is a class G felony.

(11 Del. C. 1953, § 908; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 909. Securing execution of documents by deception; class A misdemeanor.

A person is guilty of securing execution of documents by deception when, by knowingly misrepresenting the nature of the document, the person causes another person to execute any instrument affecting, purporting to affect or likely to affect the pecuniary interest of any person.

Securing execution of documents by deception is a class A misdemeanor.

(11 Del. C. 1953, § 909; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 910. Debt adjusting; class B misdemeanor.

A person is guilty of debt adjusting if the person makes a contract, either express or implied, with a particular debtor, whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt-adjusting business who shall, for a consideration, distribute the same among certain specified creditors in accordance with a plan agreed upon.

This section shall not apply to those situations involving debt adjusting incurred incidentally in the lawful practice of law in this State, nor shall anything in this section be construed to apply to any provider which is licensed under Chapter 24A of Title 6.

Debt adjusting is a class B misdemeanor.

(11 Del. C. 1953, § 910; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 430, § 5.)

§ 911. Fraudulent conveyance of public lands; class G felony.

A person is guilty of fraudulent conveyance of public lands when the person executes any deed or other written instrument purporting to convey an interest in land any part of which is public lands of this State, when such person at the time of execution of such instrument knows that the person has no legal or equitable interest in the land described in said instrument.

Fraudulent conveyance of public lands is a class G felony.

(63 Del. Laws, c. 400, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 912. Fraudulent receipt of public lands; class G felony.

A person is guilty of fraudulent receipt of public lands when the person records any deed or other written instrument purporting to transfer to the person an interest in land any part of which is public lands of this State, when such person at the time of recording knows that the transferor had no legal or equitable interest in the land described in said instrument.

Fraudulent receipt of public lands is a class G felony.

(63 Del. Laws, c. 426, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 913. Insurance fraud; class G felony.

(a) A person is guilty of insurance fraud when, with the intent to injure, defraud or deceive any insurer the person:

(1) Presents or causes to be presented to any insurer, any written or oral statement including computer-generated documents as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains false, incomplete or misleading information concerning any fact or thing material to such claim; or

(2) Assists, abets, solicits or conspires with another to prepare or make any written or oral statement that is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete or misleading information concerning any fact or thing material to such claim.

Insurance fraud is a class G felony.

(b) All insurance claims forms shall contain a statement that clearly states in substance the following:

"Any person who knowingly, and with intent to injure, defraud or deceive any insurer, files a statement of claim containing any false, incomplete or misleading information is guilty of a felony."

The lack of such a statement shall not constitute a defense against prosecution under this section.

(c) For the purposes of this section, "statement" includes, but is not limited to, a police report, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, X rays, test result or other evidence of loss, injury or expense; "insurer" shall include, but is not limited to, a health service corporation or health maintenance organization; and "insurance policy" shall include, but is not limited to, the subscriber and members contracts of health service corporations and health maintenance organizations.

(64 Del. Laws, c. 194; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 913A. Health-care fraud; class B felony; class D felony; class G felony.

(a) A person is guilty of health-care fraud when the person knowingly:

(1) Presents or causes to be presented any fraudulent health-care claim to any health-care benefit program; or

(2) Engages in a pattern of presenting or causing to be presented fraudulent health-care claims to any health-care benefit program.

(b) For the purpose of this section:

(1) "Fraudulent health-care claim" means any statement, whether written, oral or in any other form, which is made as part of or in support of a claim or request for payment from any health-care benefit program when such statement knowingly contains false, incomplete or misleading information concerning any fact or thing material to such claim.

(2) "Health-care benefit program" means any plan or contract, whether public or private, under which any medical benefit, equipment, medication or service is provided to any individual. "Health-care benefit program" also includes any individual or entity who is providing a medical benefit, equipment, medication or service for which payment may be made under a plan or contract for the provision of such benefits or services.

(3) "Health-care professional," "health-care practice," "health-care facility" or "health-care services" includes but is not limited to any person who or entity which, for payment, practices in or employs the procedures of medicine, surgery, chiropractic, podiatry, dentistry, optometry, psychology, social work, pharmacy, nursing, physical therapy or any other field concerned with the maintenance or restoration of the health of the body or mind.

(4) "Health-care provider" means any health-care professional, an owner or operator of a health-care practice or facility, any person who creates the impression that the person or the person's practice or facility can provide health-care services, or any person employed or acting on behalf of any of the aforementioned persons.

(5) "Pattern of presenting or causing to be presented" means 3 or more instances of conduct that constitute presenting or causing to be presented fraudulent health-care claims.

(c) (1) Except as provided in paragraphs (2) and (3) of this subsection, health-care fraud is a class G felony.

(2) Health-care fraud is a class D felony if the elements of subsection (a) of this section are met and if:

a. The intended loss to the health-care benefit program is more than $50,000 but less than $100,000;

b. The offender is a health-care provider at the time of the offense or offenses; or,

c. The conduct constitutes a pattern of presenting or causing to be presented fraudulent health-care claims.

(3) Health-care fraud is a class B felony if the elements of subsection (a) of this section are met and if:

a. The intended loss to the health-care benefit program is $100,000 or more; or

b. The offender is a health-care provider at the time of the offense or offenses and the conduct constitutes a pattern of presenting or causing to be presented fraudulent health-care claims.

(4) In addition to the penalties otherwise authorized by this subsection, a person convicted under this section may be subject to a fine of up to 5 times the pecuniary benefit obtained or sought to be obtained through the person's violation of this section.

(d) A conviction is not required for an act of presenting or causing presentation of a fraudulent health-care claim to be used in prosecution of a matter under this section, including an act used as proof of a pattern as defined in paragraph (b)(3) of this section. A conviction for any act of presenting or causing presentation of fraudulent health-care claims, including one which may be relied upon to establish a pattern of presenting or causing presentation of a fraudulent health-care claim, does not preclude prosecution under this section. Prosecution under this section does not preclude prosecution under any other section of the Code.

(72 Del. Laws, c. 337, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 353, §§ 3-5.)

§ 914. Use of consumer identification information.

(a) Except as provided in subsection (b) of this section, as a condition of accepting a payment card as payment for consumer credit, goods, realty, or services, a person may not write down or request to be written down the address and/or telephone number of the payment card holder on the payment card transaction form.

(b) A person may record the address or telephone number of a payment card holder if the information is necessary for:

(1) The shipping, delivery or installation of consumer goods; or

(2) Special orders of consumer goods or services.

(c) Violation of this section is an unclassified misdemeanor.

(67 Del. Laws, c. 423, § 1; 68 Del. Laws, c. 221, § 1; 79 Del. Laws, c. 260, § 5.)

§ 915. Use of payment card information.

(a) In this section, the following words have the meanings indicated:

(1) "Draft" does not include a credit or debit card sales draft.

(2) "Drawer" means the individual who makes or signs a check or other draft;

(b) Subject to the provisions of subsection (c) of this section, as a condition of accepting a check or other draft as payment for consumer credit, goods, realty or services, a person may not request or record the account number of any payment card of the drawer of the check or other draft.

(c) The provisions of this section do not prohibit a person from:

(1) Requesting the drawer to display a payment card for purposes only of identification or credit worthiness;

(2) Requesting or recording the type or issuer of a payment card of the drawer; or

(3) Recording the number and expiration date of a payment card if the person requesting the information has agreed with the payment card issuer to cash checks as a service to the issuer's cardholders and the issuer has agreed to guarantee payment of cardholder checks cashed by that person.

(d) Violation of this section is an unclassified misdemeanor.

(67 Del. Laws, c. 420, § 1; 79 Del. Laws, c. 260, § 6.)

§ 915A. Credit and debit card transaction receipts; unclassified misdemeanor.

(a) Except as provided in subsection (b) of this section, a person who accepts credit or debit cards in exchange for goods or services shall print not more than 5 digits of that credit or debit card account number on the credit or debit card receipt provided to the cardholder.

(b) This section applies only to receipts that are electronically printed and does not apply to transactions in which the sole means of recording the credit or debit card number is by handwriting or by an imprint or copy of the credit or debit card.

(c) Violation of this section is an unclassified misdemeanor.

(74 Del. Laws, c. 151, § 1.)

§ 916. Home improvement fraud; class B felony; class D felony; class F felony; class G felony, class A misdemeanor.

(a) For the purpose of this section, the following definitions shall apply:

(1) "Contract price" means the total price agreed upon under a home improvement contract.

(2) "Home improvement" means any alteration, repair, addition, modification or improvement to any dwelling or the property on which it is situated, including but not limited to the construction, painting or coating, installation, replacement or repair of driveways, sidewalks, swimming pools, unattached structures, porches, kitchens, bathrooms, chimneys, fireplaces, stoves, air conditioning or heating systems, hot water heaters, water treatment systems, electrical wiring or systems, plumbing fixtures or systems, doors or windows, roofs, gutters, downspouts and siding.

(3) A “home improvement contract” is any agreement, whether written or oral, whereby a person offers or agrees to provide home improvements in exchange for payment in any form, regardless of whether any such payments have been made, and includes all agreements for labor, services, and materials to be furnished and performed under the contract.

(4) A “material fact” is a fact that a reasonable person would consider important when purchasing a home improvement of the variety being offered.

(b) A person is guilty of home improvement fraud who enters, or offers to enter, into a home improvement contract as the provider of home improvements to another person, and who with the intent specified in § 841 of this title:

(1) Uses or employs any false pretense or false promise as those acts are defined in §§ 843 and 844 of this title;

(2) Creates or reinforces a person’s impression or belief concerning the condition of any portion of that person’s dwelling or property involved in said home improvement contract knowing that the impression or belief is false;

(3) Makes any untrue statement of a material fact or omits to state a material fact relating to the terms of the home improvement contract or the existing condition of any portion of the property which is the subject of said contract;

(4) Receives money for the purpose of obtaining or paying for services, labor, materials or equipment and fails to apply such money for such purpose by:

a. Failing to substantially complete the home improvement for which the funds were provided; or

b. Failing to pay for the services, labor, materials or equipment provided incident to such home improvement; or

c. Diverting said funds to a use other than for which the funds were received; or

(5) Fails to provide that person’s own true name, or provides a false name, address or phone number of the business offering said home improvements.

(c) For home improvement fraud under this section, it shall be prima facie evidence of the intent specified in § 841 of this title that the person offering or agreeing to provide home improvements:

(1) Has been previously convicted under this section or under a similar statute of the United States or of any state or of the District of Columbia within 10 years of the home improvement contract in question;

(2) Is currently subject to any administrative orders, judgments or injunctions that relate to home improvements under Chapter 25 of Title 6;

(3) Failed to comply with Chapter 44 of Title 6 with respect to the home improvement contract in question; or

(4) Used or threatened the use of force against the person or property of the person purchasing said home improvement and said person is 62 years of age or older.

(d) (1) Except where the person who purchased the home improvement is 62 years of age or older, or an “adult who is impaired” as defined in § 3902 of Title 31, or a “person with a disability” as defined in § 3901(a)(2) of Title 12, home improvement fraud is a class A misdemeanor, unless the loss to the person who purchased the home improvement is $1500 or more, in which case it is a class G felony.

(2) Where the person who purchased the home improvement is 62 years of age or older, or an “adult who is impaired” as defined in § 3902 of Title 31, or a “person with a disability” as defined in § 3901(a)(2) of Title 12, home improvement fraud is a class G felony, unless the loss to the person who purchased the home improvement is $1500 or more, in which case it is a class F felony.

(3) Notwithstanding paragraphs (d)(1) and (2) of this section:

a. Where the loss to the person who purchased the home improvement is at least $50,000 but less than $100,000, home improvement fraud is a class D felony.

b. Where the loss to the person who purchased the home improvement is at least $100,000, home improvement fraud is a class B felony.

(70 Del. Laws, c. 63, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 462, § 1; 73 Del. Laws, c. 126, §§ 14, 15; 77 Del. Laws, c. 133, § 11; 81 Del. Laws, c. 237, § 1.)

§ 917. New home construction fraud; class B felony; class D felony; class G felony; class A misdemeanor.

(a) For the purpose of this section, the following definitions shall apply:

(1) A “dwelling” means a building which is usually occupied by a person lodging therein at night but shall not include a mobile home as defined in § 7003(13) of Title 25.

(2) A “home buyer” means a person who intends to enter into a new home construction contract for oneself or on behalf of any person.

(3) A “new home contractor” means any person who offers or provides new home construction services as a general contractor or a subcontractor and shall, in addition, include, but not be limited to, an architect, engineer or real estate broker or agent.

(4) “New home construction” means the erection, installation or construction of a dwelling on a fixed foundation on land which is owned or purchased by a home buyer.

(5) A “new home construction contract” is any agreement, whether written or oral, between a new home contractor and a home buyer whereby the new home contractor agrees to provide new home construction services in exchange for a payment of money.

(6) “Payment of money” means tender of money or other consideration of value by a home buyer or by any lending institution on behalf of the home buyer to a new home contractor as part of a new home construction contract.

(7) For the purpose of this section, land is “purchased” by a home buyer when the home buyer acquires it by sale, negotiation, mortgage, pledge, lien, gift or any other transaction creating an interest in the property prior to the formation of the new home construction contract, or if the home buyer is to purchase the land as part of the new home construction contract.

(b) A person is guilty of new home construction fraud who, with the intent specified in § 841 of this title, enters into a new home construction contract and:

(1) Uses or employs any false pretense or false promise as those acts are defined in §§ 843 and 844 of this title; or

(2) Receives payments and intentionally fails to use said payment or payments for the purpose or purposes identified in the new home construction contract and/or diverts said payment or payments to a use or uses other than the erection, installation or construction of the dwelling identified therein; or

(3) Receives payment or payments and fails to provide that person’s own true name or provides a false name, address or phone number of the business offering said new home construction services.

(c) For new home construction fraud under this section, it shall be prima facie evidence of the intent specified in § 841 of this title that the new home contractor:

(1) Has been previously convicted under this section, § 916 of this title, or § 3505 of Title 6 within 10 years of the first payment under the new home construction contract in question; or

(2) Is currently subject to any administrative order, judgment or injunction under Chapter 25 of Title 6 relating to new home construction or home improvements (as defined in paragraph (a)(4) of this section).

(d) New construction fraud is a class A misdemeanor, unless:

(1) The loss to the home buyer is $1,500 or more but less than $50,000, in which case it is a class G felony;

(2) The loss to the home buyer is at least $50,000 but less than $100,000, in which case it is a class D felony; or

(3) The loss to the home buyer is $100,000 or more, in which case it is a class B felony.

(e) For the purpose of calculating the amount of the loss to the home buyer, the loss shall be deemed to be the lesser of the total of all payments actually made by the home buyer or the cost to the home buyer to complete the new home construction according to the terms of the original new home construction contract, whether or not said new home is actually completed.

(71 Del. Laws, c. 46, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 133, § 12; 78 Del. Laws, c. 353, §§ 6- 8; 83 Del. Laws, c. 341, § 1; 84 Del. Laws, c. 42, § 1; 85 Del. Laws, c. 206, § 1.)

§ 918. Ticket scalping.

(a) No person shall sell, resell or exchange any ticket to any event or exhibit at a price higher than the original price on the day preceding or on the day of an event at the Bob Carpenter Sports/Convocation Center on the South Campus of the University of Delaware or of a NASCAR Race held at Dover Downs, or on any state or federal highway artery within this State.

(b) Any person who violates this section shall be guilty of ticket scalping. Any person convicted a first time of ticket scalping is guilty of a class B misdemeanor. Any person convicted a second or subsequent time of ticket scalping shall be guilty of a class A misdemeanor. The Superior Court shall have jurisdiction over any offense charged under this section.

(c) For purposes of this section the word “ticket” shall mean any admittance, receipt, entrance ticket or other evidence of a right to be admitted to an event or exhibit.

(70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 233, § 1; 71 Del. Laws, c. 46, § 1.)

§ 919. [Reserved.]

J Offenses Relating to Recorded Devices and Trademark Counterfeiting

§ 920. Transfer of recorded sounds; class G felony.

(a) No person shall knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds recorded on a phonograph record, disc, wire, tape, film or other article upon which sounds are recorded, with the intent to sell or cause to be sold, or to use for profit through public performance, or to use to promote the sale of any product, such article on which sounds are so transferred, without consent of the owner; provided, that such owner is domiciled or has its principal place of business in a country which is a signatory to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (executed on October 29, 1971, Geneva).

(b) For the purposes of this section, “owner” means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master wire, master tape, master film or other device used for reproducing sounds on phonograph records, discs, wires, tapes, films or other articles upon which sound is recorded, and from which the transferred recorded sounds are directly or indirectly derived.

(c) Violation of this section shall constitute a class G felony.

(60 Del. Laws, c. 611, § 1; 67 Del. Laws, c. 130, § 8.)

§ 921. Sale of transferred recorded sounds; class A misdemeanor.

(a) No person shall knowingly, or with reasonable grounds to know, advertise or offer for sale or resale, or sell or resell, distribute or possess for such purposes, any article that has been produced in violation of § 920 of this title.

(b) Violation of this section shall constitute a class A misdemeanor.

(60 Del. Laws, c. 611, § 1; 67 Del. Laws, c. 130, § 8.)

§ 922. Improper labeling; class G felony.

(a) No person shall advertise or offer for sale or resale, or sell or resell, or possess for such purposes, any phonograph record, disc, wire, tape, film or other article on which sounds are recorded, unless the cover, box, jacket, or label clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group.

(b) Violation of this section involving 100 or more improperly labeled sound recordings shall constitute a class G felony, otherwise it is/shall constitute an unclassified misdemeanor.

(c) A second or subsequent violation of this section involving 100 or more improperly labeled sound recordings, or in which the second or subsequent violation plus any and all prior violations of this section added together involve 100 or more improperly labeled sound recordings, shall constitute a class F felony.

(60 Del. Laws, c. 611, § 1; 67 Del. Laws, c. 130, § 8; 75 Del. Laws, c. 410, §§ 1, 2.)

§ 923. Exceptions.

This subpart shall not apply to:

(1) Any broadcaster who, in connection with or as part of a radio, television or cable broadcast transmission, or for the purpose of archival preservation, transfers any such sounds recorded on a sound recording;

(2) Any person who transfers such sounds in the home, for personal use, and without compensation for such transfer;

(3) Any phonograph record, disc, wire, tape, film or other article upon which sound is recorded where a period of 50 years has transpired since the original fixation of sounds thereon was made by the owner or on the owner's behalf.

(60 Del. Laws, c. 611, § 1; 70 Del. Laws, c. 186, § 1.)

§ 924. Civil litigation.

This subpart shall neither enlarge nor diminish the rights of parties in civil litigation.

(60 Del. Laws, c. 611, § 1.)

§ 924A. Forfeiture.

If a person is convicted of a violation of § 922 of this title, the court in its sentencing order shall order the forfeiture and destruction or other disposition of:

(1) All articles on which the conviction is based; and

(2) All implements, devices, materials, and equipment used or intended to be used in the manufacture of the recordings on which the conviction is based.

(75 Del. Laws, c. 410, § 3.)

§ 925. Video privacy protection.

(a) A videotape distributor may not wrongfully disclose an individual or summary listing of any videotapes purchased or rented by a protected individual from the videotape distributor.

(b) In this section the following words or terms have the meanings indicated:

(1) "Protected individual" means:

a. The individual described by any information the wrongful disclosure of which is prohibited under this section; or

b. An agent of that individual.

(2) "Publication" means distribution to a person other than the protected individual.

(3) "Videotape distributor" means a person who sells or rents videotapes.

(4) a. "Wrongful disclosure" means any publication that occurs in circumstances in which a protected individual who rents or purchases a videotape has a reasonable expectation of privacy.

b. "Wrongful disclosure" does not include:

1. Any disclosure made incident to the normal course of the business of renting or selling videotapes to a person whom the protected individual authorizes, prior to distribution, to receive the information;

2. Any disclosure made under summons or subpoena to appropriately authorized law enforcement personnel;

3. Any disclosure made to a collection agency or person designated by the videotape distributor for the purpose of collecting an unreturned videotape or an amount equal to the value of the unreturned videotape; or

4. Any disclosure of names and addresses only for commercial mailing list purposes.

(c) A person convicted of violating this section shall be subject to a fine of not more than $500 for each violation, or imprisonment for not more than 6 months for all violations, or both.

(66 Del. Laws, c. 383, § 1.)

§ 926. Trademark counterfeiting.

(a) Any person who knowingly manufactures, uses, displays, advertises, distributes, offers for sale, sells or possesses with intent to sell or distribute any items or services bearing or identified by a counterfeit mark shall be guilty of the crime of trademark counterfeiting.

(b) *Definitions.* — As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

(1) "Counterfeit mark" means:

a. Any unauthorized reproduction or copy of intellectual property.

b. Intellectual property affixed to any item knowingly sold, offered for sale, manufactured or distributed or identifying services offered or rendered, without the authority of the owner of the intellectual property.

(2) "Intellectual property" means any trademark, service mark, trade name, label, term, device, design or word adopted or used by a person to identify that person's goods or services.

(3) "Retail value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized.

(c) *Presumption.* — A person having possession, custody or control of more than 25 items bearing a counterfeit mark shall be presumed to possess said items with intent to sell or distribute.

(d) *Penalties.* — (1) Except as provided in paragraphs (d)(2) and (3) of this section, a violation of this section constitutes a class A misdemeanor.

(2) A violation of this section constitutes a class G felony if:

a. The defendant has previously been convicted under this section; or

b. The violation involved more than 100 but less than 1,000 items bearing a counterfeit mark or the total retail value of all items or services bearing or identified by a counterfeit mark is more than $2,000, but less than $10,000.

(3) A violation of this section constitutes a class E felony if:

a. The defendant has been previously convicted of 2 or more offenses under this section;

b. The violation involved the manufacture or production of items bearing counterfeit marks; or

c. The violation involved 1,000 or more items bearing a counterfeit mark or the total retail value of all items or services bearing or identified by a counterfeit mark is $10,000 or more.

(e) *Quantity or retail value.* — The quantity or retail value of items or services shall include the aggregate quantity or retail value of all items or services bearing or identified by every counterfeit mark the defendant manufactures, uses, displays, advertises, distributes, offers for sale, sells or possesses.

(f) *Fine.* — Any person convicted under this section shall be fined not less than $5,000 or an amount up to 3 times the retail value of the items or services bearing or identified by a counterfeit mark, whichever is greater, unless extenuating circumstances are shown by the defendant.

(g) *Seizure, forfeiture and disposition.* — (1) Any items bearing a counterfeit mark, and all personal property, including, but not limited to, any items, objects, tools, machines, equipment, instrumentalities or vehicles of any kind, knowingly employed or used in connection with a violation of this section may be seized by any law enforcement officer.

(2) All seized personal property referenced in paragraph (g)(1) of this section shall be forfeited in accordance with applicable law, unless the prosecuting attorney responsible for the charges and the intellectual property owner consent in writing to another disposition.

(h) *Evidence.* — Any federal or state certificate of registration of any intellectual property shall be prima facie evidence of the facts stated therein.

(75 Del. Laws, c. 120, § 2.)

§§ 927-930. [Reserved.]

K Computer-Related Offenses

§ 931. Definitions.

As used in this subpart:

(1) "Access" means to instruct, communicate with, store data in or retrieve data from a computer, computer system or computer network.

(2) "Commercial electronic mail" or "commercial e-mail" means any electronic mail message that is sent to a receiving address or account for the purposes of advertising, promoting, marketing or otherwise attempting to solicit interest in any good service or enterprise.

(3) “Computer” means a programmable, electronic device capable of accepting and processing data.

(4) “Computer network” means:

a. A set of related devices connected to a computer by communications facilities;

b. A complex of 2 or more computers, including related devices, connected by communications facilities; or

c. The communications transmission facilities and devices used to interconnect computational equipment, along with control mechanisms associated thereto.

(5) “Computer program” means a set of instructions, statements or related data that, in actual or modified form, is capable of causing a computer or computer system to perform specified functions.

(6) “Computer services” includes, but is not limited to, computer access, data processing and data storage.

(7) “Computer software” means 1 or more computer programs, existing in any form, or any associated operational procedures, manuals or other documentation.

(8) “Computer system” means a computer, its software, related equipment and communications facilities, if any, and includes computer networks.

(9) “Data” means information of any kind in any form, including computer software.

(10) “Electronic mail” or “e-mail” means any message that is automatically passed from an originating address or account to a receiving address or account;

(11) “Electronic mail service provider” means any person who:

a. Is an intermediary in sending and receiving electronic mail; and

b. Provides to end-users of electronic mail services the ability to send or receive electronic mail.

(12) The “Internet” is a hierarchy of computer networks and systems that includes, but is not limited to, commercial (.com or .co), university (.ac or .edu) and other research networks (.org, .net) and military (.mil) networks and spans many different physical networks and systems around the world.

(13) “Person” means a natural person, corporation, trust, partnership, incorporated or unincorporated association and any other legal or governmental entity, including any state or municipal entity or public official.

(14) “Private personal data” means data concerning a natural person which a reasonable person would want to keep private and which is protectable under law.

(15) “Property” means anything of value, including data.

(16) “Originating address” or “originating account” means the string used to specify the source of any electronic mail message (e.g. company@sender.com);

(17) “Receiving address” or “receiving account” means the string used to specify the destination of any electronic mail message (e.g. person@receiver.com);

(64 Del. Laws, c. 438, § 1; 72 Del. Laws, c. 135, § 3.)

§ 932. Unauthorized access.

A person is guilty of the computer crime of unauthorized access to a computer system when, knowing that the person is not authorized to do so, the person accesses or causes to be accessed any computer system without authorization.

(64 Del. Laws, c. 438, § 1; 70 Del. Laws, c. 186, § 1.)

§ 933. Theft of computer services.

A person is guilty of the computer crime of theft of computer services when the person accesses or causes to be accessed or otherwise uses or causes to be used a computer system with the intent to obtain unauthorized computer services, computer software or data.

(64 Del. Laws, c. 438, § 1; 70 Del. Laws, c. 186, § 1.)

§ 934. Interruption of computer services.

A person is guilty of the computer crime of interruption of computer services when that person, without authorization, intentionally or recklessly disrupts or degrades or causes the disruption or degradation of computer services or denies or causes the denial of computer services to an authorized user of a computer system.

(64 Del. Laws, c. 438, § 1.)

§ 935. Misuse of computer system information.

A person is guilty of the computer crime of misuse of computer system information when:

(1) As a result of accessing or causing to be accessed a computer system, the person intentionally makes or causes to be made an unauthorized display, use, disclosure or copy, in any form, of data residing in, communicated by or produced by a computer system;

(2) That person intentionally or recklessly and without authorization:

a. Alters, deletes, tampers with, damages, destroys or takes data intended for use by a computer system, whether residing within or external to a computer system; or

b. Interrupts or adds data to data residing within a computer system;

(3) That person knowingly receives or retains data obtained in violation of paragraph (1) or (2) of this section; or

(4) That person uses or discloses any data which that person knows or believes was obtained in violation of paragraph (1) or (2) of this section.

(64 Del. Laws, c. 438, § 1; 70 Del. Laws, c. 186, § 1.)

§ 936. Destruction of computer equipment.

A person is guilty of the computer crime of destruction of computer equipment when that person, without authorization, intentionally or recklessly tampers with, takes, transfers, conceals, alters, damages or destroys any equipment used in a computer system or intentionally or recklessly causes any of the foregoing to occur.

(64 Del. Laws, c. 438, § 1.)

§ 937. Unrequested or unauthorized electronic mail or use of network or software to cause same.

A person is guilty of the computer crime of unrequested or unauthorized electronic mail:

(1) When that person, without authorization, intentionally or recklessly distributes any unsolicited bulk commercial electronic mail (commercial E-mail) to any receiving address or account under the control of any authorized user of a computer system. This section shall not apply to electronic mail that is sent between human beings, or when the individual has requested said information. This section shall not apply to the transmission of electronic mail from an organization to its members or where there is a preexisting business relationship. No Internet/interactive service provider shall be liable for merely transmitting an unsolicited, bulk commercial electronic mail message in its network. No Internet/interactive service provider shall be held liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any unsolicited, bulk electronic mail which it believes is, or will be, sent in violation to disconnect or terminate the service of any person that is in violation of this article; or

(2) When a person uses a computer or computer network without authority with the intent to: Falsify or forge electronic mail transmission information in any manner in connection with the transmission of unsolicited bulk electronic mail through or into the computer network of an electronic mail service provider or its subscribers; or

(3) When a person sells, gives or otherwise distributes or possesses with the intent to sell, give or distribute software which:

a. Is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information;

b. Has only limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information; or

c. Is marketed by that person or another acting in concert with that person's knowledge for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

(4) For the purposes of this section, conduct occurring outside of the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or if the receiving address or account was under the control of any authorized user of a computer system who was located in Delaware at the time the authorized user received the electronic mail or communication and the defendant was aware of circumstances which rendered the presence of such authorized user in Delaware a reasonable possibility.

(72 Del. Laws, c. 135, § 1; 70 Del. Laws, c. 186, § 1.)

§ 938. Failure to promptly cease electronic communication upon request.

(a) A person is guilty of the computer crime of failure to promptly cease electronic communication upon request when that person intentionally, recklessly or negligently, fails to stop sending commercial electronic mail to any receiving address or account under the control of any authorized user of a computer system after being requested to do so. All commercial electronic mail sent to any receiving address within the State shall have information to the recipient on how to unsubscribe or stop further receipt of commercial electronic mail from the sender.

(b) For the purposes of this section, conduct occurring outside of the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or if the receiving address or account was under the control of any authorized user of a computer system who was located in Delaware at the time the authorized user received the electronic mail or communication and the defendant was aware of circumstances which rendered the presence of such authorized user in Delaware a reasonable possibility.

(72 Del. Laws, c. 135, § 1; 70 Del. Laws, c. 186, § 1.)

§ 939. Penalties.

(a) A person committing any of the crimes described in §§ 932-938 of this title is guilty in the first degree when the damage to or the value of the property or computer services affected exceeds $10,000.

Computer crime in the first degree is a class D felony.

(b) A person committing any of the crimes described in §§ 932-938 of this title is guilty in the second degree when the damage to or the value of the property or computer services affected exceeds $5,000.

Computer crime in the second degree is a class E felony.

(c) A person committing any of the crimes described in §§ 932-938 of this title is guilty in the third degree when:

(1) The damage to or the value of the property or computer services affected is $1,500 or more; or

(2) That person engages in conduct which creates a risk of serious physical injury to another person.

Computer crime in the third degree is a class G felony.

(d) A person committing any of the crimes described in §§ 932-938 of this title is guilty in the fourth degree when the damage to or the value of the property or computer services, if any, is under $1,500.

Computer crime in the fourth degree is a class A misdemeanor.

(e) Any person gaining money, property services or other consideration through the commission of any offense under this subpart, upon conviction, in lieu of having a fine imposed, may be sentenced by the court to pay an amount, fixed by the court, not to exceed double the amount of the defendant's gain from the commission of such offense. In such case, the court shall make a finding as to the amount of the defendant's gain from the offense and, if the record does not contain sufficient evidence to support such a finding, the court may conduct a hearing upon the issue. For the purpose of this section, "gain" means the amount of money or the value of property or computer services or other consideration derived.

(f) Amounts included in violations of this subpart committed pursuant to 1 scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the degree of the crime.

(g) For the purposes of this subpart, the value of property or computer services shall be:

(1) The market value of the property or computer services at the time of the violation; or

(2) If the property or computer services are unrecoverable, damaged or destroyed as a result of a violation of this subpart, the cost of reproducing or replacing the property or computer services at the time of the violation.

When the value of the property or computer services or damage thereto cannot be satisfactorily ascertained, the value shall be deemed to be $250.

(h) Notwithstanding this section, the value of private personal data shall be deemed to be $500.

(64 Del. Laws, c. 438, § 1; 67 Del. Laws, c. 130, § 8; 72 Del. Laws, c. 135, §§ 1, 2; 77 Del. Laws, c. 133, § 13.)

§ 940. Venue.

(a) In any prosecution for any violation of §§ 932-938 of this title, the offense shall be deemed to have been committed in the place at which the act occurred or in which the computer system or part thereof involved in the violation was located.

(b) In any prosecution for any violation of §§ 932-938 of this title based upon more than 1 act in violation thereof, the offense shall be deemed to have been committed in any of the places at which any of the acts occurred or in which a computer system or part thereof involved in a violation was located.

(c) If any act performed in furtherance of the offenses set out in §§ 932-938 of this title occurs in this State or if any computer system or part thereof accessed in violation of §§ 932-936 of this title is located in this State, the offense shall be deemed to have occurred in this State.

(64 Del. Laws, c. 438, § 1; 72 Del. Laws, c. 135, §§ 1, 2.)

§ 941. Remedies of aggrieved persons.

(a) Any aggrieved person who has reason to believe that any other person has been engaged, is engaged or is about to engage in an alleged violation of any provision of §§ 932-938 or § 9616A of this title may bring an action against such person and may apply to the Court of Chancery for:

(1) An order temporarily or permanently restraining and enjoining the commencement or continuance of such act or acts;

(2) An order directing restitution; or

(3) An order directing the appointment of a receiver.

Subject to making due provisions for the rights of innocent persons, a receiver shall have the power to sue for, collect, receive and take into possession any property which belongs to the person who is alleged to have violated any provision of this subpart and which may have been derived by, been used in or aided in any manner such alleged violation. Such property shall include goods and chattels, rights and credits, moneys and effects, books, records, documents, papers, choses in action, bills, notes and property of every description including all computer system equipment and data, and including property with which such property has been commingled if it cannot be identified in kind because of such commingling. The receiver shall also have the power to sell, convey and assign all of the foregoing and hold and dispose of the proceeds thereof under the direction of the Court. Any person who has suffered damages as a result of an alleged violation of any provision of §§ 932-938 or § 9616A of this title, and submits proof to the satisfaction of the Court that the person has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent the person has sustained out-of-pocket losses. The Court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

(b) The Court may award the relief applied for or such other relief as it may deem appropriate in equity.

(c) Independent of or in conjunction with an action under subsection (a) of this section, any person who suffers any injury to person, business or property may bring an action for damages against a person who is alleged to have violated any provision of §§ 932-938 or § 9616A of this title. The aggrieved person shall recover actual damages and damages for unjust enrichment not taken into account in computing damages for actual loss and treble damages where there has been a showing of wilful and malicious conduct.

(d) Proof of pecuniary loss is not required to establish actual damages in connection with an alleged violation of § 935 of this title arising from misuse of private personal data.

(e) In any civil action brought under this section, the Court shall award to any aggrieved person who prevails reasonable costs and reasonable attorneys' fees.

(f) The filing of a criminal action against a person is not a prerequisite to the bringing of a civil action under this section against such person.

(g) No civil action under this section may be brought but within 3 years from the date the alleged violation of §§ 932-938 or § 9616A of this title is discovered or should have been discovered by the exercise of reasonable diligence.

(64 Del. Laws, c. 439, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 135, §§ 1, 2; 80 Del. Laws, c. 147, § 1.)

L Concealment of Funds

§ 951. Money laundering; class D felony.

(a) A person is guilty of money laundering when:

(1) The person knowingly acquires or maintains an interest in, conceals, possesses, transfers, or transports the proceeds of criminal activity; or

(2) The person knowingly conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity; or

(3) The person knowingly invests, expends, or receives, or offers to invest, expend, or receive the proceeds of criminal activity or funds that the person believes are the proceeds of criminal activity; or

(4) The person knowingly finances or invests or intends to finance or invest funds that the person believes are intended to further the commission of criminal activity; or

(5) The person knowingly engages in a transaction involving the proceeds of criminal activity intended, in whole or in part, to avoid a currency transaction reporting requirement under the laws of this State or any other state or of the United States.

(b) Knowledge of the specific nature of the criminal activity giving rise to the proceeds is not required to establish a culpable mental state under this section.

(c) For purposes of this section, the following definitions shall apply:

(1) "Criminal activity" means any offense that is a crime under the Laws of Delaware, another state, or the United States.

(2) "Funds" includes:

a. Coin or currency of the United States or any other country;

b. Bank checks or money orders; or

c. Investment or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery.

(3) "Funds that the person believes are the proceeds of criminal activity" means any funds that are believed to be proceeds of criminal activity including funds that are not the proceeds of criminal activity.

(4) "Proceeds" means funds acquired or derived directly or indirectly from, produced through, or realized through an act.

(5) "Structure" or "structuring" means that a person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct 1 or more transactions in currency, in any amount, at 1 or more financial institutions, including video lottery facilities, on 1 or more days, in any manner, for the purpose of evading currency transaction reporting requirements provided by state or federal law. "In any manner" includes, but is not limited to, the breaking down into smaller sums of a single sum of currency meeting or exceeding that which is necessary to trigger a currency reporting requirement or the conduct of a transaction, or series of currency transactions, at or below the reporting requirement. The transaction or transactions need not exceed the reporting threshold at any single financial institution on any single day in order to meet the definition of "structure" or "structuring" provided in this paragraph. Among the factors that the finder of fact may consider in determining that a transaction has been designed to avoid a transaction reporting requirement shall be whether the person, acting alone or with others, conducted 1 or more transactions in currency, in any amount, at 1 or more financial institutions, on 1 or more days, in any manner.

(d) It is a defense to prosecution under this section that the transaction was necessary to preserve a person's right to representation as guaranteed by the Sixth Amendment of the United States Constitution or by article I, § 17 of the Delaware Constitution or that the funds were received as bona fide legal fees by a licensed attorney and at the time of their receipt, the attorney did not have actual knowledge that the funds were derived from criminal activity.

(e) A violation of subsection (a) of this section is a class D felony.

(f) *Structuring; avoiding a transaction reporting requirement.* — A person is guilty of a crime if, with the purpose to evade a transaction reporting requirement of this State or of 31 U.S.C. § 5311 et seq. or 31 C.F.R. § 103 et seq., or any rules or regulations adopted under those chapters and sections, the person:

(1) Causes or attempts to cause a financial institution, including a video lottery facility, foreign or domestic money transmitter or an authorized delegate thereof, check casher, person engaged in a trade or business or any other individual or entity required by state or federal law to file a report regarding currency transactions or suspicious transactions to fail to file a report; or

(2) Causes or attempts to cause a financial institution, including a video lottery facility, foreign or domestic money transmitter or an authorized delegate thereof, check casher, person engaged in a trade or business or any other individual or entity required by state or federal law to file a report regarding currency transactions or suspicious transactions to file a report that contains a material omission or misstatement of fact; or

(3) Structures or assists in structuring, or attempts to structure or assist in structuring, any transaction with one or more financial institutions, including a video lottery facility, foreign or domestic money transmitters or an authorized delegate thereof, check cashers, persons engaged in a trade or business or any other individuals or entities required by state or federal law to file a report regarding currency transactions or suspicious transactions.

(g) A violation of subsection (f) of this section is a class G felony.

(h) Money laundering shall not be deemed to be a related or included offense of any other provision of this Code. Prosecution and sentencing for money laundering shall not be deemed to preclude prosecution or sentencing under any other provision of this Code.

(76 Del. Laws, c. 271, § 1; 77 Del. Laws, c. 221, §§ 6-9.)

Subchapter IV

Offenses Relating to Marriage

§ 1001. Bigamy; class G felony.

A person is guilty of bigamy when the person contracts or purports to contract a marriage with another person knowing the person has a living spouse, or knowing the other person has a living spouse.

Bigamy is a class G felony.

(11 Del. C. 1953, § 1001; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1002. Bigamy; defenses.

In any prosecution for bigamy it is a defense that, at the time of the allegedly bigamous marriage:

(1) The accused believed, after diligent inquiry, that the prior spouse was dead; or

(2) The parties to the former marriage had been living apart for 7 consecutive years throughout which the accused had no reasonable grounds to believe that the prior spouse was alive; or

(3) A court in any American or foreign jurisdiction had entered a judgment purporting to terminate or annul any prior disqualifying marriage, and the accused did not know that judgment to be invalid; or

(4) The accused otherwise reasonably believed that the accused was legally eligible to remarry.

(11 Del. C. 1953, § 1002; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1003. Bigamous marriage contracted outside the State.

Whoever, being a resident of Delaware, goes out of the State and contracts a marriage contrary to § 1001 of this title, intending to return and reside in Delaware, and returns accordingly, is guilty of bigamy.

(11 Del. C. 1953, § 1003; 58 Del. Laws, c. 497, § 1.)

§ 1004. Advertising marriage in another state.

A person is guilty of advertising marriage in another state when the person erects any sign or billboard, or publishes or distributes any material giving information relative to the performance of marriage in another state.

Advertising marriage in another state is a violation. In addition, a peace officer of this State may seize and destroy any sign, billboard or material which the officer observes in violation of this section.

(11 Del. C. 1953, § 1004; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

Subchapter V

Offenses Relating to Children and Vulnerable Adults

A Child Welfare; Sexual Offenses

§ 1100. Definitions relating to children.

When used in this subchapter:

(1) “Abuse” means causing any physical injury to a child through unjustified force as defined in § 468(1)(c) of this title, torture, negligent treatment, sexual abuse, exploitation, maltreatment, mistreatment or any means other than accident.

(2) “Child” shall mean any individual less than 18 years of age. For the purposes of §§ 1108, 1109, 1110, and 1111 of this title, “child” shall also mean any individual who is intended by the defendant to appear to be 14 years of age or less.

(3) “Delinquent child” means a child who commits an act which if committed by an adult would constitute a crime.

(4) “Neglect” or “neglected child” is as defined in § 901 of Title 10.

(5) “Physical injury” to a child shall mean any impairment of physical condition or pain.

(6) “Previous pattern” of abuse and/or neglect shall mean 2 or more incidents of conduct:

a. That constitute an act of abuse and/or neglect; and

b. Are not so closely related to each other or connected in point of time and place that they constitute a single event.

A conviction is not required for an act of abuse or neglect to be used in prosecution of a matter under this subchapter, including an act used as proof of a previous pattern as defined in this paragraph. A conviction for any act of abuse or neglect, including 1 which may be relied upon to establish a previous pattern of abuse and/or neglect, does not preclude prosecution under this subchapter.

(7) “Prohibited sexual act” shall include:

a. Sexual intercourse;

b. Anal intercourse;

c. Masturbation;

d. Bestiality;

e. Sadism;

f. Masochism;

g. Fellatio;

h. Cunnilingus;

i. Nudity, if such nudity is to be depicted for the purpose of the sexual stimulation or the sexual gratification of any individual who may view such depiction;

j. Partial nudity, if the child in the image depicted is all of the following:

1. Scantily clothed.

2. Posed provocatively, or otherwise posed in a fashion obviously intended to arouse even though genitalia is not blatantly displayed.

3. Is intended for the purpose of the sexual stimulation or the sexual gratification of any individual who may view such depiction.

k. Sexual contact;

l. Lascivious exhibition of the genitals or pubic area of any child;

m. Any other act which is intended to be a depiction or simulation of any act described in this paragraph.

(8) “Serious physical injury” shall mean physical injury which creates a risk of death, or which causes disfigurement, impairment of health or loss or impairment of the function of any bodily organ or limb, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.

(9) “Significant intellectual or developmental disabilities” means impairment in the intellectual or physical capacity of a child as evidenced by a discernible inability to function within the normal range of performance and behavior with regard to age, development, and environment.

(10) “Truancy” or “truant” shall refer to a pupil enrolled in grades kindergarten through 12 of a public school who has been absent from school for more than 3 school days during a school year without a valid excuse as defined in regulations of the district board of education of the school district in which the pupil is or should be enrolled pursuant to the provisions of Title 14, or where a student is enrolled in a charter school, by the board of directors of the charter school.

(11) “Visual depiction” includes, but is not limited to:

a. Any image which is recorded, stored or contained on or by developed or undeveloped photographic film, motion picture film or videotape; or

b. Data which is stored or transmitted on or by any computer, or on or by any digital storage medium or by any other electronic means which is capable of conversion into a visual image; or

c. Any picture, or computer-generated image or picture, or any other image whether made, stored or produced by electronic, digital, mechanical or other means.

(11 Del. C. 1953, § 1103; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 547, § 7; 60 Del. Laws, c. 449, § 2; 61 Del. Laws, c. 179, §§ 1, 2; 61 Del. Laws, c. 334, § 4; 63 Del. Laws, c. 290, § 8; 65 Del. Laws, c. 494, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 266, §§ 3, 4; 72 Del. Laws, c. 346, § 17; 72 Del. Laws, c. 480, §§ 1-4; 74 Del. Laws, c. 175, § 13; 76 Del. Laws, c. 136, § 8; 78 Del. Laws, c. 406, § 1; 80 Del. Laws, c. 175, § 5; 83 Del. Laws, c. 410, § 1.)

§ 1100A. Dealing in children; class E felony.

A person is guilty of dealing in a child if the person intentionally or knowingly trades, barters, buys or negotiates to trade, barter, buy or sell a child under the age of 18; provided, however, that payment of reasonable medical expenses related to the pregnancy and reasonable room and board to the providers of those services in conjunction with placement of a child for adoption in accordance with § 904(a)(2) of Title 13 shall not constitute a violation of this section.

Dealing in a child is a class E felony.

(67 Del. Laws, c. 100, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 406, § 1.)

§ 1101. Abandonment of child; class E felony; class F felony.

A person is guilty of abandonment of a child when, being a parent, guardian or other person legally charged with the care or custody of a child, the person deserts the child in any place intending permanently to abandon the child.

Abandonment of a child is a class E felony unless the child is 14 years of age or older. Abandonment of a child 14 years of age or older is a class F felony.

(11 Del. C. 1953, § 1101; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 33, § 1.)

§ 1102. Endangering the welfare of a child; class A misdemeanor; class B, C, D, E, or G felony.

(a) A person is guilty of endangering the welfare of a child when:

(1) Being a parent, guardian or any other person who has assumed responsibility for the care or supervision of a child the person:

a. Intentionally, knowingly or recklessly acts in a manner likely to be injurious to the physical, mental or moral welfare of the child; or

b. Intentionally, knowingly or recklessly does or fails to do any act, including failing to report a missing child, with the result that the child becomes a neglected or abused child; or

(2) The person knowingly contributes to the delinquency of any child less than 18 years old by doing or failing to do any act with the result, alone or in conjunction with other acts or circumstances, that the child becomes a delinquent child; or

(3) The person knowingly encourages, aids, abets or conspires with the child to run away from the home of the child's parents, guardian or custodian; or the person knowingly and illegally harbors a child who has run away from home; or

(4) The person commits any violent felony, or reckless endangering second degree, assault third degree, terroristic threatening, unlawful imprisonment second degree, or child abuse third or fourth degree against a victim, knowing that such felony or misdemeanor was witnessed, either by sight or sound, by a child less than 18 years of age who is a member of the person's family or the victim's family; or

(5) The person commits the offense of driving under the influence as set forth in § 4177 of Title 21, or the offense of operating a vessel or boat under the influence as set forth in § 2302 of Title 23, and during the commission of the offense knowingly permits a child less than 18 years of age to be a passenger in or on such vehicle, vessel or boat; or

(6) The person commits any offense set forth in Chapter 47 of Title 16 in any dwelling, knowing that any child less than 18 years of age is present in the dwelling at the time; or

(7) a. A child dies, suffers a serious physical injury, suffers a physical injury, or suffers a period of altered mental or physical state because the person intentionally, knowingly, or recklessly makes available to the child through exposure, consumption, or inhalation any of the following:

1. A controlled substance that is not prescribed to the child by a physician.

2. A prescription drug that is not a controlled substance but for which a prescription is required.

b. As used in this paragraph (a)(7):

1. "Controlled substance" means as defined in § 4701 of Title 16.

2. "Prescription drug" means as defined in § 4701 of Title 16.

(b) Endangering the welfare of a child, except paragraph (a)(7) of this section, shall be punished as follows:

(1) When the death of a child occurs while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class E felony;

(2) When serious physical injury to a child occurs while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class G felony;

(3) When a child becomes the victim of a sexual offense as defined in § 761(i) of this title while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class G felony;

(4) In all other cases, endangering the welfare of a child is a class A misdemeanor.

(c) Endangering the welfare of a child, as set forth in paragraph (a)(7) of this section, shall be punished as follows:

(1) When the death of a child occurs while the child's welfare was endangered as defined in paragraph (a)(7) of this section, endangering the welfare of a child is a class B felony.

(2) When serious physical injury to a child occurs while the child's welfare was endangered as defined in paragraph (a)(7) of this section, endangering the welfare of a child is a class C felony.

(3) When physical injury to a child occurs while the child's welfare was endangered as defined in paragraph (a)(7) of this section, endangering the welfare of a child is a class D felony.

(4) When physical injury to a child does not occur while the child's welfare was endangered as defined in paragraph (a)(7) of this section, but the child suffers a period of altered mental or physical state, endangering the welfare of a child is a class A misdemeanor.

(d) For the purpose of imposing the penalties prescribed in paragraph (b)(1), (b)(2), (b)(3), (c)(1), (c)(2), (c)(3), or (c)(4) of this section, it is not necessary to prove the person's state of mind or liability for causation with regard to the resulting death of or physical injury to the child, sexual offense against the child, or altered mental or physical state of the child, notwithstanding the provisions of § 251, § 252, § 261, § 262, § 263 or § 264 of this title, or any other statutes to the contrary.

(11 Del. C. 1953, § 1102; 58 Del. Laws, c. 497, § 1; 61 Del. Laws, c. 334, § 6; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 451, §§ 1, 2; 71 Del. Laws, c. 424, § 3; 73 Del. Laws, c. 208, §§ 1, 2, 3; 77 Del. Laws, c. 34, § 1; 78 Del. Laws, c. 242, § 1; 78 Del. Laws, c. 406, § 2; 80 Del. Laws, c. 175, § 6; 81 Del. Laws, c. 79, § 9; 82 Del. Laws, c. 150, § 1; 84 Del. Laws, c. 126, § 7; 84 Del. Laws, c. 127, § 1.)

§ 1102A. Abandonment of a baby at a safe haven as defense.

(a) For purposes of this section, "baby" means as defined in § 902 of Title 16.

(b) In any prosecution for an offense under § 1101 or § 1102 of this title, it is a defense if the person surrendered care or custody of a baby directly to an employee or volunteer of a safe haven under § 907A(b) of Title 16, if the baby is surrendered alive, unharmed, and is in a safe place in the safe haven.

(73 Del. Laws, c. 187, §§ 1, 8; 75 Del. Laws, c. 376, § 1; 83 Del. Laws, c. 242, § 4.)

§ 1103. Child abuse in the fourth degree; class A misdemeanor.

(a) A person is guilty of child abuse in the fourth degree when the person intentionally or recklessly causes physical injury to a child.

(b) Child abuse in the fourth degree is a class A misdemeanor.

(78 Del. Laws, c. 406, § 3; 84 Del. Laws, c. 126, § 1.)

§ 1103A. Child abuse in the third degree; class D felony.

(a) A person is guilty of child abuse in the third degree when the person intentionally or recklessly causes physical injury to a child and any 1 of the following applies:

(1) The child is less than 6 years of age.

(2) The child has an intellectual, developmental, or physical disability.

(3) The injury was caused by means of a deadly weapon or dangerous instrument.

(b) For an offense under this section, it is not a defense that the person did not know the child's age or that the person reasonably believed the child to be 6 years of age or older.

(c) For an offense under this section, it is not a defense that the person did not know the child has an intellectual, developmental, or physical disability or that the person reasonably believed the child did not have an intellectual, developmental, or physical disability.

(d) Child abuse in the third degree is a class D felony.

(78 Del. Laws, c. 406, § 3; 84 Del. Laws, c. 126, § 2.)

§ 1103B. Child abuse in the second degree; class B felony.

(a) A person is guilty of child abuse in the second degree when the person intentionally or recklessly causes serious physical injury to a child.

(b) Child abuse in the second degree is a class B felony.

(c) Notwithstanding any provision of this title to the contrary, any person who commits child abuse in the second degree must receive a minimum sentence of 5 years at Level V if any 1 of the following applies:

(1) The child is less than 6 years of age at the time of offense.

(2) The child has an intellectual, developmental, or physical disability.

(3) The injury was caused by means of a deadly weapon or dangerous instrument.

(d) For an offense under this section, it is not a defense that the person did not know the child's age or that the person reasonably believed the child to be 6 years of age or older.

(e) For an offense under this section, it is not a defense that the person did not know the child has an intellectual, developmental, or physical disability or that the person reasonably believed the child did not have an intellectual, developmental, or physical disability.

(72 Del. Laws, c. 197, § 1; 78 Del. Laws, c. 406, § 3; 84 Del. Laws, c. 126, § 3.)

§ 1103C. Child abuse in the first degree; class A felony.

(a) A person is guilty of child abuse in the first degree when the person intentionally or recklessly causes serious physical injury to a child and that injury causes permanent disfigurement, permanent impairment of health, or permanent loss or impairment of a bodily organ.

(b) Child abuse in the first degree is a class A felony.

(84 Del. Laws, c. 126, § 4.)

§ 1103D. Child torture; class B felony.

(a) As used in this section:

(1) "Torture" means a course of conduct consisting of 1 or more instances of any of the following acts which occur over a period of more than 24 hours and are done with malice or an extreme indifference to the well-being of the child:

a. Child abuse under § 1103, § 1103A, § 1103B, or § 1103C of this title.

b. Maltreatment or emotional abuse of a child.

c. Deprivation of, or failure to provide, necessary care such as food, water, clothing, shelter, or medical care.

(2) "Torture" includes unreasonable or extended confinement or restraint, cruel punishment, or intentional or reckless failure to provide for the health, safety, medical, or nutritional needs of a child.

(b) A person is guilty of child torture if all of the following conditions are satisfied:

(1) The child is under the person's care, custody, or control, or the person is charged by law with or has assumed responsibility for the child's care.

(2) The person intentionally or recklessly commits or allows another person to commit torture to the child.

(c) Child torture is a class B felony.

(d) A charge under this section does not limit or preclude any other charge being brought against the person.

(e) The crime of child torture does not require any proof that the child suffered physical pain or physical injury.

(84 Del. Laws, c. 126, § 5; 84 Del. Laws, c. 514, § 17.)

§ 1103E. Continuous child abuse; class G or B felony.

(a) A person is guilty of continuous child abuse when the person intentionally or recklessly engages in 3 or more acts of child abuse under § 1103, § 1103A, § 1103B, § 1103C, or § 1103D of this title over a period of time not less than 3 weeks in duration.

(b) (1) Except as provided under paragraph (b)(2) of this section, continuous child abuse is a class G felony.

(2) When 3 or more of the acts of child abuse committed under subsection (a) of this section are acts under § 1103A, § 1103B, § 1103C, or § 1103D of this title, continuous child abuse is a class B felony.

(84 Del. Laws, c. 126, § 6.)

§ 1104. Treatment of a child by a prayer as a defense to a charge of not providing medical care or treatment.

In any prosecution for endangering the welfare of a child, except where it is alleged to be punishable under § 1102(b)(1) or (b)(2) of this title, which is based upon an alleged failure or refusal to provide proper medical care or treatment to an ill child, it is an affirmative defense that the accused is a member or adherent of an organized church or religious group, the tenets of which prescribe prayer as the principal treatment for illness, and treated or caused the ill child to be treated in accordance with those tenets; provided, that the accused may not assert this defense when the person has violated any laws relating to communicable or reportable diseases and to sanitary matters.

(11 Del. C. 1953, § 1104; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 451, § 3.)

§ 1105. Crime against a vulnerable adult.

(a) Any person who commits, or attempts to commit, any of the crimes or offenses set forth in subsection (f) of this section against a person who is a vulnerable adult is guilty of a crime against a vulnerable adult.

(b) A crime against a vulnerable adult shall be punished as follows:

(1) If the underlying offense is an unclassified misdemeanor, or a class B misdemeanor, the crime against a vulnerable adult shall be a class A misdemeanor;

(2) If the underlying offense is a class A misdemeanor, the crime against a vulnerable adult shall be a class G felony;

(3) If the underlying offense is a class D, E, F, or G felony, the crime against a vulnerable adult shall be 1 class higher than the underlying offense.

(c) "Vulnerable adult" means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation, the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.

(d) Notwithstanding any provision of law to the contrary, it is no defense to an offense or sentencing provision set forth in this section that the accused did not know that the victim was a vulnerable adult or that the accused reasonably believed the person was not a vulnerable adult unless the statute defining the underlying offense, or a related statute, expressly provides that knowledge that the victim is a vulnerable adult is a defense.

(e) No person shall be sentenced for both an underlying offense and a crime against a vulnerable adult. No person shall be sentenced for a violation of subsection (a) of this section if the underlying offense, as charged against the accused, has an element that the victim was 62 years of age or older or was an "adult who is impaired" as defined in § 3902 of Title 31.

(f) The following shall be underlying offenses for the purposes of this section:

Title 11:	
§ 601	Offensive touching
§ 602(a)	Menacing
§ 602(b)	Aggravated Menacing
§ 603	Reckless endangering in the second degree
§ 604	Reckless endangering in the first degree
§ 605	Abuse of a pregnant female in the second degree
§ 606	Abuse of a pregnant female in the first degree
§ 611	Assault in the third degree
§ 612	Assault in the second degree
§ 621	Terroristic threatening
§ 622	Hoax device
§ 625	Unlawfully administering drugs
§ 626	Unlawfully administering controlled substance or counterfeit substance or narcotic drugs
§ 645	Promoting suicide
§ 763	Sexual harassment
§ 764	Indecent exposure in the second degree
§ 766	Incest
§ 767	Unlawful sexual contact in the third degree
§ 769	Unlawful sexual contact in the first degree
§ 770	Rape in the fourth degree
§ 774	Sexual extortion
§ 780	Female genital mutilation
§ 781	Unlawful imprisonment in the second degree
§ 782	Unlawful imprisonment in the first degree
§ 783	Kidnapping in the second degree
§ 791	Acts constituting coercion
§ 811	Criminal mischief
§ 825	Burglary in the second degree
§ 831	Robbery in the second degree
§ 835	Carjacking in the second degree
§ 841	Theft, except paragraph (c)(3)b.
§ 841A	Theft of a motor vehicle
§ 842	Theft; lost or mislaid property
§ 843	Theft; false pretense
§ 844	Theft; false promise
§ 846	Extortion
§ 848	Misapplication of property
§ 853	Unauthorized use of a vehicle
§ 854	Identity theft
§ 861	Forgery
§ 903	Unlawful use of payment card
§ 909	Securing execution of documents by deception
§ 914	Use of consumer identification information
§ 916	Home improvement fraud
§ 917	New home construction fraud, except paragraph (d)(3)
§ 1001	Bigamy
§ 1311	Harassment
§ 1312	Stalking, except paragraphs (d)(1) and (d)(2)
§ 1335	Violation of privacy
§ 1339	Adulteration
§ 1451	Theft of a firearm
Title 6:	
§ 73-604	Securities fraud.

(11 Del. C. 1953, § 1105; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 416, § 1; 78 Del. Laws, c. 175, § 106; 78 Del. Laws, c. 224, § 15; 79 Del. Laws, c. 260, § 10; 82 Del. Laws, c. 216, § 1.)

§ 1106. Unlawfully dealing with a child; class B misdemeanor.

A person is guilty of unlawfully dealing with a child when:

(1) The person knowingly permits a child less than 18 years old to enter or remain in a place where unlawful narcotics or dangerous drugs activity is maintained or conducted; or

(2) The person knowingly permits a child less than 18 years old to enter or remain in a place where unlawful sexual activity is maintained or conducted; or

(3) The person knowingly permits a child less than 18 years old to enter or remain in a place where gambling activity which is made unlawful by this Criminal Code is maintained or conducted; or

(4) The person, being the proprietor or person in charge of any dance house, concert saloon, theater, museum or similar place of amusement, where wines or spirituous or malt liquors are sold or given away, knowingly admits or permits to remain therein any minor under the age of 18 years, unless accompanied by a parent or guardian.

Unlawfully dealing with a child is a class B misdemeanor.

(11 Del. C. 1953, § 1106; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 68 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 318, § 1; 73 Del. Laws, c. 425, §§ 1, 2.)

§ 1107. Endangering children; unclassified misdemeanor.

A person is guilty of endangering children when the person negligently abandons or leaves unattended in any place accessible to children any refrigerator, icebox or similar airtight box or container which has a locking device inoperable from within, without first unhinging and removing the door or lid thereof or detaching the locking device from the door or lid. Nothing in this section prohibits the normal use of a refrigerator, icebox or freezer for the storage of food.

Endangering children is an unclassified misdemeanor.

(11 Del. C. 1953, § 1107; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1108. Sexual exploitation of a child; class B or D felony.

A person is guilty of sexual exploitation of a child when:

(1) The person knowingly, photographs or films a child engaging in a prohibited sexual act or in the simulation of such an act, or otherwise knowingly creates a visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(2) The person knowingly, finances or produces any motion picture, video or other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(3) The person knowingly publishes or makes available for public distribution or sale by any means, including but not limited to computer, any book, magazine, periodical, pamphlet, photograph, Internet site or web page which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, or knowingly publishes or makes available for public distribution or sale by any means, including computer, any other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(4) The person permits, causes, promotes, facilitates, finances, produces or otherwise advances an exhibition, display or performances of a child engaging in a prohibited sexual act or the simulation of such an act.

Sexual exploitation of a child is a class B felony unless the prohibited sex act is “partial nudity” as defined in § 1100 of this title, then it is a class D felony.

(61 Del. Laws, c. 179, § 3; 63 Del. Laws, c. 28, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 480, §§ 5-7; 83 Del. Laws, c. 410, § 1.)

§ 1109. Dealing in child pornography; class B or D felony.

A person is guilty of dealing in child pornography when:

(1) The person knowingly ships, transmits, mails or transports by any means, including by computer or any other electronic or digital method, any book, magazine, periodical, pamphlet, video or film depicting a child engaging in a prohibited sexual act or in the simulation of such an act, or knowingly ships, transmits, mails or transports by any means, including by computer or any other electronic or digital method, any other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act;

(2) The person knowingly receives for the purpose of selling or sells any magazine, photograph or film which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, or knowingly receives for the purpose of selling or sells any other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act;

(3) The person knowingly distributes or disseminates, by means of computer or any other electronic or digital method, or by shows or viewings, any motion picture, video or other visual depiction of a child engaging in a prohibited sexual act or the simulation of such an act. The possession or showing of such motion pictures shall create a rebuttable presumption of ownership thereof for the purposes of distribution or dissemination;

(4) The person, intentionally compiles, enters, accesses, transmits, receives, exchanges, disseminates, stores, makes, prints, reproduces or otherwise possesses any photograph, image, file, data or other visual depiction of a child engaging in a prohibited sexual

act or in the simulation of such an act. For the purposes of this subsection, conduct occurring outside the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or if such photograph, image, file or data was compiled, entered, accessed, transmitted, received, exchanged, disseminated, stored, made, printed, reproduced or otherwise possessed by, through or with any computer located within Delaware and the person was aware of circumstances which rendered the presence of such computer within Delaware a reasonable possibility; or

(5) The person knowingly advertises, promotes, presents, describes, transmits or distributes any visual depiction, exhibition, display or performance with intent to create or convey the impression that such visual depiction, exhibition, display or performance is or contains a depiction of a child engaging in a prohibited sexual act or in the simulation of such an act.

Unlawfully dealing in child pornography is a class B felony unless the prohibited sex act is "partial nudity" as defined in § 1100 of this title, then it is a class D felony.

(61 Del. Laws, c. 179, § 4; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 467, §§ 1, 2; 72 Del. Laws, c. 480, §§ 8-14; 76 Del. Laws, c. 364, §§ 3, 4; 83 Del. Laws, c. 410, § 1.)

§ 1110. Subsequent convictions of § 1108 or § 1109 of this title; class B felony.

Any person convicted of a class B felony under § 1109 of this title who is convicted of a second or subsequent violation of that section shall, upon such second or subsequent conviction, be guilty of a class B felony. Any person convicted of a class B felony under § 1108 of this title who is convicted of a second or subsequent violation of that section shall, upon such second or subsequent conviction, be sentenced to life imprisonment.

(61 Del. Laws, c. 179, § 5; 67 Del. Laws, c. 130, § 8; 83 Del. Laws, c. 410, § 1.)

§ 1110A. Exclusion for §§ 1108 and 1109 of this title.

Where the underlying prohibited sexual act is "partial nudity" as defined in § 1100 of this title, a person can only be guilty of sexual exploitation of a child under § 1108 of this title or dealing in child pornography under § 1109 of this title if the person is 18 years of age or older.

(83 Del. Laws, c. 410, § 1.)

§ 1111. Possession of child pornography; class F felony.

A person is guilty of possession of child pornography when:

(1) The person knowingly possesses any visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(2) The person knowingly possesses any visual depiction which has been created, adapted, modified or edited so as to appear that a child is engaging in a prohibited sexual act or in the simulation of such an act.

Possession of child pornography is a class F felony.

(67 Del. Laws, c. 202, § 1; 71 Del. Laws, c. 467, §§ 3, 4; 72 Del. Laws, c. 480, § 15.)

§ 1112. Sexual offenders; prohibitions from school zones.

(a) Any person who is a sexual offender and who:

(1) Resides on or within 500 feet of the property of any school shall be guilty of a class G felony.

(2) Loiters on or within 500 feet of the property of any school shall be guilty of a class F felony.

(b) For purposes of this section, the following definitions shall apply:

(1) "Loiter" means:

a. Standing, sitting idly, whether or not the person is in a vehicle, or remaining in or around school property, while not having reason or relationship involving custody of or responsibility for a pupil or any other specific or legitimate reason for being there; or

b. Standing, sitting idly, whether or not the person is in a vehicle, or remaining in or around school property, for the purpose of engaging or soliciting another person to engage in sexual intercourse, sexual penetration, sexual contact, or sexual harassment, sexual extortion, or indecent exposure.

(2) "Reside" means to dwell permanently or continuously or to occupy a dwelling or home as one's permanent or temporary place of abode.

(3) "School" means any preschool, kindergarten, elementary school, secondary school, vocational technical school or any other institution which has as its primary purpose the education or instruction of children under 16 years of age.

(4) "Sex offender" means as defined in § 4121 of this title.

(c) It shall not be a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place on or within 500 feet of any school property.

(70 Del. Laws, c. 279, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 467, § 8; 77 Del. Laws, c. 318, § 10; 80 Del. Laws, c. 175, § 7.)

§ 1112A. Sexual solicitation of a child; class C felony; class B felony.

(a) A person is guilty of sexual solicitation of a child if the person, being 18 years of age or older, intentionally or knowingly:

(1) Solicits, requests, commands, importunes or otherwise attempts to cause any child to engage in a prohibited sexual act; or

(2) Uses a computer, cellular telephone or other electronic device to communicate with another person, including a child, to solicit, request, command, importune, entice, encourage or otherwise attempt to cause a child to engage in a prohibited sexual act.

(3) [Repealed.]

(b) For purposes of this section, "child" means:

(1) An individual who is younger than 18 years of age; or

(2) An individual who represents himself or herself to be younger than 18 years of age; or

(3) An individual whom the person committing the offense believes to be younger than 18 years of age.

(c) For the purposes of this section, conduct occurring outside the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or in the instance of any manner of electronic communication or other communication that does not occur in person, the offense is committed in this State if such communication either originated in this State or is received in this State.

(d) For the purposes of this section, and notwithstanding any section of this title to the contrary, it is a defense to prosecution that at the time the conduct described in subsection (a) of this section occurred the person was married to the child.

(e) For the purposes of this section, it is not a defense to prosecution that at the time the conduct described in subsection (a) of this section occurred:

(1) The solicited prohibited sexual act did not occur; or

(2) The person was engaged in a fantasy or role playing at the time of the commission of the offense.

(f) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(g) Sexual solicitation of a child is a class C felony, except as provided in subsection (h) of this section.

(h) Sexual solicitation of a child is a class B felony if the defendant meets in person or attempts to meet in person with the child for the purpose of engaging in a prohibited sexual act.

(71 Del. Laws, c. 467, § 5; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 148, § 37; 79 Del. Laws, c. 262, § 1.)

§ 1112B. Promoting sexual solicitation of a child.

(a) A person is guilty of promoting sexual solicitation of a child if the person, being 18 years of age or older, intentionally or knowingly:

(1) Promotes, entices, offers, encourages, solicits or otherwise attempts to cause any child to engage in a prohibited sexual act; or

(2) Uses a computer, cellular telephone, or other electronic device to communicate with another person to solicit, request, command, importune, entice, encourage or otherwise attempt to cause that person to engage in a prohibited sexual act with a child.

(b) For purposes of this section, "child" means:

(1) An individual who is younger than 18 years of age; or

(2) An individual who represents himself or herself to be younger than 18 years of age; or

(3) An individual whom the person committing the offense believes to be younger than 18 years of age.

(c) For the purposes of this section, conduct occurring outside the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or in the instance of any manner of electronic communication or other communication that does not occur in person, the offense is committed in this State if such communication either originated in this State or is received in this State.

(d) For the purposes of this section, it is not a defense to prosecution that at the time the conduct described in subsection (a) of this section occurred:

(1) The solicited prohibited sexual act did not occur; or

(2) The person was engaged in a fantasy or role playing at the time of the commission of the offense.

(e) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(f) Promoting sexual solicitation is a class C felony except as provided in subsection (g) of this section.

(g) Promoting sexual solicitation of a child is a class B felony if the defendant meets in person or attempts to meet in person with another person and a child, or otherwise produces or delivers a child to another person, for the purpose of the person engaging in a prohibited sex act with the child.

(79 Del. Laws, c. 262, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1112C. Enticement for purposes of sexual contact; class F felony.

(a) A person is guilty of enticement if the person, being 18 years of age or older and at least 4 years older than a child, knowingly engages in a course of conduct to persuade, induce, entice, or coerce that involves or results in the person gaining access to and time alone with that child, with the intent of building trust with that child for the purpose of ultimately engaging in sexual contact or penetration with that child.

(b) For purposes of this section, "child" means any individual who is younger than 18 years of age.

(c) For purposes of this section, "a course of conduct" means 3 or more separate incidents that a reasonable person would find inappropriate, in isolation or collectively, given the nature and circumstances of the relationship between the person and the child, including:

(1) Showing, offering, or sending the child sexually-explicit materials, including images, videos, audio recordings, or any other depiction of sexual activity;

(2) Exposing the child to sexually-explicit language or jokes;

(3) Making comments to the child about that child's sexual or physical development;

(4) Bathing the child;

(5) Walking in on the child who is changing clothes or using the toilet, or watching the child do either;

(6) Asking the child to watch an adult change clothes or use the toilet;

(7) Taking pictures of or videorecording the child while the child is nude or wearing only underwear;

(8) Wrestling the child in underwear or while nude;

(9) Tickling the child;

(10) Playing games with the child that involve touching genitalia;

(11) Buying the child gifts that are not in celebration of a holiday or birthday;

(12) Giving special privileges to the child, such as car rides to or from school or practices; or

(13) Committing any sexual offense, as defined in subpart D of subchapter II of Chapter 5 of this title, or any attempt or solicitation to commit any such sexual offense, against the child;

(d) A conviction is not required for any predicate act relied upon to establish a course of conduct. A conviction for any predicate act relied upon to establish a course of conduct does not preclude prosecution under this section. Nothing in this section shall preclude a separate charge, conviction, or sentence for any other crime set forth in this title, or in the Delaware Code.

(e) For the purposes of this section, it is not a defense to prosecution that no sexual contact or penetration actually occurred.

(f) Enticement for purposes of sexual contact is a class F felony.

(83 Del. Laws, c. 409, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 233, § 12.)

§ 1113. Criminal nonsupport and aggravated criminal nonsupport.

(a) A person is guilty of criminal nonsupport when that person knowingly fails, refuses or neglects to provide the minimal requirements of food, clothing or shelter for that person's minor child. Criminal nonsupport is a class B misdemeanor unless the person has previously been convicted of the same offense or the offense of aggravated criminal nonsupport, in which case it is a class A misdemeanor.

(b) A person is guilty of aggravated criminal nonsupport when, being subject to a support order, that person is delinquent in meeting, as and when due, the full obligation established by such support order and has been so delinquent for a period of at least 4 months' duration. Aggravated criminal nonsupport is a class A misdemeanor, unless any 1 of the following aggravating factors is present, in which case aggravated criminal nonsupport is a class G felony:

(1) The person has previously been convicted of aggravated criminal nonsupport;

(2) The person has been delinquent in meeting, as and when due, the full obligation established by such support order for 8 consecutive months; or

(3) The arrearage is $10,000 or more.

(c) In any prosecution for criminal nonsupport, it is an affirmative defense that the accused has fully complied with a support order that was in effect for the support of the subject person during the time period of the offense charged.

(d) In any prosecution for criminal nonsupport or aggravated criminal nonsupport, it is an affirmative defense that the accused was unable to pay or provide support, but the accused's inability to pay or provide support must be the result of circumstances over which the accused had no control. Unemployment or underemployment with justifiable excuse shall constitute a defense to any prosecution for criminal nonsupport or aggravated criminal nonsupport. Justifiable excuse may be established where the accused has been involuntarily terminated from the accused's employment or otherwise had the accused's income involuntarily reduced and is diligently and in good faith seeking reasonably appropriate employment opportunities under all the circumstances or pursuing self-employment.

(e) It is not a defense to a charge of criminal nonsupport or aggravated criminal nonsupport that the person to be supported received support from a source other than the accused.

(f) In any prosecution for criminal nonsupport or aggravated criminal nonsupport, payment records maintained by an administrative agency or court through which a support order is payable, are prima facie evidence of the support paid or unpaid and the accrued arrearages.

(g) A privilege against disclosure of confidential communications between spouses does not apply to a prosecution for criminal nonsupport or aggravated criminal nonsupport, and either spouse shall be competent to testify against the other as to any and all relevant matters.

(h) No civil proceeding in any court or administrative agency shall be a bar to a prosecution for criminal nonsupport or aggravated criminal nonsupport.

(i) The court, in its discretion, may order that any fine upon conviction for criminal nonsupport or aggravated criminal nonsupport be paid for the support of the person entitled to support. If a support order has been entered, a fine paid pursuant to this subsection shall be applied in accordance with the support order.

(j) The court shall order any person convicted of criminal nonsupport or aggravated criminal nonsupport to make restitution to the person entitled to support. The amount of restitution is the arrearages that accrued under a support order during the time period for which the person was convicted of criminal nonsupport or aggravated criminal nonsupport, or, if there is no support order, an amount determined to be reasonable by the court.

(k) As used in this section:

(1) "Child" means any child, whether over or under the age of majority, with respect to whom a support order exists.

(2) "Minor child" means any child, natural or adopted, whether born in or out of wedlock, under 18 years of age, or over 18 years of age but not yet 19 years of age if such child is a student in high school and is likely to graduate.

(3) "Support order" means a judgment, decree or order, whether temporary, final or subject to modification, for the benefit of a child, a spouse or a former spouse or a parent, issued by a court or agency, which provides for monetary support, medical support, health care, arrearages or reimbursement, whether incidental to a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection or otherwise.

(70 Del. Laws, c. 448, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1114. Body-piercing, tattooing or branding; consent for minors; civil and criminal penalties.

(a) No person shall knowingly or negligently tattoo, brand or perform body-piercing on a minor unless that person obtains the prior written consent of the minor's parent over the age of 18 or legal guardian to the specific act of tattooing, branding or body-piercing.

(b) No person shall tattoo, brand or perform body-piercing on another person if the other person is under the influence of alcoholic beverages, being beer, wine or spirits or a controlled substance.

(c) Consent forms required by subsection (a) of this section shall be notarized.

(d) (1) A person who violates this section shall be guilty of a class B misdemeanor for the first offense or a class A misdemeanor for a second or subsequent offense. The Court of Common Pleas shall have original jurisdiction over these offenses for those 18 years of age or older, and the Family Court shall have original jurisdiction for those under the age of 18 at the time of the offense.

(2) In any prosecution for an offense under this subsection, it shall be an affirmative defense that the individual, who has not reached the age of 18, presented to the accused identification, with a photograph of such individual affixed thereon, which identification sets forth information which would lead a reasonable person to believe such individual was 18 years of age or older. A photocopy of the identification shall be attached to the information card that a customer shall complete at the time that the tattoo, body-piercing or branding is obtained.

(e) A person who violates subsection (a) of this section is liable in a civil action for actual damages or $1,000, whichever is greater, plus reasonable court costs and attorney fees.

(f) As used in this section:

(1) "Body-piercing" means the perforation of human tissue excluding the ear for a nonmedical purpose.

(2) "Branding" means a permanent mark made on human tissue by burning with a hot iron or other instrument.

(3) "Controlled substance" means that term as defined in Chapter 47 of Title 16.

(4) "Minor" means an individual under 18 years of age who is not emancipated.

(5) "Tattoo" means 1 or more of the following:

a. An indelible mark made upon the body of another person by the insertion of a pigment under the skin.

b. An indelible design made upon the body of another person by production of scars other than by branding.

(6) Nothing in this section shall require a person to tattoo, brand or body pierce a minor with parental consent if the person does not regularly tattoo, brand or body pierce customers under the age of 18.

(71 Del. Laws, c. 243, § 1.)

§ 1114A. Tongue-splitting; class A misdemeanor; class B misdemeanor; class G felony; additional civil penalties.

(a) A person is guilty of tongue-splitting in the first degree if the person is neither a physician nor a dentist, holding a valid license issued under the laws of the State of Delaware, and the person performs an act of tongue-splitting on any other person in this State. Tongue-splitting in the first degree is a class A misdemeanor.

(b) A doctor or dentist is guilty of tongue-splitting in the second degree if the doctor or dentist performs an act of tongue-splitting in this State and the person on whom the act of tongue-splitting is performed is either:

(1) Under the influence of alcohol or a controlled substance; or

(2) Is a minor and the person has failed to obtain the prior written and notarized consent of the minor's adult parent or legal guardian to the specific act of tongue-splitting.

Tongue-splitting in the second degree is a class B misdemeanor.

(c) Any person found guilty of a second or subsequent violation of this section is guilty of a class G felony for such second or subsequent offense.

(d) In any prosecution for an offense under paragraph (b)(2) of this section, it shall be an affirmative defense that the accused was presented with a piece of photo identification by the person on whom the accused performed the procedure setting forth such information that would lead a reasonable person to believe the individual was the person pictured on the identification and that the person was 18 years of age or older. Failure of the accused to present a photocopy of the identification to the court when raising a defense under this subsection shall be affirmative proof that no such identification exists.

(e) An act of tongue-splitting performed in violation of subsection (a) of this section constitutes both the practice of medicine without a license and the practice of dentistry without a license. Nothing in this section shall prohibit prosecution under the provisions of either § 1134 of Title 24 relating to the practice of dentistry without a license, or § 1766 of Title 24 relating to the practice of medicine without a license, or both.

(f) In addition to the penalties set forth herein, any person who has performed an act of tongue-splitting in violation of this section shall be held liable in a civil action, brought by any person aggrieved by such act, for actual damages or $1,000, whichever is greater; plus reasonable court costs and attorney fees.

(g) For the purposes of this section "tongue-splitting" means the surgical procedure of cutting a human tongue into 2 or more parts giving it a forked or multi-tipped appearance.

(74 Del. Laws, c. 340, § 1; 70 Del. Laws, c. 186, § 1.)

B Sale and Distribution of Tobacco Products

§ 1115. Definitions.

(1) "Coupon" means any card, paper, note, form, statement, ticket or other issue distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive any tobacco product without charge or at a discounted price.

(2) "Distribute" means give, deliver or sell, offer to give, deliver or sell, or cause or hire any person to give, deliver or sell, or offer to give, deliver or sell.

(3) "Health warning" means any tobacco product or tobacco substitute label mandated by federal law and intended to alert all users of such tobacco product or tobacco substitute to the health risks associated with tobacco use, including, but not limited to, warning labels imposed under the Federal Cigarette Labeling and Advertising Act (15 U.S.C. § 1331 et seq.) and the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. § 4401 et seq.).

(4) "Proof of age" means a driver's license or other government-issued identification with a photograph of the individual affixed thereon that indicates that the individual is 21 years old or older.

(5) "Public place" means any area to which the general public is invited or permitted, including, but not limited to, parks, streets, sidewalks or pedestrian concourses, sports arenas, pavilions, gymnasiums, public malls and property owned, occupied or operated by the State or by any agency thereof.

(6) "Sample" means a tobacco product or tobacco substitute distributed to members of the general public at no cost for the purpose of promoting the product.

(7) "Sampling" means the distribution of samples or coupons for redemption of tobacco products or tobacco substitutes to members of the general public in a public place.

(8) "Tax stamp" means any required state or federal stamp imposed for the purpose of collecting excise tax revenue.

(9) a. "Tobacco product" means any product that is made from or derived from tobacco or that contains nicotine, including: cigarettes, cigars, pipe tobacco, hookah tobacco, chewing tobacco, snuff, snus, or smokeless tobacco and is intended for human consumption by any means including smoking, heating, chewing, absorbing, dissolving, inhaling, or ingesting.

b. "Tobacco product" also means a component or accessory used in the consumption of a tobacco product, including filters, rolling papers, and pipes.

c. "Tobacco product" does not mean a drug, device, or combination product authorized for sale by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.).

(10) "Tobacco store" means any retail establishment where 60% of the retail establishment's gross revenue comes from the retail sale of tobacco products and smoking paraphernalia.

(11) a. "Tobacco substitute" means an electronic smoking device employing a mechanical heating element, battery, or circuit to produce aerosol or vapor for inhalation into the body of an individual.

b. "Tobacco substitute" also means liquid used in a device under paragraph (11)a. of this section, including liquids that contain nicotine and liquids that do not contain nicotine.

c. “Tobacco substitute” does not mean a drug, device, or combination product authorized for sale by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.).

(12) “Vending machine” means any mechanical, electronic or other similar device which automatically dispenses tobacco products or tobacco substitutes, usually upon the insertion of a coin, token or slug.

(70 Del. Laws, c. 318, § 4; 79 Del. Laws, c. 249, § 1; 82 Del. Laws, c. 10, § 1.)

§ 1116. Sale or distribution of tobacco products or tobacco substitutes to individuals under the age of 21 years.

(a) It shall be unlawful for any person to sell or distribute any tobacco product or tobacco substitute to an individual who has not attained the age of 21 years or to purchase any tobacco product or tobacco substitute on behalf of an individual under 21 years of age.

(b) A person engaged in the sale or distribution of tobacco products or tobacco substitutes shall have the right to demand proof of age from a prospective purchaser or recipient of such products.

(c) A person engaged in the sale or distribution of tobacco products or tobacco substitutes shall demand proof of age from a prospective purchaser or recipient of such products who is under 30 years of age.

(70 Del. Laws, c. 318, § 4; 77 Del. Laws, c. 180, § 1; 79 Del. Laws, c. 249, § 1; 82 Del. Laws, c. 10, § 2.)

§ 1117. Notice.

A person engaged in the sale or distribution of tobacco products or tobacco substitutes shall post conspicuously at each point of purchase and each tobacco vending machine a notice stating that selling tobacco products or tobacco substitutes to anyone under 21 years of age is illegal, that the purchase of tobacco products or tobacco substitutes by anyone under 21 years of age is illegal and that a violator is subject to fines. The notice shall also state that all persons selling tobacco products or tobacco substitutes are required, under law, to check the proof of age of any purchaser of tobacco products or tobacco substitutes under the age of 30 years. The notice shall include a toll-free telephone number to the Department of Safety and Homeland Security for persons to report unlawful sales of tobacco products or tobacco substitutes. The owners of an establishment who fail to post a notice in compliance with this section shall be subject to a fine of $100.

(70 Del. Laws, c. 318, § 4; 74 Del. Laws, c. 110, § 138; 77 Del. Laws, c. 180, § 2; 79 Del. Laws, c. 249, § 1; 82 Del. Laws, c. 10, § 3.)

§ 1118. Distribution of samples or coupons.

(a) It shall be unlawful for any person to distribute tobacco product or tobacco substitute samples or coupons for subsequent receipt of free or discounted tobacco products or tobacco substitutes to an individual who has not attained the age of 21 years.

(b) A person engaged in sampling shall have the right to demand proof of age from a prospective recipient of samples or of coupons for the redemption of tobacco products or tobacco substitutes.

(70 Del. Laws, c. 318, § 4; 79 Del. Laws, c. 249, § 1; 82 Del. Laws, c. 10, § 4.)

§ 1119. Distribution of tobacco products or tobacco substitutes through vending machines.

(a) It shall be unlawful for any person to distribute or permit the distribution of tobacco products or tobacco substitutes through the operation of a vending machine in a public place, except as provided in subsection (b) of this section.

(b) Pursuant to subsection (a) of this section, a person may distribute or permit the distribution of tobacco products or tobacco substitutes through the operation of a vending machine in a taproom, tavern, tobacco shop or in premises in which an individual who has not attained the age of 21 years is prohibited by law from entering. A tobacco vending machine must be operated a minimum of 25 feet from any entrance to the premises and must be directly visible to the owner or supervisor of the premises.

(c) It shall be unlawful for any person who owns, operates or manages a business establishment where tobacco products or tobacco substitutes are offered for sale over the counter at retail to maintain such products in any display accessible to customers that is not under the control of a cashier or other employee. This prohibition shall not apply to business establishments to which individuals under the age of 21 are not admitted unless accompanied by an adult, tobacco vending machines as permitted under subsection (b) of this section, or tobacco stores. As used in this subsection, “under the control” means customers cannot readily access the tobacco products or tobacco substitutes without the assistance of a cashier or other employee. A display that holds tobacco products or tobacco substitutes behind locked doors shall be construed as under the control of a cashier or other employee.

(70 Del. Laws, c. 318, § 4; 72 Del. Laws, c. 472, § 2; 77 Del. Laws, c. 180, § 3; 79 Del. Laws, c. 249, § 1; 82 Del. Laws, c. 10, § 5.)

§ 1120. Distribution of tobacco products.

(a) No person shall distribute a tobacco product for commercial purposes unless the product is in a sealed package provided by the manufacturer with the required health warning and tax stamp.

(b) No person shall distribute any pack of cigarettes containing fewer than 20 cigarettes.

(70 Del. Laws, c. 318, § 4; 72 Del. Laws, c. 472, § 1.)

§ 1121. Penalties.

(a) (1) Notwithstanding any other provision of Delaware law, a person who violates § 1116, § 1118, § 1119, or § 1120 of this title regarding an individual who is under 18 years old is guilty of a violation and is fined $250 for the first offense, $500 for the second offense, and $1,000 for the third and all subsequent offenses.

(2) Notwithstanding any other provision of Delaware law, a person who violates § 1116, § 1118, § 1119, or § 1120 of this title regarding an individual who is at least age 18 years old but fewer than 21 years old is subject to a civil penalty as follows:

a. For a first occurrence, fined $250.

b. For a second occurrence, fined $500.

c. For a third or subsequent occurrence, fined $1,000.

(3) a. Notwithstanding any other provision of Delaware law, a person who violates § 1116, § 1118, § 1119, or § 1120 of this title is subject to a civil penalty for selling or distributing any of the following:

1. A tobacco substitute that does not contain nicotine.

2. A tobacco product under paragraph § 1115(9)b. of this title.

b. The civil penalty under paragraph (3)a. of this section is as follows:

1. For a first occurrence, fined $250.

2. For a second occurrence, fined $500.

3. For a third or subsequent occurrence, fined $1,000.

(b) Additionally, and notwithstanding any other provision of Delaware law, in imposing a penalty for a second, third, or other subsequent offense under this subpart, the court may order the Department of Finance to suspend the defendant's license for sale of tobacco products, issued under § 5307 of Title 30, for a period not to exceed 6 months. Upon the suspension of such license, the court shall advise the Department of Finance of the suspension in writing. The holder of the license shall surrender the license to the Department of Finance and no refund of fees will be paid. For purposes of this subpart, a subsequent offense is one that occurs within 12 months of a prior like offense.

(70 Del. Laws, c. 318, § 4; 82 Del. Laws, c. 10, § 6.)

§ 1122. Affirmative defense.

In any prosecution for an offense under this subpart, it shall be an affirmative defense that the purchaser or recipient of tobacco products or tobacco substitutes who had not reached the age of 21 years presented to the accused proof of age which set forth information that would lead a reasonable person to believe that such individual was 21 years of age or older.

(70 Del. Laws, c. 318, § 4; 79 Del. Laws, c. 249, § 1; 82 Del. Laws, c. 10, § 7.)

§ 1123. Liability of employer.

(a) If a sale or distribution of any tobacco product or tobacco substitute or coupon is made in violation of § 1116, § 1118, § 1119, or § 1120 of this title, the owner, proprietor, franchisee, store manager or other person in charge of the establishment where the violation occurred shall be guilty of the violation and shall be subject to the fine only if the retail licensee has received written notice of the provisions of §§ 1116 through 1121 of this title by the Department of Safety and Homeland Security. For purposes of determining the liability of a person who owns or controls franchises or business operations in multiple locations, for a second or subsequent violation of this subpart, each individual franchise or business location shall be deemed a separate establishment.

(b) Notwithstanding any other provision of this subpart, in any prosecution for a violation of § 1116, § 1118, or § 1120 of this title, the owner, proprietor, franchisee, store manager, or other person in charge of the establishment where the alleged violation occurred has an affirmative defense if the person or entity can establish that before the date of the violation, the person or entity did all of the following:

(1) Adopted and enforced a written policy against selling tobacco products or tobacco substitutes to individuals under 21 years of age.

(2) Informed its employees of the applicable laws regarding the sale of tobacco products or tobacco substitutes to individuals under 21 years of age.

(3) Required employees to sign a form indicating that they have been informed of and understand the written policy required under this subsection.

(4) Required employees to verify the age of tobacco product or tobacco substitute customers by means of photographic identification.

(5) Established and enforced disciplinary sanctions for noncompliance.

(c) The affirmative defense established in subsection (b) of this section may be used by an owner, proprietor, franchisee, store manager, or other person in charge of the establishment no more than 1 time at each location within any 36-month period.

(70 Del. Laws, c. 318, § 4; 72 Del. Laws, c. 69, § 1; 74 Del. Laws, c. 110, § 138; 79 Del. Laws, c. 249, § 1; 82 Del. Laws, c. 10, § 8; 83 Del. Laws, c. 37, § 7.)

§ 1124. Purchase or receipt of tobacco products or tobacco substitutes by minors [Repealed].

(70 Del. Laws, c. 318, § 4; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 249, § 1; repealed by 82 Del. Laws, c. 10, § 9, effective July 16, 2019.)

§ 1125. Unannounced inspections; reporting; enforcement.

(a) The Department of Safety and Homeland Security or its delegates shall conduct annual, random, unannounced inspections at locations where tobacco products or tobacco substitutes are sold or distributed to test and ensure compliance with and enforcement of §§ 1116 through 1120 of this title.

(b) An individual under the age of 21 may be enlisted by the Department of Safety and Homeland Security or its delegates to test compliance with and enforcement of §§ 1116 through 1120 of this title, provided however, that the individual may be used only under the direct supervision of the Department of Safety and Homeland Security, its employees or delegates and only where written parental consent has been provided for an individual under the age of 18.

(c) Participation in the inspection and enforcement activities of this section by an individual under 21 years of age shall not constitute a violation of this subpart for the individual under 21 years of age, and the individual under 21 years of age is immune from prosecution thereunder, or under any other provision of law prohibiting the purchase of these products by an individual under 21 years of age.

(d) The Department of Safety and Homeland Security shall adopt and publish guidelines for the use of individuals under 21 years of age in inspections conducted under this section.

(e) The Department of Safety and Homeland Security may enter into an agreement with any local law-enforcement agency for delegation of the inspection and enforcement activities of this section within the local law-enforcement agency's jurisdiction. The contract shall require the inspection and enforcement activities of the local law-enforcement agency to comply with this subpart and with all applicable laws.

(f) In cases where inspection and enforcement activities have been delegated to a local law-enforcement agency pursuant to this section, any inspection or enforcement by the Department of Safety and Homeland Security in the jurisdiction of the local law-enforcement agency shall be coordinated with the local law enforcement agency.

(g) The Delaware Department of Health and Social Services shall annually submit to the Secretary of the United States Department of Health and Human Services the report required by § 1926 of the federal Public Health Service Act (42 U.S.C. § 300x-26). A copy of this report shall be available to the Governor and the General Assembly.

(70 Del. Laws, c. 318, § 4; 74 Del. Laws, c. 110, § 138; 79 Del. Laws, c. 249, § 1; 82 Del. Laws, c. 10, § 10; 83 Del. Laws, c. 37, § 8.)

§ 1126. Jurisdiction.

The Justice of the Peace Court has jurisdiction over violations of this subpart, except in the instance of violations by an individual who has not attained the age of 18, in which case the Family Court has jurisdiction.

(70 Del. Laws, c. 318, § 4; 83 Del. Laws, c. 37, § 9.)

§ 1127. Preemption.

The provisions of this subpart shall preempt and supersede any provisions of any municipal or county ordinance or regulation on the subject of this subpart enacted after June 30, 1996.

(70 Del. Laws, c. 318, § 4.)

Subchapter VI

Offenses Against Public Administration

A Bribery and Improper Influence

§ 1201. Bribery; class E felony.

A person is guilty of bribery when:

(1) The person offers, confers or agrees to confer a personal benefit upon a public servant upon an agreement or understanding that the public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced; or

(2) The person offers, confers or agrees to confer a personal benefit upon a public servant or party officer upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office; or

(3) The person offers, confers or agrees to confer a personal benefit upon a public servant for having violated a duty as a public servant.

Bribery is a class E felony.

(11 Del. C. 1953, § 1201; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1202. Bribery; defense.

In any prosecution for bribery under § 1201(1) of this title, it is a defense that the accused offered, conferred or agreed to confer the benefit upon the public servant as a result of conduct of the public servant constituting theft or coercion or an attempt to commit theft or coercion.

(11 Del. C. 1953, § 1202; 58 Del. Laws, c. 497, § 1.)

§ 1203. Receiving a bribe; class E felony.

(a) A public servant is guilty of receiving a bribe when the public servant solicits, accepts or agrees to accept a personal benefit from another person upon an agreement or understanding that the public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

(b) A public servant or party officer is guilty of receiving a bribe when the public servant solicits, accepts or agrees to accept personal benefit from another person upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office.

(c) A public servant is guilty of receiving a bribe when the public servant solicits, accepts or agrees to accept a personal benefit from another person for having violated the public servant's duty as a public servant.

Receiving a bribe is a class E felony.

(11 Del. C. 1953, § 1203; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1204. Theft or coercion no defense to receiving a bribe.

It is no defense to a prosecution for receiving a bribe that the conduct charged to constitute the offense also constitutes theft or coercion.

(11 Del. C. 1953, § 1204; 58 Del. Laws, c. 497, § 1.)

§ 1205. Giving unlawful gratuities; class A misdemeanor.

A person is guilty of giving unlawful gratuities when the person knowingly offers, confers or agrees to confer any personal benefit upon a public servant for engaging in official conduct which the public servant is required or authorized to perform, and for which the public servant is not entitled to any special or additional compensation.

Giving unlawful gratuities is a class A misdemeanor.

(11 Del. C. 1953, § 1205; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1206. Receiving unlawful gratuities; class A misdemeanor.

A public servant is guilty of receiving unlawful gratuities when the public servant solicits, accepts, or agrees to accept any personal benefit for engaging in official conduct which the public servant is required or authorized to perform, and for which the public servant is not entitled to any special or additional compensation.

Receiving unlawful gratuities is a class A misdemeanor.

(11 Del. C. 1953, § 1206; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 283, § 10.)

§ 1207. Improper influence; class A misdemeanor.

A person is guilty of improper influence when:

(1) The person threatens unlawful harm to any person with intent to influence the latter's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party officer or voter; or

(2) The person threatens unlawful harm to any public servant or party officer with intent to influence that public servant or party officer to violate that public servant's or party officer's duty as a public servant or party officer.

Improper influence is a class A misdemeanor.

(11 Del. C. 1953, § 1207; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1208. Defect in office no defense.

It is no defense to a prosecution for improper influence that a person whom the accused sought to influence was not qualified to act in the desired way, whether because the person had not yet assumed office, or lacked jurisdiction or for any other reason.

(11 Del. C. 1953, § 1208; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1209. Definitions relating to bribery and improper influence.

As used in §§ 1201-1208 of this title:

(1) "Harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any other person in whose welfare the person is interested.

(2) "Party officer" means a person who holds any position or office in a political party, whether by election, appointment or otherwise.

(3) "Personal benefit" means gain or advantage to the recipient personally or anything regarded by the recipient as such gain or advantage, including gain or advantage conferred on the behalf or at the request of the person upon another person in whose welfare the person is interested but not a gain or advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(4) "Public servant" means any officer or employee of the State or any political subdivision thereof, including legislators and judges, and any person participating as juror, advisor or consultant in performing a governmental function but the term does not include

witnesses. This definition includes persons who are candidates for office or who have been elected to office but who have not yet assumed office.

(11 Del. C. 1953, § 1209; 58 Del. Laws, c. 497, § 1; 62 Del. Laws, c. 109, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1210. [Reserved.]

B Abuse of Office

§ 1211. Official misconduct; class A misdemeanor, class G, F, D, B felony.

(a) A public servant is guilty of official misconduct when, intending to obtain a personal benefit or to cause harm to another person, the public servant knowingly does any of the following:

(1) Commits an act constituting an unauthorized exercise of official functions, knowing that the act is unauthorized.

(2) Refrains from performing a duty or breaches a duty which is imposed by law or is clearly inherent in the nature of the office.

(3) Performs official functions in a way intended to benefit the public servant's own property or financial interests under circumstances in which the public servant's actions would not have been reasonably justified in consideration of the factors which ought to have been taken into account in performing official functions.

(4) Performs official functions in a way intended to practice discrimination on the basis of race, religion, color, disability, sexual orientation, sex, age, gender identity, national origin, or ancestry.

(5) Uses or relies on the public servant's position of trust or authority to engage in criminal conduct.

(b) Official misconduct is punished as follows:

(1) For a violation of paragraph (a)(1) or (a)(2) of this section, a class A misdemeanor.

(2) For a violation of paragraph (a)(3), (a)(4), or (a)(5) of this section, a class G felony.

(3) A sentence is enhanced for a violation of paragraphs (a)(1) through (a)(5) of this section as follows:

a. A class F felony, if the value of the personal benefit received, or the harm caused, is $1,500 or more, but less than $50,000.

b. A class D felony, if the value of the personal benefit received, or the harm caused, is $50,000 or more, but less than $100,000.

c. A class B felony, if the value of the personal benefit received, or the harm caused, is $100,000 or more.

d. A class F felony, if the harm caused is physical injury, or the public servant engages in conduct constituting an offense that is punishable as an unclassified misdemeanor, a class B misdemeanor, or a class A misdemeanor.

e. A class D felony, if the harm caused is serious physical injury, or the public servant engages in conduct constituting an offense that is punishable as a class G felony, a class F felony, or a class E felony.

f. One grade higher than the underlying offense, if the public servant engages in conduct constituting an offense that is punishable as a class D felony or a class C felony.

g. A class A felony, if the public servant engages in conduct constituting an offense that is punishable as a class B felony or a class A felony, or if the harm caused is death.

(c) The Superior Court has exclusive jurisdiction over a violation of this section.

(11 Del. C. 1953, § 1211; 58 Del. Laws, c. 497, § 1; 61 Del. Laws, c. 327, § 1; 64 Del. Laws, c. 48, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 225, § 1; 84 Del. Laws, c. 449, § 1.)

§ 1212. Profiteering; class A misdemeanor.

A public servant is guilty of profiteering when, in contemplation of official action by the public servant or by a governmental entity with which the public servant is associated, or in reliance on information to which the public servant has access in an official capacity and which has not been made public:

(1) The public servant acquires a pecuniary interest in any property, transaction or enterprise which may be affected by the official action or information; or

(2) The public servant speculates or wagers on the basis of the official action or information; or

(3) The public servant aids another person to do any of the foregoing acts, intending to gain thereby a personal benefit.

Profiteering is a class A misdemeanor.

(11 Del. C. 1953, § 1212; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1213. Definitions relating to abuse of office.

(a) The definitions under § 1209 of this title apply to §§ 1211 and 1212 of this title.

(b) As used in § 1211 of this title:

(1) "Protective hairstyle" includes braids, locks, and twists.

(2) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

(11 Del. C. 1953, § 1213; 58 Del. Laws, c. 497, § 1; 83 Del. Laws, c. 13, § 7.)

§§ 1214-1220. [Reserved.]

C Perjury and Related Offenses

§ 1221. Perjury in the third degree; class A misdemeanor.

A person is guilty of perjury in the third degree when the person swears falsely.

Perjury in the third degree is a class A misdemeanor.

(11 Del. C. 1953, § 1221; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1222. Perjury in the second degree; class F felony.

A person is guilty of perjury in the second degree when the person swears falsely and when the false statement is:

(1) Made in a written instrument for which an oath is required by law; and

(2) Made with intent to mislead a public servant in the performance of official functions; and

(3) Material to the action, proceeding or matter involved.

Perjury in the second degree is a class F felony.

(11 Del. C. 1953, § 1222; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1223. Perjury in the first degree; class D felony.

A person is guilty of perjury in the first degree when the person swears falsely and when the false statement consists of testimony and is material to the action, proceeding or matter in which it is made.

Perjury in the first degree is a class D felony.

(11 Del. C. 1953, § 1223; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1224. Definition of “swears falsely.”

A person “swears falsely” when the person intentionally makes a false statement or affirms the truth of a false statement previously made, knowing it to be false or not believing it to be true, while giving testimony or under oath in a written instrument or in an unsworn declaration made pursuant to Chapter 53A of Title 10 or § 3927 of Title 10. A false swearing in a written instrument is not complete until the instrument is delivered by its maker, or by someone acting in the maker’s behalf to another person with intent that it be uttered or published as true. A person who gives an oral and/or written statement while granted the privilege of the floor during a session of the House of Representatives or Senate of the General Assembly, whether or not that person is under oath, gives testimony within the scope of this section.

(11 Del. C. 1953, § 1224; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 193, § 1; 77 Del. Laws, c. 332, § 2; 80 Del. Laws, c. 283, § 2.)

§ 1225. Inconsistent statements under oath; no need to prove one false; framing indictment; proof of irreconcilable inconsistency; conviction of lesser offense.

When a person has made 2 statements under oath which are inconsistent to the degree that 1 of them is necessarily false, and the circumstances are such that each statement, if false, is perjurious, the inability of the prosecution to establish specifically which of the 2 statements is the false one does not preclude a prosecution for perjury. The prosecution may be conducted as follows:

(1) The indictment or information may set forth the 2 statements and, without designating either, charge that 1 of them is false and perjurious.

(2) The falsity of one or the other of the 2 statements may be established by proof of their irreconcilable inconsistency. Such proof is sufficient to establish a prima facie case of falsity.

(3) If perjury of different degrees would be established by the making of the 2 statements, hypothetically assuming that each is false and perjurious, the defendant may be convicted of the lesser degree at most.

(11 Del. C. 1953, § 1225; 58 Del. Laws, c. 497, § 1.)

§§ 1226-1230. [Reserved.]

§ 1231. Retraction of false statement as affirmative defense.

In any prosecution for perjury, it is an affirmative defense that the accused retracted the false statement in the course of the proceeding in which it was made, before the false statement substantially affected the proceeding and before it became manifest that its falsity was or would be exposed.

(11 Del. C. 1953, § 1231; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1232. Perjury; no defense.

It is no defense to a prosecution for perjury that:

(1) The accused was not competent under the relevant rules of evidence to make the false statement alleged; or

(2) The accused mistakenly believed the false statement to be immaterial; or

(3) The oath was administered or taken in an irregular manner; or

(4) A document purporting to be made upon oath and uttered or published as so made by the accused was not in fact made under oath; or

(5) The court in which the acts constituting the offense were committed lacked jurisdiction over the person of the accused or over the subject matter.

(11 Del. C. 1953, § 1232; 58 Del. Laws, c. 497, § 1.)

§ 1233. Making a false written statement; class A misdemeanor.

A person is guilty of making a false written statement when the person makes a false statement which the person knows to be false or does not believe to be true in a written instrument bearing a notice, authorized by law, to the effect that false statements therein are punishable.

Making a false written statement is a class A misdemeanor.

(11 Del. C. 1953, § 1233; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1234. Corroboration of testimony of perjury or false written statement.

In any prosecution for perjury or making a false written statement, falsity of a statement may not be established by the uncorroborated testimony of a single witness. Corroboration may be made by circumstantial evidence.

(11 Del. C. 1953, § 1234; 58 Del. Laws, c. 497, § 1.)

§ 1235. Perjury and related offenses; definitions.

(a) A statement is "material" when, regardless of its admissibility under the rules of evidence, it could have affected the course or outcome of the proceeding.

(b) "Oath" includes an affirmation and every other mode authorized by law of attesting the truth of that which is stated.

(c) An affidavit, deposition or other written instrument is one for which an "oath is required by law" when, absent an oath, it does not or would not, according to statute or appropriate regulatory provisions, have legal efficacy in a court of law or before any public or governmental body, agency or public servant to whom it is or might be submitted.

(d) "Public servant" has the meaning given in § 1209(4) of this title.

(e) "Swear" means to state under oath.

(f) "Testimony" means an oral statement made under oath in a proceeding before any court, body, agency, public servant or other person authorized to conduct the proceeding and to administer the oath or cause it to be administered.

(11 Del. C. 1953, § 1235; 58 Del. Laws, c. 497, § 1.)

§§ 1236-1238. [Reserved.]

D Offenses Involving Obstruction of Governmental Operations

§ 1239. Wearing a disguise during the commission of a felony; class E felony.

(a) A person who wears a hood, mask or other disguise during the commission of any felony is guilty of wearing a disguise during the commission of a felony. Wearing a disguise during the commission of a felony is a class E felony.

(b) A person may be found guilty of violating this section notwithstanding that the felony for which the person is convicted during which the person was wearing a disguise is a lesser included felony of the one originally charged.

(70 Del. Laws, c. 372, § 1.)

§ 1240. Terroristic threatening of public officials or public servants; class G felony.

(a) A person is guilty of terroristic threatening of a public official or public servant when the person threatens to commit any crime likely to result in death or in serious injury to a public official or public servant during or because of the public official's or public servant's exercise of the official's or servant's official functions.

(b) "Public official or public servant" includes any elected official, appointed official, officer or employee of the State or any political subdivision thereof, any judge or other judicial officer, any person participating as a juror, or any person acting as an advisor, contractor or consultant in performing a governmental function. "Public official or public servant" shall include persons who are candidates for office or who have been elected to office, but who have not yet assumed office. For the purposes of this section "public official or public servant" also includes any person who formerly held a position as a public official or public servant.

(c) Terroristic threatening of a public official or public servant is a class G felony.

(70 Del. Laws, c. 551, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 176, § 13; 74 Del. Laws, c. 31, § 1.)

§ 1241. Refusing to aid a police officer; class B misdemeanor.

A person is guilty of refusing to aid a police officer when, upon command by a police officer identifiable or identified by the officer as such, the person unreasonably fails or refuses to aid the police officer in effecting an arrest, or in preventing the commission by another person of any offense.

Refusing to aid a police officer is a class B misdemeanor.

(11 Del. C. 1953, § 1241; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1242. Limitation of civil liability for aiding a police officer.

(a) A person who complies with § 1241 of this title by aiding a police officer, upon command, to affect an arrest or prevent the commission of an offense, shall not be held liable to any person for any damages resulting therefrom; provided, that the person employs means which would have been employed by a reasonable person under the circumstances known to the person at the time.

(b) A duly licensed physician, medical technician or registered nurse requested to withdraw blood from a person by a police officer so as to prevent the loss of evidence of blood alcohol content or the presence of drugs in the blood stream, and a hospital employing such physician, technician or nurse shall not be liable for civil damages for any acts or omissions arising out of the taking of such sample, or the reporting of the results to law-enforcement officials.

(11 Del. C. 1953, § 1242; 58 Del. Laws, c. 497, § 1; 63 Del. Laws, c. 88, § 7; 70 Del. Laws, c. 186, § 1.)

§ 1243. Obstructing fire-fighting operations; class A misdemeanor.

A person is guilty of obstructing fire-fighting operations when the person intentionally and unreasonably obstructs the efforts of any firefighter in extinguishing a fire, or prevents or dissuades another person from extinguishing or helping to extinguish a fire.

Obstructing fire-fighting operations is a class A misdemeanor.

(11 Del. C. 1953, § 1243; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1244. Hindering prosecution; class A misdemeanor.

(a) A person is guilty of hindering prosecution when, with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person whom the person accused of hindering prosecution knows has committed acts constituting a crime, or is being sought by law-enforcement officers for the commission of a crime, the person accused of hindering prosecution:

(1) Harbors or conceals the person; or

(2) Warns the person of impending discovery or apprehension; or

(3) Provides the person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or

(4) Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of the person or in the lodging of a criminal charge against the person; or

(5) Suppresses, by an act of concealment, alteration or destruction, any physical evidence which might aid in the discovery or apprehension of the person or in the lodging of a criminal charge against the person; or

(6) Aids the person to protect or profit expeditiously from an advantage derived from the person's crime.

(b) Hindering prosecution is a class G felony if the person commits any of the acts set forth in subsection (a) of this section with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person whom that person knows committed acts constituting a felony, or is being sought by law-enforcement officers for the commission of a felony.

(c) Hindering prosecution is a class A misdemeanor if the person commits any of the acts set forth in subsection (a) of this section with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person whom that person knows committed acts constituting a crime other than a felony, or is being sought by law-enforcement officers for the commission of a crime other than a felony.

(11 Del. C. 1953, § 1244; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 52, §§ 1, 2; 70 Del. Laws, c. 186, § 1.)

§ 1244A. Obstruction of justice; class D felony; class G felony; class A misdemeanor.

(a) A person is guilty of obstruction of justice when the person corruptly intimidates, influences, obstructs, or impedes the administration of law, a law-enforcement investigation, or any other inquiry authorized by law, including criminal, civil, or administrative inquiries.

(b) Obstruction of justice is classified and punished as follows:

(1) Obstruction of justice is a class D felony if a person uses force, violence, or physical interference when the person commits or attempts to commit an act under subsection (a) of this section.

(2) Obstruction of justice is a class G felony if a person does any of the following when the person commits or attempts to commit an act under subsection (a) of this section:

a. Conceals, alters, or destroys material evidence.

b. Bestows money or any other benefit upon another person.

c. Commits a breach of official duty or creates an obstacle.

(3) If a person intentionally commits or attempts to commit any crime under the laws of this State, other than a crime enumerated under paragraphs (b)(1) or (b)(2) of this section, when the person commits or attempts to commit an act under subsection (a) of this section, obstruction of justice is 1 class higher than the underlying offense.

(4) All other violations under subsection (a) of this section are a class A misdemeanor.

(c) For purposes of this section:

(1) "Corruptly" means acting with an improper purpose, personally or by influencing another, including any of the following:

a. Making a false or misleading statement.

b. Withholding, concealing, altering, or destroying a document or other information.

(2) "Obstacle" means any effort or scheme intended to delay or interfere with a law-enforcement investigation or any other inquiry authorized by law, including criminal, civil, or administrative inquiries. An "obstacle" may be a threat, act, or physical object.

(d) This section does not apply to any of the following:

(1) Flight by a person charged with a crime.

(2) Refusal to submit to arrest.

(e) Superior Court has exclusive jurisdiction over violations of this section.

(84 Del. Laws, c. 228, § 1.)

§ 1245. Falsely reporting an incident; class A misdemeanor.

A person is guilty of falsely reporting an incident when, knowing the information reported, conveyed or circulated is false or baseless, the person:

(1) Initiates or circulates a false report or warning of or impending occurrence of a fire, explosion, crime, catastrophe or emergency under circumstances in which it is likely that public alarm or inconvenience will result or that fire-fighting apparatus, ambulance or a rescue vehicle might be summoned; or

(2) Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion or other catastrophe or emergency which did not in fact occur or does not in fact exist; or

(3) Reports to a law-enforcement officer or agency:

a. The alleged occurrence of an offense or incident which did not in fact occur; or

b. An allegedly impending occurrence of an offense or incident which is not in fact about to occur; or

c. False information relating to an actual offense or incident or to the alleged implication of some person therein; or

d. The alleged abduction of a child which would generate the activation of a state-wide and interstate alert response and law-enforcement broadcast when such abduction has not, in fact, occurred.

(4) Without just cause, calls or summons by telephone, fire alarm system or otherwise, any fire-fighting apparatus, ambulance or rescue truck.

Falsely reporting an incident is a class A misdemeanor, unless the defendant has violated this section previously, in which case it shall be a class G felony. In addition to the penalties otherwise authorized by law, any person convicted of an offense in violation of this section shall pay a fine of not less than $500, or less than $1,000 for a violation of paragraph (3)d. of this section, which fine cannot be suspended and be sentenced to perform a minimum of 100 hours of community service, and shall be required to reimburse the State, or other responding or other investigating governmental agency, for any expenses expended in the investigation and/or response to the incident falsely reported.

(11 Del. C. 1953, § 1245; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 469, § 1; 60 Del. Laws, c. 542, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 412, § 1; 73 Del. Laws, c. 87, § 1; 73 Del. Laws, c. 255, § 2; 75 Del. Laws, c. 86, §§ 1, 2.)

§ 1245A. Providing a false statement to law enforcement; class G felony; class A misdemeanor.

(a) A person is guilty of providing a false statement to law enforcement when, with intent to prevent, hinder or delay the investigation of any crime or offense by a law-enforcement officer or agency, the person knowingly provides any false written or oral statement to the law-enforcement officer or agency when such statement is material to the investigation.

(b) As used in this section:

(1) A "statement" is any oral or written assertion and includes, but is not limited to, any oral utterance, any written document or instrument, any computer-generated document or instrument, any police report, or any representation that a person makes under circumstances evidencing an intent that such be used or knowledge that a law-enforcement officer or agency may use such as an assertion of fact.

(2) A statement is "false" when such statement contains untrue, incomplete or misleading information concerning any fact or thing material to the investigation of a crime or offense by a law-enforcement officer or agency.

(3) A statement is "material" when, regardless of its eventual use or admissibility in an official proceeding, it could have affected the course or outcome of the investigation of a crime or offense by a law-enforcement officer or agency.

(4) An "official proceeding" includes any action or proceeding conducted by or before a legally constituted judicial, administrative or other governmental agency or official, in which evidence or testimony of witnesses may properly be received.

(c) Providing a false statement to law enforcement is a class G felony if the crime or offense being investigated is a felony.

(d) Providing a false statement to law enforcement is a class A misdemeanor if the crime or offense being investigated is other than a felony.

(78 Del. Laws, c. 283, § 1.)

§ 1246. Compounding a crime; class A misdemeanor.

A person is guilty of compounding a crime when:

(1) The person solicits, accepts or agrees to accept any benefit from a person upon any representation or pretense that criminal prosecution of such person shall be dropped, withheld or abandoned, or the sentence thereon reduced, or upon any promise to assert pretended influence to cause such criminal prosecution to be dropped, withheld or abandoned or the sentence thereon reduced; or

(2) The person offers, confers or agrees to confer any benefit upon another person upon an agreement or understanding that the other person will refrain from initiating a prosecution for a crime.

Compounding a crime is a class A misdemeanor.

(11 Del. C. 1953, § 1246; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1247. Defense to compounding a crime.

In any prosecution for compounding a crime, it is an affirmative defense that the benefit did not exceed the amount which the accused believed to be due as restitution or indemnification for harm caused by the crime.

(11 Del. C. 1953, § 1247; 58 Del. Laws, c. 497, § 1.)

§ 1248. Obstructing the control and suppression of rabies.

(a) A person is guilty of obstructing the control and suppression of rabies when the person violates any lawful order of authorized state employees, or their agents, in the enforcement of laws to control and suppress rabies, pursuant to Chapter 82 of Title 3, or prevents or dissuades another person from complying with such orders.

(b) Obstructing the control and suppression of rabies is a Class B misdemeanor. However, obstructing the control and suppression of rabies in a place and at a time when a state of emergency with respect to rabies has been declared pursuant to § 8211 of Title 3 is a class E felony.

(66 Del. Laws, c. 247, § 2; 70 Del. Laws, c. 186, § 1.)

§ 1249. Abetting the violation of driver's license restrictions.

(a) It shall be unlawful for any person to blow into an ignition interlock device, or to start a motor vehicle equipped with such a device, for the purpose of providing an operable motor vehicle to a person whose driving privilege is restricted.

(b) It shall be unlawful for any person to request or solicit any other person to blow into an ignition interlock device, or to start a motor vehicle equipped with such device, for the purpose of providing an operable motor vehicle to a person whose driving privilege is restricted.

(c) It shall be unlawful to tamper with, or to circumvent the operation of, any ignition interlock device.

(d) A violation of this section shall be a class A misdemeanor; provided, however, that a second or subsequent conviction of a violation of this section shall be a class G felony. Where a person violates this section, and such violation is a direct cause of the subsequent death of any person, such violation of this section shall be a class G felony. The Superior Court shall have jurisdiction over all violations of this section.

(67 Del. Laws, c. 437, § 5; 68 Del. Laws, c. 125, § 6; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 353, § 1.)

§ 1250. Offenses against law-enforcement animals.

(a) *Harassment of law-enforcement animals.* — (1) A person is guilty of harassment of a law-enforcement animal when such person intentionally harasses, taunts, menaces, challenges or alarms a law-enforcement animal in such a manner as is likely to provoke from such animal a violent, defensive or threatening response, such as lunging, baring of teeth, kicking, spinning or jumping, if such response from the animal causes alarm, distress, fear or risk of injury to any person or to the animal.

(2) Harassment of a law-enforcement animal is an unclassified misdemeanor.

(b) *Assault in the second degree against a law-enforcement animal.* — (1) A person is guilty of assault in the second degree against a law-enforcement animal when such person intentionally or recklessly engages in conduct which creates a substantial risk of physical injury or death to a law-enforcement animal, including, but not limited to, beating, poisoning or torturing such animal.

(2) Assault in the second degree against a law-enforcement animal is a class A misdemeanor.

(c) *Assault in the first degree against a law-enforcement animal.* — (1) A person is guilty of assault in the first degree against a law-enforcement animal when such person intentionally or recklessly causes serious physical injury or death to such law-enforcement animal.

(2) Assault in the first degree against a law-enforcement animal is a class D felony.

(d) *"Law-enforcement animal" defined.* — For purposes of this section, the words "law-enforcement animal" shall mean any animal, including, but not limited to, canines, K-9 dogs and horses utilized by any law-enforcement officer, including any corrections officer, in the performance of such officer's duties.

(68 Del. Laws, c. 116, § 2; 70 Del. Laws, c. 54, § 1.)

E Escape and Other Offenses Relating to Custody

§ 1251. Escape in the third degree; class A misdemeanor.

A person is guilty of escape in the third degree when the person escapes from custody, including placement in nonsecure facilities by the Division of Youth Rehabilitative Services.

Escape in the third degree is a class A misdemeanor.

(11 Del. C. 1953, § 1251; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 93, § 1.)

§ 1252. Escape in the second degree; class G felony.

A person is guilty of escape in the second degree when the person escapes from a detention facility or from the custody of the Department of Health and Social Services or the Department of Correction.

Escape in the second degree is a class G felony.

(11 Del. C. 1953, § 1252; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 547, § 8; 63 Del. Laws, c. 168, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1253. Escape after conviction; class B felony; class C felony; class D felony.

A person shall be guilty of escape after conviction if such person, after entering a plea of guilty or having been convicted by the court, escapes from a detention facility or other place having custody of such person or from the custody of the Department of Health and Social Services or the Department of Correction.

Escape after conviction shall be a class D felony; provided, however, that if the defendant uses force or the threat of force against another person or possesses a deadly weapon at the time of escape, it shall be a class C felony. If the defendant inflicts injury upon another person during the escape or from the time of escape until such person is again in custody, it shall be a class B felony. Any sentence imposed upon conviction of escape after conviction shall not run concurrently with any other sentence.

(11 Del. C. 1953, § 1253; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 547, § 8; 63 Del. Laws, c. 168, § 2; 67 Del. Laws, c. 130, § 8; 67 Del. Laws, c. 350, § 36; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 67, § 1.)

§ 1254. Assault in a detention facility; penalty; class B and class D felony.

(a) (1) Any person who, being confined in a detention facility, intentionally or recklessly causes physical injury to a correctional officer, other state employee of a detention facility acting in the lawful performance of duties, any other person confined in a detention facility or any other person at a detention facility or other place having custody of such person shall be guilty of a class D felony.

(2) Notwithstanding Chapter 45 of this title, any person convicted for a violation of this subsection shall be imprisoned for a mandatory minimum period of 2 years which shall commence upon final judgment of conviction. Such sentence shall not be suspended nor shall the defendant be eligible for parole or probation.

(b) (1) Any person who, being confined in a detention facility, intentionally or recklessly causes serious physical injury to a correctional officer, other state employee of a detention facility acting in the lawful performance of duties, any other person confined in a detention facility or any other person at a detention facility or other place having custody of such person shall be guilty of a class B felony.

(2) Notwithstanding Chapter 45 of this title, any person convicted for a violation of this subsection shall be imprisoned for a mandatory minimum period of 3 years which shall commence upon final judgment of conviction. Such sentence shall not be suspended nor shall the defendant be eligible for parole or probation.

(c) (1) Any person who, being confined in a detention facility, intentionally or recklessly strikes with urine, feces or other bodily fluid a correctional officer or other state employee of a detention facility acting in the lawful performance of duties or any other person at a detention facility or other place having custody of such person, other than another person confined at a detention facility shall be guilty of a class D felony.

(2) Notwithstanding Chapter 45 of this title, any person convicted for a violation of this subsection shall be imprisoned for a mandatory minimum period of 1 year, which shall commence upon final conviction. Such sentence shall not be suspended nor shall the defendant be eligible for parole or probation.

(3) When charged with a violation of this subsection, the defendant shall be tested for diseases transmittable through bodily fluids, the cost of such tests to be assessed as costs upon conviction. The results of such tests shall be provided only to the Attorney General, the victim of the assault, the defendant and the Department's medical care provider.

(d) The execution and operation of the sentence for any other crime causing such original confinement shall, upon the commencement of the sentence for a violation of this section, be placed in suspension, to be continued only after completion of the sentence for the violation of this section.

(59 Del. Laws, c. 247, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 88, §§ 1-3; 72 Del. Laws, c. 12, §§ 1-3; 81 Del. Laws, c. 167, § 1; 84 Del. Laws, c. 233, § 13.)

§ 1256. Promoting prison contraband; class F felony; class A misdemeanor.

(a) A person is guilty of promoting prison contraband when:

(1) The person knowingly and unlawfully introduces any contraband into a detention facility; or

(2) The person possesses with intent to deliver any contraband to any person confined within a detention facility; or

(3) Being a person confined in a detention facility, the person knowingly and unlawfully makes, obtains or possesses any contraband.

(b) Promoting prison contraband is a class A misdemeanor. However, promoting prison contraband is a class F felony if any of the following applies:

(1) The prison contraband is a deadly weapon, cellular telephone, or any prohibited electronic device not specifically authorized or approved by the Commissioner or designee, any illegal narcotic or look-a-like substance, or any prescription medication, or any item or article that could be used to facilitate an escape.

(2) An unmanned aircraft system is used to deliver or attempt to deliver any of the following into a detention facility

a. Contraband, as defined by § 1258 of this title.

b. Any of the contraband listed in paragraph (b)(1) of this section.

(11 Del. C. 1953, § 1256; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 367, § 1; 81 Del. Laws, c. 168, § 1; 82 Del. Laws, c. 190, § 1.)

§ 1257. Resisting arrest with force or violence, class G felony; resisting arrest, class A misdemeanor.

(a) A person is guilty of resisting arrest with force or violence when:

(1) The person intentionally prevents or attempts to prevent a peace officer from effecting an arrest or detention of the person or another person by use of force or violence towards said peace officer; or

(2) The person intentionally flees from a peace officer, who is effecting an arrest or detention of the person, by use of force or violence towards said peace officer; or

(3) While a peace officer is effecting an arrest or detention of a person, the person causes physical injury to the peace officer. Resisting arrest with force or violence is a class G felony.

(b) A person is guilty of resisting arrest when the person intentionally prevents or attempts to prevent a peace officer from effecting an arrest or detention of the person or another person or intentionally flees from a peace officer who is effecting an arrest or detention of the person.

Resisting arrest is a class A misdemeanor.

(11 Del. C. 1953, § 1257; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 310, §§ 1-3; 77 Del. Laws, c. 266, § 1; 79 Del. Laws, c. 259, § 1.)

§ 1257A. Use of an animal to avoid capture, class G felony; class A misdemeanor.

(a) A person is guilty of using an animal to avoid capture when, with the intent to prevent, hinder or delay the apprehension of a wanted person, including themselves, they release any animal against a law-enforcement or other authorized person to make arrests under Delaware law.

(b) Use of an animal to avoid capture is a class G felony:

(1) If the person commits any of the acts set forth in subsection (a) of this section with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person whom that person knows committed acts constituting a felony, or is being sought by law-enforcement officers for the commission of a felony, or

(2) If the animal injures the law-enforcement officer.

(c) Use of an animal to avoid capture is a class A misdemeanor if the person commits any of the acts set forth in subsection (a) of this section with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person whom that person knows committed acts constituting a crime other than a felony, or is being sought by law-enforcement officers for the commission of a crime other than a felony.

(71 Del. Laws, c. 248, § 1.)

§ 1258. Escape and offenses relating to custody; definitions.

As used in §§ 1251-1257 of this title:

(1) "Contraband" means any intoxicating liquor or drug prohibited under Chapter 47 of Title 16, except as prescribed by a physician for medical treatment; tobacco; nicotine products; any money without the knowledge or consent of the Department of Health and Social Services or the Department of Correction; or any deadly weapon or part thereof or any instrument or article which may be used to effect an escape.

(2) "Custody" means restraint by a public servant pursuant to an arrest, detention or an order of a court.

(3) "Detention facility" means any place used for the confinement of a person:

a. Charged with or convicted of an offense; or

b. Charged with being a delinquent child as defined in § 901 of Title 10; or

c. Held for extradition or as a material witness; or

d. Otherwise confined pursuant to an order of a court.

(4) "Escape" means departure from the place in which the actor is held or detained with knowledge that such departure is unpermitted.

(5) "Other place having custody of such person" includes, but is not limited to, any building, facility, structure, vehicle or property in which a person may be placed while in custody, whether temporarily or permanently and regardless of whether such building, facility, structure, vehicle or property is owned or controlled by the Department of Correction or any other state agency.

(11 Del. C. 1953, § 1258; 58 Del. Laws, c. 497, § 1; 72 Del. Laws, c. 12, § 4; 79 Del. Laws, c. 367, § 1; 81 Del. Laws, c. 79, § 10.)

§ 1259. Sexual relations in detention facility; class G felony [Repealed].

(62 Del. Laws, c. 282, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 241, § 1; repealed by 81 Del. Laws, c. 389, § 2, effective Aug. 29, 2018.)

§ 1260. Misuse of prisoner mail; class A misdemeanor; class G felony.

A person is guilty of misuse of prisoner mail when being a person in custody in a state detention facility, or in the custody of the Department of Health and Social Services or the Department of Correction, that person intentionally:

(1) Communicates by mail with a person not in custody in a manner which the person in custody knows is likely to cause inconvenience, annoyance or alarm; or

(2) Designates a written communication as legal mail knowing that said written communication is wholly unrelated to any actual or potential legal matter or to the administration of justice.

Misuse of prisoner mail is a class A misdemeanor unless the person has previously been convicted under this section, in which case it is a class G felony.

(70 Del. Laws, c. 480, § 1; 70 Del. Laws, c. 186, § 1.)

F Offenses Relating to Judicial and Similar Proceedings

§ 1261. Bribing a witness; class E felony.

A person is guilty of bribing a witness when the person offers, confers or agrees to confer any benefit upon a witness or a person about to be called as a witness in any official proceeding upon an agreement or understanding that:

(1) The testimony of the witness will thereby be influenced; or

(2) The witness will be absent from, or otherwise avoid or seek to avoid appearing or testifying at, the official proceeding.

Bribing a witness is a class E felony.

(11 Del. C. 1953, § 1261; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1262. Bribe receiving by a witness; class E felony.

A witness or a person about to be called as a witness in any official proceeding is guilty of bribe receiving by a witness when the witness solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that:

(1) The witness's testimony will thereby be influenced; or

(2) The witness will be absent from, or otherwise avoid or seek to avoid appearing or testifying at, the official proceeding.

Bribe receiving by a witness is a class E felony.

(11 Del. C. 1953, § 1262; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1263. Tampering with a witness; class E felony.

A person is guilty of tampering with a witness when:

(1) The person knowingly induces, influences or impedes any witness or victim by false statement, fraud or deceit, with intent to affect the testimony or availability of such witness; or

(2) The person intentionally causes physical injury to any party or witness or intentionally damages the property of any party or witness on account of past, present or future attendance at any court proceeding or official proceeding of this State or on account of past, present, or future testimony in any action pending therein; or

(3) The person knowingly intimidates a witness or victim under circumstances set forth in subchapter III of Chapter 35 of this title.

Tampering with a witness is a class E felony.

(11 Del. C. 1953, § 1263; 58 Del. Laws, c. 497, § 1; 63 Del. Laws, c. 20, § 1; 63 Del. Laws, c. 275, §§ 1, 2; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1263A. Interfering with child witness.

(a) A person commits an offense if, intending to interfere with or prevent the prosecution of any person, the person intentionally or knowingly:

(1) Removes a child from the county of residence of the child knowing that the child is or is likely to become a witness in a criminal case in the county of residence; or

(2) Refuses or fails to produce a child in the person's custody before a court in which there is pending a criminal case in which the child is a witness; or

(3) Confers or offers or agrees to confer a benefit on another person in order to:

a. Cause a child to be removed from the county of residence of the child, knowing the child is or is likely to become a witness in a criminal case in the county of residence; or

b. Cause a person in custody of a child to refuse or fail to produce the child before a court in which there is pending a criminal case in which the child is a witness; or

(4) Harms or threatens to harm another person in order to:

a. Cause a child to be removed from the county of residence, knowing the child is or is likely to become a witness in a criminal case in the county of residence; or

b. Cause a person in custody of a child to refuse to produce the child before a court in which there is pending a criminal case in which the child is a witness.

(b) For purposes of this section:

(1) The county of residence of a child is the county in which the child resides at the time of the commission of the offense being prosecuted in the criminal case in which the child is a witness;

(2) A child is in the custody of a person if the person is the parent or guardian of the child, is acting in loco parentis to the child or exercises control over the location or supervision of the child; and

(3) A criminal case is pending in a court if an indictment, information or complaint in the case has been filed with or presented to the court.

(c) "Witness" as used in this section means any natural person:

(1) Having knowledge of the existence or nonexistence of facts relating to any crime; or

(2) Whose declaration under oath is received, or has been received, as evidence for any purpose; or

(3) Who has reported any crime to any peace officer, prosecuting agency, law-enforcement officer, probation officer, parole officer, correctional officer or judicial official; or

(4) Who has been served personally or through a parent, guardian, person acting in loco parentis or other custodian, with a subpoena issued under the authority of any court of this State, or any other state or of the United States; or

(5) Who would be believed by any reasonable person to be an individual described in any paragraph of this subsection.

An offense under paragraph (a)(2), (a)(3)b. or (a)(4)b. of this section is a class E felony.

An offense under paragraph (a)(1), (a)(3)a. or (a)(4)a. of this section is a class G felony unless the child is a complaining witness, in which event the offense is a class F felony.

(65 Del. Laws, c. 110, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1264. Bribing a juror; class E felony.

A person is guilty of bribing a juror when the person offers, confers or agrees to confer any benefit upon a juror upon an agreement or understanding that the juror's vote, opinion, judgment, decision or other action as a juror will thereby be influenced.

Bribing a juror is a class E felony.

(11 Del. C. 1953, § 1264; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1265. Bribe receiving by a juror; class E felony.

A juror is guilty of bribe receiving by a juror when the juror solicits, accepts or agrees to accept any benefit from another person upon agreement or understanding that the juror's vote, opinion, judgment, decision or other action as a juror will thereby be influenced.

Bribe receiving by a juror is a class E felony.

(11 Del. C. 1953, § 1265; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1266. Tampering with a juror; class A misdemeanor.

A person is guilty of tampering with a juror when:

(1) With intent to influence the outcome of an official proceeding, the person communicates with a juror in the proceeding, except as permitted by the rules of evidence governing the proceeding; or

(2) In relation to an official proceeding pending or about to be brought before the juror, the person offers, negotiates, confers or agrees to confer any payment or benefit to the juror or to a third person in consideration for supplying any information depicting the juror's service.

For purposes of this section, a juror shall be any person who has received notice of summons to appear for jury service.

Tampering with a juror is a class A misdemeanor.

(11 Del. C. 1953, § 1266; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 158, § 1.)

§ 1267. Misconduct by a juror; class A misdemeanor.

A person is guilty of misconduct by a juror when, in relation to an official proceeding pending or about to be brought before the juror:

(1) The juror agrees to give a vote, opinion, judgment decision or report for or against any party to the action or proceeding, or

(2) The juror solicits, negotiates, accepts or agrees to accept any payment or benefit for himself or herself for a third person in consideration for supplying any information depicting the juror's service.

For purposes of this section, a juror shall be any person who has received notice of summons to appear for jury service.

Misconduct by a juror is a class A misdemeanor.

(11 Del. C. 1953, § 1267; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 323, § 1.)

§ 1268. Communications between jurors not tampering or misconduct.

Nothing in § 1266 or § 1267 of this title applies to communications between jurors in the same proceeding with regard to matters admitted as evidence in the proceeding.

(11 Del. C. 1953, § 1268; 58 Del. Laws, c. 497, § 1.)

§ 1269. Tampering with physical evidence; class G felony.

A person is guilty of tampering with physical evidence when:

(1) Intending that it be used or introduced in an official proceeding or a prospective official proceeding the person:

a. Knowingly makes, devises, alters or prepares false physical evidence; or

b. Produces or offers false physical evidence at a proceeding, knowing it to be false; or

(2) Believing that certain physical evidence is about to be produced or used in an official proceeding or a prospective official proceeding, and intending to prevent its production or use, the person suppresses it by any act of concealment, alteration or destruction, or by employing force, intimidation or deception against any person.

Tampering with physical evidence is a class G felony.

(11 Del. C. 1953, § 1269; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1270. [Reserved.]

§ 1271. Criminal contempt; class A misdemeanor; class B misdemeanor.

A person is guilty of criminal contempt when the person engages in any of the following conduct:

(1) Disorderly, contemptuous or insolent behavior, committed during the sitting of a court, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due to its authority; or

(2) Breach of the peace, noise or other disturbance directly tending to interrupt a court's proceedings; or

(3) Intentional disobedience or resistance to the process, injunction or other mandate of a court; or

(4) Contumacious refusal to be sworn as a witness in any court proceeding or, after being sworn, to answer any proper interrogatory; or

(5) Knowingly publishing a false or grossly inaccurate report of a court's proceedings; or

(6) Intentional refusal to serve as a juror; or

(7) Intentional and unexcused failure by a juror to attend a trial at which the person has been chosen to serve as a juror; or

(8) Intentional failure to appear personally on the required date, having been released from custody, with or without bail, by court order or by other lawful authority, upon condition that the person will subsequently appear personally in connection with a criminal action or proceeding.

Criminal contempt is a class A misdemeanor, except for violations of paragraph (1) of this section. A violation of paragraph (1) of this section shall be a class B misdemeanor.

(11 Del. C. 1953, § 1211; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1271A. Criminal contempt of a domestic violence protective order, lethal violence protective order, or sexual violence protective order; class A misdemeanor; class F felony.

(a) (1) A person is guilty of criminal contempt of a domestic violence protective order when the person knowingly violates or fails to obey any provision of a protective order issued by: the Family Court; a court of any state, territory, or Indian nation in the United States, as long as such violation or failure to obey occurred in Delaware; or a court of Canada, as long as such violation or failure to obey occurred in Delaware.

(2) A person is guilty of criminal contempt of a lethal violence protective order or sexual violence protective order when the person knowingly violates or fails to obey any provision of a protective order issued by the Justice of the Peace Court or Superior Court, as long as such violation or failure to obey occurred in Delaware.

(b) Criminal contempt of a domestic violence protective order, lethal violence protective order, or sexual violence protective order is a class A misdemeanor, unless any of the elements set forth in subsection (c) of this section are met, in which case the offense shall be a class F felony.

(c) A person is guilty of felony criminal contempt of a domestic violence protective order, a lethal violence protective order, or a sexual violence protective order if:

(1) Such contempt resulted in physical injury.

(2) Such contempt involved the use or threatened use of a deadly weapon or firearm.

(d) A person found guilty of criminal contempt of a domestic violence protective order, lethal violence protective order, or sexual violence protective order shall receive a minimum sentence of 15 days incarceration if:

(1) Such contempt resulted in physical injury.

(2) Such contempt involved the use or threatened use of a deadly weapon or firearm.

(3) The defendant was convicted of criminal contempt of a domestic violence protective order, lethal violence protective order, or sexual violence protective order under this section on 2 or more prior occasions.

(e) The minimum sentence shall not be subject to suspension and no person subject to the minimum sentence shall be eligible for probation, parole, furlough, or suspended custody during the sentence.

(f) The Superior Court has exclusive jurisdiction over offenses under paragraph (a)(2) of this section.

(69 Del. Laws, c. 160, § 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 179, § 1; 72 Del. Laws, c. 63, § 1; 76 Del. Laws, c. 117, §§ 1-4; 80 Del. Laws, c. 373, § 2; 81 Del. Laws, c. 274, § 2; 83 Del. Laws, c. 449, § 2.)

§ 1272. Criminal contempt; summary punishment.

A person who commits criminal contempt as defined by § 1271(1) of this title may in the discretion of the court be convicted and sentenced for that offense without further criminal proceedings during or immediately after the termination of the proceeding in which the act constituting criminal contempt occurred.

(11 Del. C. 1953, § 1272; 58 Del. Laws, c. 497, § 1.)

§ 1273. Unlawful grand jury disclosure; class B misdemeanor.

A person is guilty of unlawful grand jury disclosure when, being a grand juror, a public prosecutor, a grand jury stenographer, a grand jury interpreter, a peace officer guarding a witness in a grand jury proceeding, or a clerk, attendant, warden or other public servant having official duties in or about a grand jury room or proceeding, the person intentionally discloses to another person the nature or substance of any grand jury testimony, or any decision, result or other matter attending a grand jury proceeding which is required by law to be kept secret, except in the proper discharge of official duties or upon written order of the court.

Unlawful grand jury disclosure is a class B misdemeanor.

(11 Del. C. 1953, § 1273; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1274. Offenses relating to judicial and similar proceedings; definitions.

As used in §§ 1261-1273 of this title:

(1) “Benefit” means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested.

(2) “Official proceeding” includes any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence or testimony of witnesses may properly be received.

(3) “Physical evidence” means any article, object, document, record or other thing of physical substance which is or is about to be produced or used as evidence in an official proceeding.

(11 Del. C. 1953, § 1274; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

Subchapter VII

Offenses Against Public Health, Order and Decency

A Riot, Disorderly Conduct and Related Offenses

§ 1301. Disorderly conduct; unclassified misdemeanor.

(a) A person is guilty of disorderly conduct when any of the following apply:

(1) The person intentionally causes public inconvenience, annoyance or alarm to any other person, or creates a risk thereof by:

a. Engaging in fighting or in violent, tumultuous or threatening behavior; or

b. Making an unreasonable noise or an offensively coarse utterance, gesture or display, or addressing abusive language to any person present; or

c. Disturbing any lawful assembly or meeting of persons without lawful authority; or

d. Obstructing vehicular or pedestrian traffic; or

e. Congregating with other persons in a public place and refusing to comply with a lawful order of the police to disperse; or

f. Creating a hazardous or physically offensive condition which serves no legitimate purpose; or

g. Congregating with other persons in a public place while wearing masks, hoods or other garments rendering their faces unrecognizable, for the purpose of and in a manner likely to imminently subject any person to the deprivation of any rights, privileges or immunities secured by the Constitution or laws of the United States of America.

(2) The person engages with at least 1 other person in a course of disorderly conduct as defined in paragraph (a)(1) of this section which is likely to cause substantial harm or serious inconvenience, annoyance or alarm, and refuses or knowingly fails to obey an order to disperse made by a peace officer to the participants.

(3) The person intentionally interferes with the operation of a school bus if both of the following apply:

a. The school bus is transporting, picking up, or dropping off students.

b. The person does any of the following:

1. Boards the school bus and refuses to exit after being lawfully ordered to exit by the school bus driver or bus attendant.

2. Wrongfully restricts the movement of the school bus.

3. Threatens the school bus driver or a school bus passenger, including when the school bus driver or the school bus passenger is entering, leaving, or waiting for the school bus. For purposes of this paragraph (a)(3)b.3., a statement that a person plans to hire an attorney, seek a legal remedy, or inform others about concerns, is not a threat.

(b) Disorderly conduct is an unclassified misdemeanor.

(c) A passenger, including a student, authorized to be on the school bus in the ordinary course of business may not be guilty of disorderly conduct for a violation of paragraph (a)(3) of this section.

(d) (1) A parent of a student with an individualized education program (IEP) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., or a § 504 plan under § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, does not violate paragraphs (a)(3)b.1. and (a)(3)b.2. of this section if they are addressing a health or safety concern involving their student in a manner that is safe for the other occupants of the school bus.

(2) For purposes of this subsection, "parent" means as defined in § 3101 of Title 14, if the student satisfies the definition of "child with a disability" under § 3101 of Title 14. Otherwise, "parent" means as defined in § 401A of Title 14.

(11 Del. C. 1953, § 1301; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 203, §§ 23, 24; 63 Del. Laws, c. 305, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 85 Del. Laws, c. 194, § 1.)

§ 1302. Riot; class F felony.

A person is guilty of riot when the person participates with 2 or more persons in a course of disorderly conduct:

(1) With intent to commit or facilitate the commission of a felony or misdemeanor; or

(2) With intent to prevent or coerce official action; or

(3) When the accused or any other participant to the knowledge of the accused uses or plans to use a firearm or other deadly weapon.

Any other provision of this Criminal Code notwithstanding, whoever violates this section shall be guilty of a class F felony.

Any other provision of this Criminal Code or Title 10 notwithstanding, any person over 16 years old who violates this section may be prosecuted as an adult pursuant to §§ 1010 and 1011 of Title 10.

(11 Del. C. 1953, § 1302; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 199, § 1.)

§ 1303. Disorderly conduct; funeral or memorial service.

(a) A person shall not do any of the following within 300 feet of the building or other location where a funeral or memorial service is being conducted, or within 1,000 feet of a funeral procession or burial:

(1) Direct abusive epithets or make any threatening gesture which the person knows or reasonably should know is likely to provoke a violent reaction by another.

(2) Disturb or disrupt the funeral, memorial service, funeral procession, or burial by conduct intended to disturb or disrupt the funeral, memorial service, funeral procession or burial.

(b) This section applies to conduct within 1 hour preceding, during and within 2 hours after a funeral, memorial service, funeral procession or burial.

(c) A person who commits a violation of this section commits:

(1) A class A misdemeanor for a first offense.

(2) A class F felony for a second or subsequent offense.

(d) This section shall not preclude any county or municipality from legislating and enforcing its own more restrictive law in this regard.

(75 Del. Laws, c. 271, § 1.)

§ 1304. Hate crimes; class A misdemeanor, class G felony, class F felony, class E felony, class D felony, class C felony, class B felony, class A felony.

(a) Any person who commits, or attempts to commit, any crime as defined by the laws of this State, and who intentionally does any of the following is guilty of a hate crime:

(1) Commits the crime for the purpose of interfering with the victim's free exercise or enjoyment of any right, privilege, or immunity protected by the First Amendment to the United States Constitution, or commits the crime because the victim has exercised or enjoyed a First Amendment right, privilege, or immunity.

(2) Commits the crime and is motivated in whole or in part by a belief or perception regarding the race, religion, color, disability, sexual orientation, sex, age, gender identity, national origin, or ancestry of a person or group, regardless of whether the belief or perception is accurate.

(b) For purposes of this section:

(1) "Group" includes an organization or association of persons, whether formal or informal.

(2) "Protective hairstyle" includes braids, locks, and twists.

(3) "Race" includes traits historically associated with race, including hair texture and protective hairstyle.

(c) A hate crime is punished as follows:

(1) If the underlying offense is a violation or unclassified misdemeanor, the hate crime is a class A misdemeanor;

(2) If the underlying offense is a class A, B, or C misdemeanor, the hate crime is a class G felony;

(3) If the underlying offense is a class C, D, E, F, or G felony, the hate crime is 1 grade higher than the underlying offense;

(4) If the underlying offense is a class A or B felony, the hate crime is the same grade as the underlying offense, and the minimum sentence of imprisonment required for the underlying offense must be doubled.

(d) The Superior Court has exclusive jurisdiction over a violation of this section.

(70 Del. Laws, c. 138, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 175, §§ 1, 2; 79 Del. Laws, c. 47, § 15; 83 Del. Laws, c. 13, § 8; 83 Del. Laws, c. 195, § 3; 83 Del. Laws, c. 477, § 1; 84 Del. Laws, c. 215, § 3.)

§ 1305. Desecration; class A misdemeanor.

(a) A person is guilty of desecration if the person attempts or does intentionally deface, damage, pollute or otherwise physically mistreat any of the following:

(1) A burial place.

(2) A public monument or structure.

(3) A place of worship or place primarily used for religious purposes.

(4) A school, educational institution, or community center.

(b) (1) Any person who commits desecration of a burial place is guilty of a class A misdemeanor and upon conviction the court may impose a fine of up to $2,300.

(2) Any person who commits desecration under paragraph (a)(2) through (a)(4) of this section is guilty of a class A misdemeanor.

(3) The penalty for a violation of this section may include restitution and 250 hours of community service.

(c) The Superior Court has exclusive jurisdiction over a violation of this section.

(11 Del. C. 1953, § 1331; 58 Del. Laws, c. 497, § 1; 65 Del. Laws, c. 463, §§ 1, 2; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 477, § 2.)

§ 1306. Cross or religious symbol burning; class A misdemeanor.

(a) A person is guilty of cross or religious symbol burning when the person attempts or does burn, or causes to be burned, any cross or other religious symbol, on any private or public property with the intent to intimidate an individual or a group of individuals.

(b) A person is guilty of cross or religious symbol burning when the person burns, or causes to be burned, any cross or other religious symbol, on any private or public property without all of the following:

(1) The express written consent of the owner of the property.

(2) A minimum of 48 hours advanced notification of the proposed burning to the fire board or call board of the county in which the burning is to take place.

(c) A violation of this section is a class A misdemeanor.

(d) The Superior Court has exclusive jurisdiction over a violation of this section.

(69 Del. Laws, c. 106, § 1; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 477, § 2.)

§ 1307. Civil remedies for violations of hate crimes and related offenses.

(a) A person incurring injury to self, including emotional distress, or damage or loss to property, as a result of conduct committed in violation of § 1304, § 1305, or § 1306 of this title has a civil cause of action to secure an injunction, damages, or other appropriate relief in law or in equity.

(b) In an action under subsection (a) of this section, whether a violation of § 1304, § 1305, or § 1306 of this title has occurred is to be determined according to the burden of proof used in other civil actions for similar relief.

(c) (1) The Attorney General may initiate a cause of action against a person or group who violates § 1304, § 1305, or § 1306 of this title on behalf of any person or group that has sustained injury to person or property.

(2) For purposes of this subsection, "group" means as defined under § 1304(b) of this title,

(d) (1) In an action to enforce this section, the court may award the prevailing party or the Attorney General a reasonable attorneys' fee. In awarding attorneys' fees under this subsection, the court may include reasonable expert fees as part of the attorneys' fee.

(2) On prevailing in an action under subsection (a) of this section, the plaintiff may recover both special and general damages, including damages for emotional distress and punitive damages.

(e) Notwithstanding any other provision of the law to the contrary, a parent or legal guardian of an unemancipated minor is liable for a judgment rendered against the minor under this section if the parent or legal guardian knew of the propensity of the minor to commit a violation of § 1304, § 1305, or § 1306 of this title.

(83 Del. Laws, c. 477, § 2.)

§ 1308. Hate crime reporting requirement.

(a) Police agencies shall report the number of violations, or investigations into a violation, of § 1304 of this title to the Division of Civil Rights and Public Trust, established under § 2553 of Title 29, at the request of the Division.

(b) The Division of Civil Rights and Public Trust may request a police agency to provide any additional information deemed necessary to effectuate the Division's mission.

(c) The Division of Civil Rights and Public Trust shall post on the Division's website annually the number and nature of violations of § 1304 of this title.

(83 Del. Laws, c. 477, § 2.)

§ 1309. Deprivation of civil rights; class A misdemeanor; class B and D felony.

(a) Whoever, under color of any law, statute, ordinance, regulation, or custom, knowingly subjects any person or group to the deprivation of any rights, privileges, or immunities secured or protected by the United States Constitution, the Delaware Constitution, or the laws of the State of Delaware, shall be guilty of a class A misdemeanor.

(b) If physical injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous instrument, explosives, or fire, the defendant shall be guilty of a class D felony.

(c) If serious physical injury or death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, a felony sex offense or an attempt to commit a felony sex offense, or an attempt to kill, the defendant shall be guilty of a class B felony.

(d) The Superior Court shall have exclusive jurisdiction over violations of this section.

(83 Del. Laws, c. 502, § 1.)

§ 1310. [Reserved.]

§ 1311. Harassment; class A misdemeanor.

(a) A person is guilty of harassment when, with intent to harass, annoy or alarm another person:

(1) That person insults, taunts or challenges another person or engages in any other course of alarming or distressing conduct which serves no legitimate purpose and is in a manner which the person knows is likely to provoke a violent or disorderly response or cause a reasonable person to suffer fear, alarm, or distress;

(2) Communicates with a person by telephone, telegraph, mail or any other form of written or electronic communication in a manner which the person knows is likely to cause annoyance or alarm including, but not limited to, intrastate telephone calls initiated by vendors for the purpose of selling goods or services;

(3) Knowingly permits any telephone under that person's control to be used for a purpose prohibited by this section;

(4) In the course of a telephone call that person uses obscene language or language suggesting that the recipient of the call engage with that person or another person in sexual relations of any sort, knowing that the person is thereby likely to cause annoyance or alarm to the recipient of the call; or

(5) Makes repeated or anonymous telephone calls to another person whether or not conversation ensues, knowing that person is thereby likely to cause annoyance or alarm.

(b) Harassment is a class A misdemeanor.

(11 Del. C. 1953, § 1311; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 316, § 3; 74 Del. Laws, c. 362, § 1; 76 Del. Laws, c. 343, §§ 1, 2.)

§ 1312. Stalking; class G felony, class F felony, class C felony.

(a) A person is guilty of stalking when the person knowingly engages in a course of conduct directed at a specific person and that conduct would cause a reasonable person to:

(1) Fear physical injury to himself or herself or that of another person; or

(2) Suffer other significant mental anguish or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(b) A violation of subsection (a) of this section is a class G felony.

(c) Stalking is a class F felony if a person is guilty of stalking and 1 or more of the following exists:

(1) The person is age 21 or older and the victim is under the age of 14; or

(2) The person violated any order prohibiting contact with the victim; or

(3) The victim is age 62 years of age or older; or

(4) The course of conduct includes a threat of death or threat of serious physical injury to the victim, or to another person; or

(5) The person causes physical injury to the victim.

(d) Stalking is a class C felony if the person is guilty of stalking and 1 or more of the following exists:

(1) The person possesses a deadly weapon during any act; or

(2) The person causes serious physical injury to the victim.

(e) *Definitions.* — The following terms shall have the following meaning as used in this section:

(1) "Course of conduct" means 3 or more separate incidents, including, but not limited to, acts in which the person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about another, or interferes with, jeopardizes, damages, or disrupts another's daily activities, property, employment, business, career, education, or medical care. A conviction is not required for any predicate act relied upon to establish a course of conduct. A conviction for any predicate act relied upon to establish a course of conduct does not preclude prosecution under this section. Prosecution under this section does not preclude prosecution under any other section of the Code.

(2) "A reasonable person" means a reasonable person in the victim's circumstances.

(f) Notwithstanding any contrary provision of § 4205 of this title, any person who commits the crime of stalking by engaging in a course of conduct which includes any act or acts which have previously been prohibited by a then-existing court order or sentence shall receive a minimum sentence of 6 months incarceration at Level V. The first 6 months of said period of incarceration shall not be subject to suspension.

(g) Notwithstanding any contrary provision of § 4205 of this title, any person who is convicted of stalking within 5 years of a prior conviction of stalking shall receive a minimum sentence of 1 year incarceration at Level V. The first year of said period of incarceration shall not be subject to suspension.

(h) In any prosecution under this law, it shall not be a defense that the perpetrator was not given actual notice that the course of conduct was unwanted; or that the perpetrator did not intend to cause the victim fear or other emotional distress.

(i) In any prosecution under this section, it is an affirmative defense that the person charged was engaged in lawful picketing.

(j) This section shall not apply to conduct which occurs in furtherance of legitimate activities of law-enforcement, private investigators, security officers or private detectives as those activities are defined in Chapter 13 of Title 24.

(68 Del. Laws, c. 250, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 316, § 1; 74 Del. Laws, c. 116, §§ 1, 2; 76 Del. Laws, c. 343, § 4.)

§ 1312A. Stalking; class F felony [Transferred].

Transferred to § 1312 of this title by 76 Del. Laws, c. 343, § 4, effective Oct. 14, 2008.

§ 1313. Malicious interference with emergency communications; class B misdemeanor.

(a) As used in this section:

(1) “Emergency communication” means any telephone call or any other form of communication made, transmitted or facilitated by radio, computer or any other electronic device which is intended by its maker to provide warning or information pertaining to any crime, fire, accident, disaster or risk of injury or damage to any person or property.

(2) “Emergency communications center” means any public or private facility or entity which accepts emergency communications for the purpose of notifying, dispatching, directing or coordinating law enforcement, fire, medical, paramedic, ambulance, utility or other public safety personnel.

(b) A person is guilty of malicious interference with emergency communications when the person:

(1) Intentionally prevents or hinders the initiation, making or completion of an emergency communication by another person; or

(2) Intentionally initiates or makes repeated nonemergency communications to any 911 or other emergency communications center, knowing it was thereby likely that the operations of such emergency communications center would be disrupted.

(11 Del. C. 1953, § 1313; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 73 Del. Laws, c. 87, § 2.)

§ 1314. [Reserved.]

§ 1315. Public intoxication; unclassified misdemeanor; violation.

A person is guilty of public intoxication when the person appears in a public place manifestly under the influence of alcohol or narcotics or any other drug not administered or prescribed to be taken by a physician, to the degree that the person may be in danger or endanger other persons or property, or annoy persons in the vicinity.

Public intoxication is a violation, unless the accused has been convicted of public intoxication twice before within 1 year, in which case the offense is an unclassified misdemeanor.

(11 Del. C. 1953, § 1315; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1316. Registration of out-of-state liquor agents; violation.

(a) In order to promote and protect the public safety and the peace of the community, by reason of the presence of many persons engaged in the enforcement of the laws of other states, any agent, employee, or representative of another state shall register with the Delaware Alcoholic Beverage and Tobacco Enforcement not less than 30 days in advance of each entry into a county for the purpose of observing any alcoholic beverage sales.

(b) At the time of registration the person shall provide the following information:

(1) A written statement setting forth the identity of the out-of-state official;

(2) The purpose of the intended entry into the county;

(3) The make, model and license number of each and every vehicle to be used in the conduct of any surveillance activity;

(4) The specific establishments at which surveillance will be conducted; and

(5) The specific times for surveillance of each establishment.

(c) Any person who registers shall be issued a certificate of registration which must be retained in the possession of the person during all investigative or surveillance activities.

(d) Any person who fails to register as required by this section, or who having registered violates any provision of this section, shall lose the right to register or the person’s registration, as the case may be, for a period of 6 months.

(e) Any person who, during the period imposed by subsection (d) of this section, violates this section is guilty of a violation.

(f) Upon written request, the Delaware Alcoholic Beverage and Tobacco Enforcement shall release the information regarding agencies and officers who have registered under this section.

(69 Del. Laws, c. 275, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 74.)

§§ 1317-1319. [Reserved.]

§ 1320. Loitering on property of a state-supported school, college or university; violation.

A person is guilty of loitering on property of a state-supported school, college or university when the person loiters or remains in or about the buildings or grounds of a school, college or university supported in whole or in part with state funds, not having any reason or relationship involving custody of or responsibility for a pupil or student, or any other specific, legitimate reason for being there, and not having written permission from anyone authorized to grant the same.

Any law-enforcement officer, state official or employee, the owner or occupier of such lands or property, an agent or employee of such persons, or any other person or persons whom they may call to their assistance, may arrest such loiterer, either with or without warrant, either upon the premises or in immediate flight therefrom and, if with warrant, then at any place.

Loitering on property of a state-supported school, college or university is a violation.

(11 Del. C. 1953, § 1320; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1321. Loitering; violation.

A person is guilty of loitering when:

(1) The person fails or refuses to move on when lawfully ordered to do so by any police officer; or

(2) The person stands, sits idling or loiters upon any pavement, sidewalk or crosswalk, or stands or sits in a group or congregates with others on any pavement, sidewalk, crosswalk or doorstep, in any street or way open to the public in this State so as to obstruct or hinder the free and convenient passage of persons walking, riding or driving over or along such pavement, walk, street or way, and fails to make way, remove or pass, after reasonable request from any person; or

(3) The person loiters or remains in or about a school building or grounds, not having reason or relationship involving custody of or responsibility for a pupil or any other specific or legitimate reason for being there, unless the person has written permission from the principal; or

(4) The person loiters, remains or wanders about in a public place for the purpose of begging; or

(5) The person loiters or remains in a public place for the purpose of engaging or soliciting another person to engage in sexual intercourse or deviate sexual intercourse; or

(6) The person loiters, congregates with others or prowls in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity, especially in light of the crime rate in the relevant area. Unless flight by the accused or other circumstances make it impracticable, a peace officer shall, prior to any arrest for an offense under this paragraph, afford the accused an opportunity to dispel any alarm which would otherwise be warranted, by requesting identification and an explanation of the person's presence and conduct. No person shall be convicted of an offense under this paragraph if the peace officer did not comply with the preceding sentence, or if it appears that the explanation given by the accused was true and, if believed by the peace officer at the time, would have dispelled the alarm.

Loitering is a violation.

(11 Del. C. 1953, § 1321; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 113, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1322. Criminal nuisance; unclassified misdemeanor.

A person is guilty of criminal nuisance when:

(1) By conduct either unlawful in itself or unreasonable under all the circumstances, the person knowingly or recklessly creates or maintains a condition which endangers the safety or health of others; or

(2) The person knowingly conducts or maintains any premises, place or resort where persons gather for purposes of engaging in unlawful conduct.

Criminal nuisance is an unclassified misdemeanor.

(11 Del. C. 1953, § 1322; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1323. Obstructing public passages; violation.

A person is guilty of obstructing public passages when alone or with other persons and having no legal privilege to do so, the person intentionally or recklessly renders any public passage unreasonably inconvenient or hazardous to use, or the person wilfully enters upon or tampers with or obstructs any public utility right-of-way.

Obstructing a public passage is a violation.

(11 Del. C. 1953, § 1323; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1324. Obstructing ingress to or egress from public buildings; unclassified misdemeanor.

A person is guilty of obstructing ingress to or egress from public buildings when the person knowingly prevents any person from passing through any entrance or exit to a public building, except that this section shall not apply to lawful picketing or to picketing for any lawful union objective.

Obstructing ingress to or egress from public buildings is an unclassified misdemeanor.

(11 Del. C. 1953, § 1324; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1325. Cruelty to animals; class A misdemeanor; class F felony.

(a) For the purpose of this section, the following words and phrases shall include, but not be limited to, the meanings respectively ascribed to them as follows:

(1) "Abandonment" includes completely forsaking or deserting an animal originally under one's custody without making reasonable arrangements for custody of that animal to be assumed by another person.

(2) "Animal" shall not include fish, crustacea or molluska.

(3) "Cruel" includes every act or omission to act whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.

(4) “Cruel mistreatment” includes any treatment whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.

(5) “Cruel neglect” includes neglect of an animal, which is under the care and control of the neglector, whereby pain or suffering is caused to the animal or abandonment of any domesticated animal by its owner or custodian. By way of example, cruel neglect shall also include allowing an animal to live in unsanitary conditions, such as keeping an animal where the animal’s own excrement is not removed from the animal’s living area and/or other living conditions which are injurious to the animal’s health.

(6) “Cruelty to animals” includes mistreatment of any animal or neglect of any animal under the care and control of the neglector, whereby unnecessary or unjustifiable physical pain or suffering is caused. By way of example, “cruelty to animals” includes the following: unjustifiable beating of an animal; overworking an animal; tormenting an animal; abandonment of an animal; tethering of any dog for 9 consecutive hours or more in any 24-hour period, except on any farm; tethering any dog for any amount of time if the dog is under 4 months of age or is a nursing mother while the offspring are present, except on any farm; and failure to feed properly or give proper shelter or veterinary care to an animal.

(7) “Custody” includes the responsibility for the welfare of an animal subject to one’s care and control whether one owns it or not. A person who provides sterilization or care to a free-roaming cat that lacks discernible owner identification is not deemed to have “custody,” “care,” or “control” of the cat for purposes of this section.

(8) “Farm” means any place that meets the 2017 USDA Federal Census of Agriculture definition of farm: “any place from which $1,000 or more of agricultural products were produced and sold, or normally would have been sold, during the census year”.

(9) “Person” includes any individual, partnership, corporation or association living and/or doing business in the State.

(10) “Proper feed” includes providing each animal with daily food and water of sufficient quality and quantity to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(11) “Proper shelter” includes providing each animal with adequate shelter from the weather elements as required to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(12) “Proper veterinary care” includes providing each animal with veterinary care sufficient to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(13) “Serious injury” shall include any injury to any animal which creates a substantial risk of death, or which causes prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(14) “Tethering” shall include fastening or restraining with a rope, chain, cord, or similar device creating a fixed radius; tethering does not include walking a dog on a leash, regardless of the dog’s age.

(b) A person is guilty of cruelty to animals when the person intentionally or recklessly:

(1) Subjects any animal to cruel mistreatment; or

(2) Subjects any animal in the person’s custody to cruel neglect; or

(3) Kills or injures any animal belonging to another person without legal privilege or consent of the owner; or

(4) Cruelly or unnecessarily kills or injures any animal. This section does not apply to the killing of any animal normally or commonly raised as food for human consumption, provided that such killing is not cruel. A person acts unnecessarily if the act is not required to terminate an animal’s suffering, to protect the life or property of the actor or another person or if other means of disposing of an animal exist which would not impair the health or well-being of that animal; or,

(5) Captures, detains, transports, removes or delivers any animal known to be a pet or owned or unowned companion animal, or any other animal of scientific, environmental, economic or cultural value, under false pretenses to any public or private animal shelter, veterinary clinic or other facility, or otherwise causes the same through acts of deception or misrepresentation of the circumstances and disposition of any such animal.

(6) Confines an animal unattended in a standing or parked motor vehicle in which the temperature is either so high or so low as to endanger the health or safety of the animal. A law-enforcement officer, animal welfare officer, or firefighter who has probable cause to believe that an animal is confined in a motor vehicle under conditions that are likely to cause suffering, injury, or death to the animal may use reasonable force to remove the animal left in the vehicle in violation of this provision. A person removing an animal under this section shall use reasonable means to contact the owner. If the person is unable to contact the owner, the person may take the animal to an animal shelter and must leave written notice bearing that person’s name and office, and the address of the location where the animal can be claimed. This provision shall not apply to the legal transportation of horses, cattle, swine, sheep, poultry, or other agricultural animals in motor vehicles designed to transport such animals. The owner of the vehicle from which the animal is rescued and the owner of the animal rescued are not liable for injuries suffered by the person rescuing the animal.

Paragraphs (b)(1), (2) and (4) of this section are inapplicable to accepted veterinary practices and activities carried on for scientific research.

Cruelty to animals is a class A misdemeanor, unless the person intentionally kills or causes serious injury to any animal in violation of paragraph (b)(4) of this section or unless the animal is killed or seriously injured as a result of any action prohibited by paragraph (b)(5) of this section, in which case it is a class F felony.

(c) Any person convicted of a misdemeanor violation of this section shall be prohibited from owning or possessing any animal for 5 years after said conviction, except for animals grown, raised or produced within the State for resale, or for sale of a product thereof, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale. Any person convicted of a second or subsequent misdemeanor violation of this section shall be prohibited from owning or possessing any animal for 5 years after said conviction without exception.

A violation of this subsection is subject to a fine in the amount of $1,000 in any court of competent jurisdiction and to forfeiture of any animal illegally owned in accordance with the provisions of § 3035F of Title 16.

(d) Any person convicted of a felony violation of this section shall be prohibited from owning or possessing any animal for 15 years after said conviction, except for animals grown, raised or produced within the State for resale, or for sale of a product thereof, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale. Any person convicted of a second or subsequent felony violation of this section shall be prohibited from owning or possessing any animal for 15 years after said conviction without exception.

A violation of this subsection is subject to a fine in the amount of $5,000 in any court of competent jurisdiction and to forfeiture of any animal illegally owned in accordance with the provisions of § 3035F of Title 16.

(e) Any trained and certified animal welfare officer of the Department of Health and Social Service's Office of Animal Welfare or the Department of Agriculture may impound an animal owned or possessed in apparent violation of this section, consistent with § 3035F of Title 16.

(f) This section shall not apply to the lawful hunting or trapping of animals as provided by law.

(g) Notwithstanding any provision to the contrary, for a first offense misdemeanor violation of this section relating to animals left in motor vehicles or the tethering of dogs, a warning shall be issued.

(h) Exclusive jurisdiction of offenses under this section relating to animals left in motor vehicles or the tethering of dogs shall be in the Superior Court.

(11 Del. C. 1953, § 1325; 58 Del. Laws, c. 497, § 1; 62 Del. Laws, c. 71, §§ 1, 2; 63 Del. Laws, c. 260, § 1; 64 Del. Laws, c. 196, §§ 1-3; 67 Del. Laws, c. 130, § 8; 69 Del. Laws, c. 280, §§ 1, 2; 70 Del. Laws, c. 60, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 75, § 1; 73 Del. Laws, c. 182, §§ 1, 2; 73 Del. Laws, c. 238, §§ 1, 2; 78 Del. Laws, c. 390, §§ 1, 2; 79 Del. Laws, c. 375, § 4; 80 Del. Laws, c. 156, §§ 1, 2; 80 Del. Laws, c. 200, § 3; 80 Del. Laws, c. 248, § 2; 81 Del. Laws, c. 450, § 1; 82 Del. Laws, c. 238, § 3; 83 Del. Laws, c. 158, § 1; 84 Del. Laws, c. 42, § 1.)

§ 1325A. The unlawful trade in dog or cat by-products; class B misdemeanor; class A misdemeanor, penalties.

(a) (1) A person is guilty of the unlawful trade in dog or cat by-products in the second degree if the person knowingly or recklessly sells, barters or offers for sale or barter, the fur or hair of a domestic dog or cat or any product made in whole or in part from the fur or hair of a domestic dog or cat.

(2) This subsection shall not apply to the sale or barter, or offering for sale or barter, of the fur or hair of a domestic dog or cat which has been cut at a commercial grooming establishment, or at a veterinary office or clinic, or for scientific research purposes.

(3) The unlawful trade in dog or cat by-products in the second degree is a class B misdemeanor.

(b) (1) A person is guilty of the unlawful trade in dog or cat by-products in the first degree if the person knowingly or recklessly sells, barters or offers for sale or barter, the flesh of a domestic dog or cat or any product made in whole or in part from the flesh of a domestic dog or cat.

(2) The unlawful trade in dog or cat by-products in the first degree is a class A misdemeanor.

(c) In addition to any other penalty provided by law, any person convicted of a violation of this section shall be:

(1) Prohibited from owning or possessing any domestic dog or cat for 15 years after said conviction, except for those grown, raised or produced within the State for resale, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale;

(2) Subject to a fine in the amount of $2,500 in any court of competent jurisdiction; and

(3) Required to forfeit any domestic dog or cat illegally owned in accordance with the provisions of Chapter 79 of Title 3.

(d) For the purposes of this section, the term "domestic dog or cat" means a dog (Canis familiaris) or cat (Felis catus or Felis domesticus) that is generally recognized in the United States as being a household pet and shall not include coyote, fox, lynx, bobcat or any other wild or commercially raised canine or feline species the fur or hair of which is recognized for use in warm clothing and outer wear by the United States Department of Agriculture and which species is not recognized as an endangered or threatened species by the United States Fish and Wild Life Service or the Delaware Department of Natural Resources and Environmental Control.

(72 Del. Laws, c. 391, § 1.)

§ 1326. Animals; fighting and baiting prohibited; class E felony.

(a) A person who owns, possesses, keeps, trains, or uses a bull, bear, dog, cock, or other animal or fowl for the purpose of fighting or baiting; or a person who is a party to or who causes the fighting or baiting of a bull, bear, dog, cock, or other animal or fowl; or a

person who rents or otherwise obtains the use of a building, shed, room, yard, ground, or premises for the purpose of fighting or baiting an animal or fowl; or a person who knowingly suffers or permits the use of a building, shed, room, yard, ground, or premises belonging to the person, or that is under the person's control, for any of the purposes described in this section; or a person who knowingly possesses, owns, buys, sells, transfers, or manufactures animal fighting paraphernalia with the intent to engage in or otherwise promote or facilitate such fighting, is guilty of a class E felony.

(b) A person who is present at a building, shed, room, yard, ground, or premises where preparations are being made for an exhibition prohibited by subsection (a) of this section, and who knows that the exhibition is taking place or is about to take place, is guilty of a class F felony.

(c) A person who gambles on the outcome of an exhibition prohibited by subsection (a) of this section is guilty of a class F felony.

(d) All animals, equipment, devices, and money involved in a violation of this section must be forfeited to the State. Animals so forfeited must be evaluated by a duly incorporated society for the prevention of cruelty to animals, an authorized state agency, or a duly incorporated humane society in charge of animals for eligibility for adoption. After evaluation, animals may also be transferred to a rescue organization. Animals forfeited may be adopted to individuals other than the convicted person or person dwelling in the same household, who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act, or humanely disposed of according to the provisions of subchapter I of Chapter 30F of Title 16.

(e) Prosecution for any offense under this section may not be commenced after 5 years from the commission of the offense.

(f) A person convicted of a violation of this section is prohibited from owning or possessing any animal or fowl for 15 years after conviction.

(g) A fine issued as a result of a violation of this section may not be suspended.

(h) In addition to the penalties provided under this section, the court may require a person convicted of violating this section to attend and participate in an appropriate treatment program or to obtain appropriate psychiatric or psychological counseling, or both. The court may impose the costs of any treatment program or counseling upon the person convicted.

(i) "Animal fighting paraphernalia" means equipment, products, implements, and materials of any kind that are used, intended for use, or designed for use in the training, preparation, conditioning, or furtherance of animal fighting, and includes, but is not limited to, the following: breaking sticks, cat mills, treadmills, slat mills, isolation huts, fighting pits, spring poles, unprescribed anabolic steroids, unprescribed anti-inflammatory steroids, unprescribed antibiotics, treatment supplies or gaffs, slashers, heels, or any other sharp implement designed to be attached in place of the natural spur of a cock or game fowl. In determining whether an object is animal fighting paraphernalia, the court may consider:

(1) Any prior convictions under federal or state law relating to animal fighting.

(2) The proximity of the object in time and space to the direct violation of this section.

(3) Direct or circumstantial evidence of the intent of the accused to deliver the object to persons whom the accused knows or should reasonably know intends to use the object to facilitate a violation of this section.

(4) Oral or written instructions provided with or in the vicinity of the object concerning its use.

(5) Descriptive materials accompanying the object which explain or depict its use.

(6) All other relevant factors.

(66 Del. Laws, c. 369, § 2; 67 Del. Laws, c. 130, § 8; 67 Del. Laws, c. 350, §§ 34, 35; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 417, § 1; 73 Del. Laws, c. 238, §§ 3-5; 73 Del. Laws, c. 411, § 1; 76 Del. Laws, c. 259, §§ 1-3; 77 Del. Laws, c. 264, § 1; 79 Del. Laws, c. 374, § 3; 79 Del. Laws, c. 377, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 394, § 1.)

§ 1327. Maintaining a dangerous animal; class E felony; class F felony; class A misdemeanor.

(a) A person is guilty of maintaining a dangerous animal when such person knowingly or recklessly owns, controls or has custody over any dangerous animal which causes death, serious physical injury or physical injury to another person or which causes death or serious injury to another animal.

(b) For the purposes of this section, "dangerous animal" means any dog or other animal which:

(1) Had been declared dangerous or potentially dangerous by the Justice of the Peace Court or by voluntary acceptance of the dog owner under subchapter V of Chapter 30F of Title 16;

(2) Had been trained for animal fighting, or that has been used primarily or occasionally for animal fighting;

(3) Had been intentionally trained so as to increase its viciousness, dangerousness or potential for unprovoked attacks upon human beings or other animals; or

(4) Has an individualized and known propensity, tendency or disposition, specific to the individual dog, for viciousness, dangerousness or unprovoked attacks upon human beings or other animals.

(c) No dog shall be considered dangerous or potentially dangerous solely because of the dog's breed or perceived breed.

(d) Maintaining a dangerous animal shall be punished as follows:

(1) When a dangerous animal causes the death of a person, maintaining a dangerous animal is a class E felony;

(2) When a dangerous animal causes serious physical injury to a person, maintaining a dangerous animal is a class F felony;

(3) When a dangerous animal causes physical injury to a person or when a dangerous animal causes death or physical injury to another animal, maintaining a dangerous animal is a class A misdemeanor.

(e) This section shall not apply to any dog or other animal trained or owned or used by any law-enforcement agency or any person, company, agency or entity licensed pursuant to Chapter 13 of Title 24.

(f) In any prosecution under this section it shall be an affirmative defense that at the time of the attack during which physical injury, serious physical injury or death was inflicted upon a person:

(1) The victim of the attack was in the course of committing criminal trespass or any violent felony as set forth in this title or was attempting to commit criminal trespass or said violent felony;

(2) The victim had provoked the attack by committing cruelty to animals as defined in § 1325 of this title upon said dangerous animal or by inflicting physical injury upon said dangerous animal; or

(3) The owner or custodian of the dangerous animal was in full compliance with the applicable provisions of subchapter III of Chapter 17 of Title 7, including the requirements pertaining to confinement, restraint and muzzling.

(g) In any prosecution under this section it shall be an affirmative defense that at the time of the attack during which physical injury or death was inflicted upon an animal:

(1) The animal which was injured or killed had entered onto the real property of the owner or custodian of the dangerous animal without permission;

(2) The animal which was injured or killed had provoked the attack by menacing, biting or attacking the dangerous animal or its owner or custodian; or

(3) The owner or custodian of the dangerous animal was in full compliance with the applicable provisions of subchapter V of Chapter 30F of Title 16, including the requirements pertaining to confinement, restraint and muzzling.

(73 Del. Laws, c. 411, § 2; 81 Del. Laws, c. 31, § 1; 81 Del. Laws, c. 96, § 5; 84 Del. Laws, c. 390, § 1.)

§§ 1328, 1329. [Reserved.]

§ 1330. Smoking on trolleys and buses.

(a) Whoever in any trackless trolley coach, or gasoline or diesel-engine-propelled bus being used as a public conveyance for carrying passengers within this State, smokes or carries a lighted cigarette, cigar or pipe shall be fined not less than $5.00 nor more than $25.

(b) Justices of the peace shall have jurisdiction of offenses under this section.

(60 Del. Laws, c. 66, § 1; 66 Del. Laws, c. 369, § 2; 73 Del. Laws, c. 411, § 2.)

§ 1331. Desecration; class A misdemeanor [Transferred].

Transferred to § 1305 of this title by 83 Del. Laws, c. 477, § 4, effective Oct. 21, 2022.

§ 1332. Abusing a corpse; class A misdemeanor.

A person is guilty of abusing a corpse when, except as authorized by law, the person treats a corpse in a way that a reasonable person knows would outrage ordinary family sensibilities.

Abusing a corpse is a class A misdemeanor.

(11 Del. C. 1953, § 1332; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1333. Trading in human remains and Associated Funerary Objects.

(a) As used in this section:

(1) “Associated funerary objects” means an item of human manufacture or use that is intentionally placed with human remains at the time of interment in a burial site or later as a part of a death rite or ceremony of a culture, religion or group. “Associated funerary object” includes any gravestone, monument, tomb or other structure in or directly associated with a burial site.

(b) A person is guilty of trading in human remains and associated funerary objects when the person knowingly sells, buys or transports for sale or profit, or offers to buy, sell or transport for sale or profit, within this State, any unlawfully removed human remains or any associated funerary objects.

(c) The provisions of this section shall not apply to:

(1) Any person acting in the course of medical, archaeological, educational or scientific study authorized by an accredited educational institution or governmental entity; or

(2) A licensed mortician or other professional who transports human remains in the course of carrying out the individual’s professional duties and responsibilities.

(d) Nothing in this section shall be construed to interfere with the normal operation and maintenance of a public or private cemetery including correction of improper burial siting, and, with the consent of any person who would qualify as an heir of the deceased, moving the remains within a public or private cemetery.

Trading in human remains and associated funerary objects is a class B misdemeanor.

(70 Del. Laws, c. 50, § 1.)

§ 1334. Unlawful use of an unmanned aircraft system; unclassified misdemeanor; class B misdemeanor; class A misdemeanor.

(a) *Definitions. —*

The following terms shall have the following meanings as used in this section.

(1) "Critical infrastructure" means petroleum refineries, petroleum storage facilities, chemical storage facilities, chemical manufacturing facilities, fuel storage facilities, electric substations, power plants, electric generation facilities, military facilities, commercial port and harbor facilities, rail yard facilities, drinking water treatment or storage facilities, correctional facilities, government buildings, and public safety buildings or facilities.

(2) "First responder" means federal, state, and local law-enforcement officers, fire, and emergency medical services personnel, hazardous materials response team members, 911 dispatchers, or any individual who is responsible for the protection and preservation of life and is directed to respond to an incident that could result in death or serious injury.

(3) "Unmanned aircraft system" means a powered, aerial vehicle that:

a. Does not carry a human operator;

b. Uses aerodynamic forces to provide vehicle lift;

c. Can fly autonomously or be piloted remotely; and

d. Can be expendable or recoverable.

(b) *Prohibited acts. —*

Except as provided in this section, no person shall knowingly operate, direct, or program an unmanned aircraft system to fly:

(1) Over any sporting event, concert, automobile race, festival, or other event at which more than 1500 people are in attendance; or

(2) Over any critical infrastructure; or

(3) Over any incident where first responders are actively engaged in response or air, water, vehicular, ground, or specialized transport; or

(4) So as to subject another person, who is on private property, to harassment in violation of § 1311(a) of this title; or

(5) So as to invade the privacy of another person, who is on private property, in violation of § 1335(a)(1), (2), (3), (4), or (6) of this title; or

(6) So as to violate or fail to obey any provision of a protective order issued by any of the following:

a. The Family Court.

b. A court of any state, territory, or Indian nation in the United States, as long as such violation or failure to obey occurs in Delaware.

c. A court of Canada, as long as such violation or failure to obey occurs in Delaware.

(c) *Exemptions. —*

The prohibitions set forth in subsection (b) of this section shall not apply to:

(1) An unmanned aircraft system used for law enforcement purposes; or

(2) An unmanned aircraft system flying over property where written permission has been granted by the property owner or occupier; or

(3) An unmanned aircraft system operated by an institution of higher education for educational purposes in compliance with Federal Aviation Administration regulations; or

(4) An unmanned aircraft system that is being used for a commercial or other purpose if the operator is authorized by the Federal Aviation Administration.

(d) *Penalties. —*

Except as set forth in § 1256 of this title, unlawful use of an unmanned aircraft system is an unclassified misdemeanor for a first offense and a class B misdemeanor for a second or subsequent offense, except that in any case where physical injury to a person or damage to property occurs as a result of a violation of this section unlawful use of an unmanned aircraft system is a class A misdemeanor.

(e) *Preemption. —*

Only the State may enact a law or take any other action to prohibit, restrict, or regulate the testing or operation of an unmanned aircraft systems in the State. This section preempts the authority of a county or municipality to prohibit, restrict, or regulate the testing or operating of unmanned aircraft systems and supersedes any existing law or ordinance of a county or municipality that prohibits, restricts, or regulates the testing or operating of unmanned aircraft systems.

(81 Del. Laws, c. 264, § 1; 80 Del. Laws, c. 421, § 1; 82 Del. Laws, c. 190, § 2; 84 Del. Laws, c. 514, § 18.)

§ 1335. Violation of privacy; class A misdemeanor; class G felony.

(a) A person is guilty of violation of privacy when, except as authorized by law, the person:

(1) Trespasses on property intending to subject anyone to eavesdropping or other surveillance in a private place; or

(2) Installs in any private place, without consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying or broadcasting sounds or events in that place; or

(3) Installs or uses outside a private place any device for hearing, recording, amplifying or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy there; or

(4) Intercepts without the consent of all parties thereto a message by telephone, telegraph, letter or other means of communicating privately, including private conversation; or

(5) Divulges without the consent of the sender and the receiver the existence or contents of any message by telephone, telegraph, letter or other means of communicating privately if the accused knows that the message was unlawfully intercepted or if the accused learned of the message in the course of employment with an agency engaged in transmitting it.

(6) Tape records, photographs, films, videotapes or otherwise reproduces the image of another person who is getting dressed or undressed or has that person's genitals, buttocks or breasts exposed, without consent, in any place where persons normally disrobe including but not limited to a fitting room, dressing room, locker room or bathroom, where there is a reasonable expectation of privacy. This paragraph shall not apply to any acts done by a parent or guardian inside of that person's dwelling, or upon that person's real property, when a subject of victim of such acts is intended to be any child of such parent or guardian who has not yet reached that child's eighteenth birthday and whose primary residence is in or upon the dwelling or real property of the parent or guardian, unless the acts done by the parent or guardian are intended to produce sexual gratification for any person in which case this paragraph shall apply; or

(7) Secretly or surreptitiously videotapes, films, photographs or otherwise records another person under or through that person's clothing for the purpose of viewing the body of or the undergarments worn by that other person; or

(8) Knowingly installs an electronic or mechanical location tracking device in or on a motor vehicle without the consent of the registered owner, lessor or lessee of said vehicle. This paragraph shall not apply to the lawful use of an electronic tracking device by a law-enforcement officer, nor shall it apply to a parent or legal guardian who installs such a device for the purpose of tracking the location of a minor child thereof; or

(9) Knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates a visual depiction of a person who is nude, or who is engaging in sexual conduct, when the person knows or should have known that the reproduction, distribution, exhibition, publication, transmission, or other dissemination was without the consent of the person depicted and that the visual depiction was created or provided to the person under circumstances in which the person depicted has a reasonable expectation of privacy.

a. For the purposes of the introductory paragraph of this paragraph (a)(9), paragraphs (a)(9)b., and (a)(9)d. of this section:

1. "Deep fake" means synthetic media where 1 or both of the following applies:

A. The synthetic media appears to a reasonable person to depict a real individual saying or doing something that did not actually occur.

B. The synthetic media provides a reasonable person a fundamentally different understanding or impression of the appearance, action, or speech than a reasonable person would have from an unaltered, original version of the image, audio recording, or video recording.

2. "Nude" means any 1 or more of the following uncovered parts of the human body, or parts of the human body visible through less than opaque clothing:

A. The genitals;

B. The pubic area;

C. The buttocks;

D. Any portion of the female breast below the top of the areola.

3. "Personally identifiable information" means any information about a person that permits the physical or online identifying or contacting of a person. The term includes either a person's face or a person's first and last name or first initial and last name in combination with any 1 or more of the following:

A. A home or other physical address, including street name and name of a city or town;

B. An e-mail address;

C. A telephone number;

D. Geolocation data;

E. Any other identifier that permits the physical or online identifying or contacting of a person.

4. "Sexual conduct" means actual or simulated:

A. Sexual contact;

B. Sexual intercourse;

C. Sexual penetration;

D. Masturbation;

E. Bestiality;

F. Sadism;

G. Masochism; or

H. Explicit representations of the defecation or urination functions.

5. “Sexual contact” means any touching by 1 person of the uncovered anus, breast, buttocks, or genitalia of another person or any touching of a person with the uncovered anus, breasts, buttocks or genitalia of another person.

6. “Sexual intercourse” means any act of physical union of the genitalia or anus of a person with the mouth, anus, or genitalia of another person.

7. “Sexual penetration” means the placement of an object inside the anus or vagina of a person or the placement of a sexual device inside the mouth of a person.

8. “Synthetic media” means an image that has been created or intentionally manipulated with the use of generative adversarial network techniques or other digital technology in a manner to create a realistic but false image, audio, or video.

9. “Visual depiction” shall have the meaning as used in § 1100 of this title and includes a deep fake.

b. A person who has, within the context of a private or confidential relationship, consented to the capture or possession of a visual depiction of the person when nude or when engaging in sexual conduct retains a reasonable expectation of privacy with regard to the reproduction, distribution, exhibition, publication, transmission, or other dissemination of the visual depiction beyond that relationship.

c. For the purposes of this paragraph (a)(9), each of the following shall be an aggravating factor and shall be alleged in the charging information or indictment and constitute an element of the offense:

1. The actor knowingly obtains such visual depictions without the consent of the person depicted.

A. A violation of this paragraph (a)(9)c.1. occurs when a person commits a theft as provided for in § 841, § 842, § 843, or § 844 of this title or obtains such visual depictions by committing unauthorized access to a computer system as provided for in § 932 of this title or by unauthorized access to electronic mail or an electronic mail service provider as defined in § 931 of this title.

B. A violation of this paragraph (a)(9)c.1. consistent with § 932 of this title is subject to the venue provision in § 940 of this title.

2. The actor knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates such visual depictions for profit.

3. The actor knowingly maintains an Internet website, online service, online application, or mobile application for the purpose of reproducing, distributing, exhibiting, publishing, transmitting, or otherwise disseminating such visual depictions.

4. The actor knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates such visual depictions with the intent to harass, annoy, or alarm the person depicted and such conduct would cause a reasonable person to suffer significant mental anguish or distress.

5. The actor pairs such visual depiction with personally identifiable information of the person depicted.

6. At the time of the creation of the visual depiction, the actor was over the age of 18 and the person depicted was under the age of 18.

d. For purposes of this paragraph (a)(9), the fact the actor committed this offense within 5 years of a prior conviction for a violation of this paragraph (a)(9) shall be an aggravating factor for sentencing purposes only and, therefore, this fact is not to be alleged in the charging information or indictment and does not constitute an element of the offense.

e. In addition to when the consent of the person depicted is given, the introductory paragraph of this paragraph (a)(9) and paragraph (a)(9)b. of this section do not apply to any of the following:

1. When the visual depiction is of an individual less than 18 years of age and does not violate § 1108, § 1109, or § 1111 of this title, or any similar provision of this title, and the reproduction, distribution, exhibition, publication, transmission, or other dissemination is not for commercial purposes.

2. When the visual depiction is reproduced, distributed, exhibited, published, transmitted, or otherwise disseminated in the course of lawful and common practices of a law-enforcement officer, the reporting of unlawful conduct, legal proceedings, or medical treatment procedures.

3. When the person depicted has consented to the reproduction, distribution, exhibition, transmission, or other dissemination of the visual depiction for commercial purposes.

4. When the person depicted has voluntarily appeared nude in public or voluntarily engages in sexual conduct in public.

5. When the reproduction, distribution, exhibition, publication, transmission, or other dissemination serves a legitimate public purpose.

f. Nothing within this paragraph (a)(9) shall be construed to impose liability on an interactive computer service, as defined in 47 U.S.C. § 230(f)(2), or an information service or telecommunications service, as defined in 47 U.S.C. § 153, for content provided by the actor or another person.

g. When the visual depiction is a deep fake, it is not necessary to prove that the visual depiction was created or provided to the person under circumstances in which the person depicted has a reasonable expectation of privacy.

(b) This section does not apply to:

(1) Overhearing of messages through a regularly installed instrument on a telephone party line or an extension or any other regularly installed instrument or equipment; or

(2) Acts done by the telephone company or subscribers incident to the enforcement of telephone company regulations or subscriber rules relating to the use of facilities; or

(3) Acts done by personnel of any telephone or telegraph carrier in the performance of their duties in connection with the construction, maintenance or operation of a telephone or telegraph system; or

(4) The divulgence of the existence of any message in response to a subpoena issued by a court of competent jurisdiction or a governmental body having subpoena powers; or

(5) Acts done by police officers as provided in §§ 1336 [repealed] and 1431 of this title.

(c) Any violation of paragraph (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(8), or (a)(9) of this section shall be a class A misdemeanor. Any violation of paragraph (a)(6), (a)(7), (a)(9)c., or (a)(9)d. of this section shall be a class G felony.

(11 Del. C. 1953, § 1335; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 180, §§ 1-3; 73 Del. Laws, c. 172, §§ 1, 2, 3; 75 Del. Laws, c. 341, §§ 1, 2; 79 Del. Laws, c. 415, § 1; 81 Del. Laws, c. 79, § 11; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 479, § 2.)

§ 1336. Wiretapping and electronic surveillance [Repealed].

Repealed by 72 Del. Laws, c. 232, effective July 23, 1999.

§ 1337. Definitions relating to riot, disorderly conduct and related offenses.

(a) “Private place” means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access.

(b) “Public place” means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement, parks, playgrounds, prisons and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

(11 Del. C. 1953, § 1337; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 203, § 25.)

§ 1338. Bombs, incendiary devices, Molotov cocktails and explosive devices; class D felony.

(a) For purposes of this section the following definitions shall be made applicable:

(1) “Incendiary device” means any item designed to ignite by hand, chemical reaction or by spontaneous combustion and is not designed for any lawful purpose or use whatsoever, or any lawful purpose or use has been or is terminated.

(2) “Molotov cocktail” means a makeshift incendiary bomb made of a breakable container filled with flammable liquid and provided with a wick composed of any substance capable of bringing flame into contact with the liquid.

(b) Whoever manufactures, transfers, uses, possesses or transports any bomb, incendiary device, Molotov cocktail or device designed to explode or produce uncontained combustion with intent to cause bodily harm or damage to any property or thing shall be guilty of a class D felony.

(c) Any other provision of this Criminal Code notwithstanding, any person over 16 years old who violates this section may be prosecuted as an adult pursuant to §§ 1010 and 1011 of Title 10.

(d) In any prosecution under this section, it is prima facie evidence of intent to cause bodily harm or damage to any property or thing if the accused had possession of the device prescribed by this section.

(11 Del. C. 1953, § 1338; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 81 Del. Laws, c. 199, § 2.)

§ 1339. Adulteration; class G felony; class E felony; class A felony.

(a) A person is guilty of adulteration when:

(1) The person adulterates any substance with the intent to cause death, physical injury or illness of a person;

(2) The person distributes, disseminates, gives, sells or otherwise transfers an adulterated substance with the intent to cause death, physical injury or illness of a person knowing or having reason to know that the substance has been adulterated as defined in subsection (b) of this section.

(b) “Adulteration” means the intentional adding of any substance, which has the capacity either acting alone or in conjunction with the other substance to cause death, physical injury or illness by ingestion, injection, inhalation or absorption, to another substance having a customary or reasonably foreseeable human use.

(c) Adulteration is a class G felony unless the adulteration actually causes physical injury or illness in which case it is a class E felony, or causes death in which case it is a class A felony.

(d) This offense is a separate and distinct offense and shall not limit or restrict prosecution for murder or any other criminal offense.

(64 Del. Laws, c. 191, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1340. Desecration of burial place [Transferred].

Transferred to § 1305 of this title by 83 Del. Laws, c. 477, § 5, effective Oct. 21, 2022.

B Offenses Involving Public Indecency

§ 1341. Lewdness; class B misdemeanor.

A person is guilty of lewdness when the person does any lewd act in any public place or any lewd act which the person knows is likely to be observed by others who would be affronted or alarmed.

Lewdness is a class B misdemeanor.

(11 Del. C. 1953, § 1341; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1342. Prostitution; class B misdemeanor.

(a) (1) A person, 18 years or older, is guilty of prostitution when the person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

(2) Prostitution is a class B misdemeanor.

(b) (1) Any person, 18 years or older, found guilty of an act of prostitution when such crime has occurred on or within 1,000 feet of the property of any school, residence, church, synagogue or other place of worship shall be guilty of a class A misdemeanor. The minimum mandatory fine shall be $500. This fine shall not be suspended.

(2) It shall not be a defense to prosecution for a violation of this section that the person was unaware that the prohibited conduct took place on or within 1,000 feet of any school property, residence, church, synagogue or other place of worship.

(c) A minor who, if 18 years or older, could be charged with prostitution as defined in subsection (a) of this section, is presumed to be a neglected or abused child under § 901 of Title 10. Whenever a police officer has probable cause to believe that a minor has engaged in prostitution, the police officer shall make an immediate report to the Department of Services for Children, Youth and Their Families pursuant to § 903 of Title 16.

(11 Del. C. 1953, § 1342; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 319, § 1; 82 Del. Laws, c. 59, § 1.)

§ 1343. Patronizing a prostitute prohibited.

(a) A person is guilty of patronizing a prostitute when:

(1) Pursuant to a prior agreement or understanding, the person pays a fee to another person as compensation for that person's having engaged in sexual conduct with the person; or

(2) The person pays or agrees to pay a fee to another person pursuant to an agreement or understanding that in return therefor that person or a third person will engage in sexual conduct with the person; or

(3) The person solicits or requests another person to engage in sexual conduct with the person in return for a fee.

(b) (1) Patronizing a prostitute is a misdemeanor, except as set forth under paragraph (b)(2) of this section. The minimum mandatory fine shall be $500. This fine shall not be suspended.

(2) Patronizing a prostitute is a class E felony if the person from whom prostitution is sought is a minor. It is not a defense that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.

(c) Whenever any vehicle, as defined in § 2321 of this title, has been used in, or in connection with, the offense of patronizing a prostitute, it shall forthwith be seized and taken into custody by the peace officer or officers having knowledge of the facts of such use.

(d) Vehicle seizure shall apply in the case of a defendant who has a previous conviction for the same offense in the previous 5 years. For the purpose of this section, "prior offense" shall be defined as a conviction of § 1343 of this title.

(e) (1) Any person found guilty of patronizing a prostitute and such crime has occurred on or within 1,000 feet of the property of any school, residence, church, synagogue or other place of worship shall be guilty of a class A misdemeanor, unless the person from whom prostitution is sought is a minor, in which case the offense is a class E felony. The minimum mandatory fine shall be $1,000. This fine shall not be suspended.

(2) It shall not be a defense to prosecution for a violation of this section that the person was unaware that the prohibited conduct took place on or within 1,000 feet of any school property, residence, church, synagogue or other place of worship.

(11 Del. C. 1953, § 1343; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 69 Del. Laws, c. 23, §§ 1, 2, 5, 6; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 319, § 2; 84 Del. Laws, c. 377, § 1.)

§ 1344. Prostitution and patronizing a prostitute; no defense.

In any prosecution for prostitution it is no defense that the persons were of the same sex, or that the person who received, agreed to receive or solicited a fee was a male and the person who paid, agreed or offered to pay the fee was a female.

(11 Del. C. 1953, § 1344; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1345. Screening for sexually transmissible diseases.

(a) Any person convicted under § 1342 or § 1343 of this title shall be ordered to undergo testing for sexually transmitted diseases, abbreviated "STD," as designated by the Department of Health and Social Services in its rules and regulations.

(b) The result of any STD test conducted pursuant to this subsection shall not be a public record for purposes of Chapter 100 of Title 29.

(c) The result of any STD testing conducted pursuant to this section shall only be released by the Division of Public Health to the defendant, the defendant's spouse and the court issuing the order for testing except as otherwise permitted under § 711 of Title 16.

(d) The cost of testing under this section shall be paid by the defendant tested unless the court has determined that the defendant is an indigent person.

(e) Filing of a notice of appeal shall not automatically stay an order that the defendant submit to STD testing.

(75 Del. Laws, c. 319, § 4.)

§§ 1346-1350. [Reserved.]

§ 1351. Promoting prostitution in the third degree; class F felony.

A person is guilty of promoting prostitution in the third degree when the person knowingly advances or profits from prostitution.

Promoting prostitution in the third degree is a class F felony.

(11 Del. C. 1953, § 1351; 58 Del. Laws, c. 497, § 1; 61 Del. Laws, c. 33, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1352. Promoting prostitution in the second degree; class E felony.

A person is guilty of promoting prostitution in the second degree when the person knowingly:

(1) Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by 2 or more prostitutes; or

(2) Advances or profits from prostitution of a person less than 18 years old.

Promoting prostitution in the second degree is a class E felony.

(11 Del. C. 1953, § 1352; 58 Del. Laws, c. 497, § 1; 61 Del. Laws, c. 33, § 2; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1353. Promoting prostitution in the first degree; class C felony.

A person is guilty of promoting prostitution in the first degree when the person knowingly:

(1) Advances prostitution by compelling a person by force or intimidation to engage in prostitution or profits from such coercive conduct by another; or

(2) Advances or profits from prostitution of a person less than 16 years old.

Promoting prostitution in the first degree is a class C felony.

(11 Del. C. 1953, § 1353; 58 Del. Laws, c. 497, § 1; 61 Del. Laws, c. 33, § 3; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1354. Promoting prostitution; attempt to promote prostitution; corroboration.

A person shall not be convicted of promoting prostitution or of an attempt to promote prostitution solely on the uncorroborated testimony of a person whose prostitution activity the person is alleged to have advanced or attempted to advance or from whose prostitution activity the person is alleged to have profited or attempted to profit.

(11 Del. C. 1953, § 1354; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1355. Permitting prostitution; class B misdemeanor.

A person is guilty of permitting prostitution when, having possession or control of premises which the person knows are being used for prostitution purposes, the person fails to halt or abate such use within a reasonable period of time.

Permitting prostitution is a class B misdemeanor.

(11 Del. C. 1953, § 1355; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1356. Definitions relating to prostitution.

As used in §§ 1342-1355 of this title:

(1) "*Advance prostitution.*" — A person advances prostitution when, acting other than as a prostitute or as a patron thereof, the person knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise or engages in any other conduct designed to institute, aid or facilitate an act or enterprise of prostitution.

(2) "*Profit from prostitution.*" — A person profits from prostitution when, acting other than as a prostitute receiving compensation for personally rendered prostitution services, the person accepts or receives money or other property pursuant to an agreement or understanding with any person whereby the person participates or is to participate in the proceeds of prostitution activity.

(3) "School" means any preschool, kindergarten, elementary school, secondary school, vocational technical school or any other institution which has as its primary purpose the education or instruction of children under 18 years of age.

(4) “Sexual conduct” means any act designed to produce sexual gratification to either party. It is not limited to intercourse or deviate sexual intercourse.

(11 Del. C. 1953, § 1356; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 319, § 3.)

§§ 1357-1360. [Reserved.]

C Obscenity

§ 1361. Obscenity; acts constituting; class E felony or class G felony; subsequent violations.

(a) A person is guilty of obscenity when the person knowingly:

(1) Sells, delivers or provides any obscene picture, videotape, video game, writing, record, audio cassette tape, compact disc or other representation or embodiment of the obscene;

(2) Presents or directs an obscene play, dance or performance or participates in that portion thereof which makes it obscene;

(3) Publishes, exhibits or otherwise makes available any obscene material;

(4) Possesses any obscene material for purposes of sale or other commercial dissemination; or

(5) Permits a person under the age of 12 to be on the premises where material harmful to minors, as defined by § 1365 of this title, is either sold or made available for commercial distribution and which material is readily accessible to or easily viewed by such minors. Any material covered by this paragraph shall not be considered readily accessible to or easily viewed by minors if it has been placed or otherwise located 5 feet or more above the floor of the subject premises or if the material is concealed so that no more than the top 3 inches is visible to the passerby.

(b) Obscenity is a class E felony if a person sells, delivers or provides any obscene picture, videotape, video game, writing, record, audio cassette tape, compact disc or other representation or embodiment of the obscene to a person under the age of 18. In all other cases, obscenity is a class G felony. In addition to the above penalties, upon conviction of obscenity involving live conduct as defined in § 1364 of this title, the court shall order the business or establishment which presented, displayed or exhibited such conduct closed for a period of 6 months.

(c) Notwithstanding Chapter 42 of this title, the minimum sentence for a subsequent violation of this section occurring within 5 years of a former conviction shall be a fine in the amount of $5,000, imprisonment for a minimum period of 9 months, no portion which may be suspended or reduced, and probation for a period of 2 years; provided, however, that where the defendant is an organization, the fine shall be $10,000. In addition to the above penalties, upon conviction of obscenity involving conduct as defined in § 1364 of this title, the court shall order the business or establishment which presented, displayed or exhibited such conduct closed for a period of 2 years.

(d) Where the criminality of conduct depends on a child being under the age of 12, paragraph (a)(5) of this section, or under the age of 18, subsection (b) of this section, it is no defense that the actor did not know the child’s age.

(11 Del. C. 1953, § 1361; 58 Del. Laws, c. 497, § 1; 60 Del. Laws, c. 445, § 1; 61 Del. Laws, c. 121, § 1; 63 Del. Laws, c. 111, §§ 1-3; 67 Del. Laws, c. 130, § 8; 67 Del. Laws, c. 350, §§ 11, 12; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 71, § 2; 74 Del. Laws, c. 380, §§ 1, 2.)

§ 1362. Obscenity; defenses.

In any prosecution for obscenity it is an affirmative defense that dissemination was restricted to:

(1) Institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material; or

(2) Noncommercial dissemination to personal associates of the accused who are known by the accused not to object to the receipt of such material.

(11 Del. C. 1953, § 1362; 58 Del. Laws, c. 497, § 1.)

§ 1363. Obscenity; presumption.

A person who disseminates or possesses obscene material in the course of business is presumed to do so knowingly or recklessly.

(11 Del. C. 1953, § 1363; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1364. Definition of obscene.

Material or live conduct is obscene if:

(1) The average person applying contemporary community standards would find the material or conduct, taken as a whole, appeals to the prurient interests; and

(2) The material depicts or describes or the live conduct portrays:

a. Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated; or

b. Patently offensive representations or descriptions of masturbation, excretory functions, and/or lewd exhibitions of the genitals; and

(3) The work or conduct taken as a whole lacks serious literary, artistic, political or scientific value.

(11 Del. C. 1953, § 1364; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 236, § 1; 63 Del. Laws, c. 111, § 4.)

§ 1365. Obscene literature harmful to minors; class A misdemeanor.

(a) Definitions as used in this section:

(1) "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominately appeals to the prurient, shameful or morbid interest of minors and is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

(2) "Known minor" is any person known, in fact, to be under the age of 18 years, or any person, in fact, under the age of 18 years unless a reasonable, bona fide attempt has been made to ascertain the age of that minor.

(3) "Knows" means:

a. Knowledge that the character and content of any material described in paragraph (i)(1) of this section is harmful to minors; or

b. Knowledge of facts that would lead a reasonable person to inquire whether the character and content of any material described in paragraph (i)(1) of this section is harmful to minors; or

c. Knowledge or information that the material described herein has been adjudged to be harmful to minors in a proceeding instituted pursuant to subsection (b) or (i) of this section or is the subject of a pending proceeding instituted pursuant to subsection (b) or (i) of this section.

(4) "Minor" means any person under the age of 17 years.

(5) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple or the depiction of covered male genitals in a discernibly turgid state.

(6) "Sado-masochistic abuse" means flagellation or torture practiced by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(7) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's unclothed genitals or pubic area or a female person's breast.

(8) "Sexual excitement" means the condition of human male or female genitals in a state of sexual stimulation or arousal.

(b) Whenever the Attorney General of this State has reasonable cause to believe that any person is or may become engaged in any of the acts described in paragraph (i)(1), (i)(2) or (i)(4) of this section, the Attorney General shall institute an action in the Court of Chancery for the county where such act is or will be performed for adjudication of the question of whether such material is harmful to minors.

(c) The action authorized by subsection (b) of this section shall be commenced by the filing of a complaint to which shall be attached as an exhibit a true copy of the allegedly harmful material. The complaint shall:

(1) Be directed against such material by name or description;

(2) Allege that such material is harmful to minors;

(3) Designate as respondents and list the names and addresses, if known, of any person in this State engaged or about to be engaged in any of the acts described in paragraph (i)(1), (i)(2) or (i)(4) of this section with respect to such material;

(4) Seek an adjudication that such material is harmful to minors; and

(5) Seek a permanent injunction against any respondent prohibiting the respondent from performing any of the acts described in paragraph (i)(1), (i)(2) or (i)(4) of this section.

(d) Upon the filing of the complaint described in subsection (c) of this section, the Attorney General shall present the same, together with the material attached thereto, as soon as practicable to the Court for its examination and reading. If after such examination and reading the Court finds no probable cause to believe such material to be harmful to minors, the Court shall cause an endorsement to that effect to be placed and dated upon the complaint and shall thereupon dismiss the action. If after such examination and reading the Court finds probable cause to believe such material to be harmful to minors, the Court shall cause an endorsement to that effect to be placed and dated upon the complaint whereupon it shall be the responsibility of the Attorney General promptly to request the Register in Chancery to issue summons and to furnish to the Register in Chancery such number of copies of such complaint and endorsement as are needed for the service of summons. Service of such summons and endorsed complaint shall be made upon the respondents thereto in any manner provided by law.

(e) The author, publisher or any person interested in sending or causing to be sent, bringing or causing to be brought, into this State for sale or commercial distribution, or any person in this State preparing, selling, exhibiting or commercially distributing or possessing with intent to sell or commercially distribute or exhibit, the material exhibited to the endorsed complaint, may appear and may intervene in accordance with the Rules of the Court of Chancery. If no person appears and files an answer, or moves to intervene within the time set by the rule or by an order of the Court of Chancery, the Court may forthwith adjudge whether the material so exhibited to the endorsed complaint is harmful to minors and enter an appropriate final judgment.

(f) (1) The public policy of this State requires that all proceedings prescribed in this section, other than criminal actions under subsection (i) of this section, be heard and disposed of with the maximum promptness and dispatch commensurate with constitutional requirements, including due process, freedom of the press and freedom of speech.

(2) The Rules of the Court of Chancery shall be applicable, except as they may be modified by this section.

(3) Any party or intervenor shall be entitled, upon request, to a trial of any issue with an advisory jury and the Court, with the consent of all parties, may order a trial of any issue with a jury whose verdict shall have the same effect as in cases of law.

(4) In any action in which an injunction is sought under this section, any respondent or intervenor shall be entitled to a trial of the issues within 1 day, exclusive of Saturday, Sunday and holidays, after joinder of issue, and a decision shall be rendered by the Court or jury, as the case may be, within 2 days, exclusive of Saturday, Sunday and holidays, of the conclusion of the trial. If the issues are being tried before a jury and the jury shall not be able to render a decision within 2 days of the conclusion of the trial, then notwithstanding any other provision of this section, the jury shall be dismissed and a decision shall be rendered by the Court within 2 days of the conclusion of the trial.

(5) In the event that the Court or jury, as the case may be, finds the material exhibited to the complaint not to be harmful to minors, the Court shall enter judgment accordingly and shall dismiss the complaint.

(6) In the event that the Court or jury, as the case may be, finds the material exhibited to the complaint to be harmful to minors, the Court shall enter judgment to such effect and may, in such judgment or in subsequent orders of enforcement thereof, enter a permanent injunction against any respondent prohibiting the respondent from engaging in any of the acts described in paragraph (i)(1), (i)(2) or (i)(4) of this section.

(g) If the Court, pursuant to subsection (d) of this section, finds probable cause to believe the exhibited material to be harmful to minors, and so endorses the complaint, the Court may, upon the motion of the Attorney General and in accordance with the Chancery Court Rules, issue a temporary restraining order against any respondent prohibiting the respondent from selling, commercially distributing or giving away such material to minors or from permitting minors to inspect such material. No temporary restraining order shall be granted without notice to the respondents unless it clearly appears from specific facts shown by affidavit or by the verified complaint that 1 or more of the respondents are engaged in the sale of material harmful to minors and that immediate and irreparable injury to the morals and general welfare of minors in this State will result before notice can be served and a hearing had thereon. All proceedings for temporary restraining order and preliminary injunction shall be governed by the Rules of the Court of Chancery.

(h) Any respondent, or any officer, agent, servant, employee or attorney of such respondent, or any person in active concert or participation by contract or arrangement with such respondent, who receives actual notice, by personal service or otherwise, of any injunction or restraining order entered pursuant to subsection (f) or (g) of this section, and who shall disobey any of the provisions thereof, shall be guilty of contempt of court and upon conviction shall be guilty of a class A misdemeanor.

(i) Any person is guilty of a class A misdemeanor who:

(1) Exhibits for sale, sells, displays, transfers, gives gratis, loans, rents or advertises to a known minor any book, pamphlet, magazine or printed matter, however reproduced, or sound recording or picture, photograph, drawing, sculpture, motion picture film or similar visual representation that such person knows to be in whole or in part harmful to minors.

(2) Sells, gives gratis or transfers an admission ticket or pass to a known minor or admits a known minor to a premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, such person knows to be harmful to minors.

(3) Misrepresents the person’s age as 17 years or older for the purpose of evading the restrictions of this section.

(4) Exhibits for sale, sells, displays, gives gratis, transfers, loans or rents any matter enumerated in paragraph (i)(1) of this section that such person knows to be harmful to minors which does not prominently include in such advertisement the words “unlawful to persons under 17 years of age.”

(j) No criminal proceeding shall be commenced against any person pursuant to paragraph (i)(1), (i)(2) or (i)(4) of this section unless, prior to the act which is the subject of such proceeding, such person:

(1) Had written notice from the Attorney General that the material which is the subject of such proceeding has been adjudged harmful to minors pursuant to subsection (b) or (i) of this section; or

(2) Has been subject to an order entered pursuant to subsection (b) of this section relating to the material which is the subject of such criminal proceeding, or any other material harmful to minors.

(k) No person shall be subject to prosecution pursuant to this section:

(1) For any sale to a minor where such person had reasonable cause to believe that the minor involved was 17 years old or more, and such minor exhibited to such person a draft card, driver’s license, birth certificate or other official or apparently official document purporting to establish that such minor was 17 years old or more; or

(2) For any sale where a minor is accompanied by a parent or guardian, or accompanied by an adult and such person has no reason to suspect that the adult accompanying the minor is not the minor’s parent or guardian; or

(3) Where such person is a bona fide school, museum or public library or is acting in an official capacity as an employee of such organization or as a retail outlet affiliated with and serving the educational purposes of such organization.

(l) In order to provide for the uniform application of this section to all minors within this State, it is intended that the sole and only regulation of the matters herein discussed shall be under this section and no municipality, county or other governmental unit within this State shall make any law, ordinance or regulation relating to the subject matter hereof as to minors. All such laws, ordinances and regulations, as they affect minors, whether enacted before or after this section shall become void, unenforceable and of no effect upon

April 1, 1973; provided, however, that such prior laws, ordinances and regulations shall govern litigations commenced prior to April 1, 1973, and shall continue in effect solely for that purpose.

(m) This section may be known and cited as Delaware Law on the Protection of Minors From Harmful Materials, and may be referred to by that designation.

(11 Del. C. 1953, § 1365; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 236, § 2; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1366. Outdoor motion picture theaters.

(a) Whoever being the owner or operator of an outdoor motion picture theater exhibits or permits to be exhibited any film not suitable for minors or harmful to minors and which film can be viewed by such minors not in attendance at the said outdoor motion picture theater shall be guilty of a class A misdemeanor.

(b) Definitions as used in this section:

(1) "Code and Rating Administration of the Motion Picture Association of America" ratings are:

"G" — All ages admitted. General audiences;

"PG" — All ages admitted. Parental guidance suggested;

"R" — Restricted. Under 17 requires accompanying parent or adult guardian;

"X" — No one under 17 admitted.

(2) "Film" means any motion picture film or series of films, whether full length or short subject, but does not include newsreels portraying actual current events or pictorial news of the day.

(3) "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominately appeals to the prurient, shameful or morbid interest of minors and is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and taken as a whole the work lacks serious literary, artistical, political or scientific value for minors.

(4) "Minor" means any person under the age of 17 years.

(5) "Not suitable for minors" means any film, reel or view which has a rating of "R" or "X" according to the Code and Rating Administration of the Motion Picture Association of America.

(6) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple or the depiction of covered male genitals in a discernibly turgid state.

(7) "Sado-masochistic abuse" means flagellation or torture practiced by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(8) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's unclothed genitals or pubic area or a female person's breast.

(9) "Sexual excitement" means the condition of human male or female genitals in a state of sexual stimulation or arousal.

(10) "Suitable for minors" means any film, reel or view which has a rating of "G" or "PG" according to the Code and Rating Administration of the Motion Picture Association of America.

(59 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1367. Unauthorized promotion of boxing, mixed martial arts or of a combative sports or combative sports entertainment or combative fighting match, contest, or event; class A misdemeanor.

(a) A person is guilty of the unauthorized promotion of boxing, mixed martial arts or of a combative sports or combative sports entertainment or combative fighting match, contest, or event if the person promotes, arranges, advertises, or conducts a combative sports entertainment or combative fighting match, contest, or event in violation of Chapter 1 of Title 28.

(b) A charge of the unauthorized promotion of boxing, mixed martial arts or of a combative sports or combative sports entertainment or combative fighting match, contest, or event shall not exclude prosecution for other offenses or violations of this Code.

(c) The unauthorized promotion of boxing, mixed martial arts or of a combative sports or combative sports entertainment or combative fighting match, contest, or event is a class A misdemeanor.

(76 Del. Laws, c. 413, § 1; 81 Del. Laws, c. 79, § 12.)

§ 1368. Unauthorized participation in a boxing, mixed martial arts or in a combative sports or combative sports entertainment or combative fighting match, contest, or event; class A misdemeanor.

(a) A person is guilty of the unauthorized participation in a boxing, mixed martial arts or in a combative sports or combative sports entertainment or combative fighting match, contest, or event if the person participates as a competitor in a boxing, mixed martial arts or in a combative sports entertainment or combative fighting match, contest, or event in violation of Chapter 1 of Title 28.

(b) A charge of the unauthorized participation in a boxing, mixed martial arts or in a combative sports or combative sports entertainment or combative fighting match, contest, or event shall not exclude prosecution for other offenses or violations this Code.

(c) The unauthorized participation in a boxing, mixed martial arts or in a combative sports or combative sports entertainment or combative fighting match, contest, or event is a class A misdemeanor.

(76 Del. Laws, c. 413, § 1; 81 Del. Laws, c. 79, § 13.)

§§ 1369-1400. [Reserved.]

D Offenses Involving Gambling

§ 1401. Advancing gambling in the second degree; class A misdemeanor.

A person is guilty of advancing gambling in the second degree when:

(1) The person sells or disposes of, or has in the person's possession with intent to sell or dispose of, a lottery policy, certificate or any other thing by which the person or another person or persons promises or promise, guarantees or guarantee that any particular number, series of numbers, character, ticket or certificate shall, in the event or on the happening of any contingency in the nature of a lottery, entitle the purchaser or holder to receive money, property or evidence of debt; or

(2) The person uses or employs any other device by which such person, or any other person, promises or guarantees as provided in paragraph (1) of this section; or

(3) The person is concerned in interest in lottery policy writing, or in selling or disposing of any lottery policy, certificate, number or numbers or any other thing by which the person or another person or persons promises or promise, guarantees or guarantee that any particular number or numbers, character, ticket or certificate shall, in the event or on the happening of any contingency in the nature of a lottery, entitle the purchaser or holder to receive money, property or evidence of debt; or

(4) The person uses or employs any other device by which such person or any other person promises or guarantees as provided in paragraph (3) of this section.

Advancing gambling in the second degree is a class A misdemeanor.

(11 Del. C. 1953, § 1401; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1402. Foreign lotteries; prima facie evidence; class A misdemeanor.

(a) A person is guilty of engaging in a foreign lottery when the person brings, sends or procures to be brought or sent into this State any scheme of any lottery or any drawing of any such scheme or any ticket or part of a ticket or certificate of or a substitute for any ticket or part of a ticket, and sells or offers for sale any such ticket or part of ticket or any certificate or substitute for a certificate, and circulates in any manner any scheme or any drawing.

(b) On the trial of any person under subsection (a) of this section any lottery scheme drawing, ticket, certificate of or a substitute for a ticket or parts of tickets, which shall be proved to have been by the accused brought or procured to be brought, or sent or procured to be sent into this State or printed or procured to be printed within this State, for the purpose of circulating the same by mail or otherwise, shall be prima facie evidence within the description of this section.

(c) Engaging in foreign lotteries is a class A misdemeanor.

(11 Del. C. 1953, § 1402; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1403. Advancing gambling in the first degree; class A misdemeanor.

A person is guilty of advancing gambling in the first degree when:

(1) The person keeps, exhibits or uses, or is concerned in interest in keeping, exhibiting or using any book, device, apparatus or paraphernalia for the purpose of receiving, recording or registering bets or wagers upon the result of any trial or contest, wherever conducted, of skill, speed or power of endurance of human or beast; or

(2) Being the owner, lessee or occupant of a room, house, building, enclosure or place of any kind, the person keeps, exhibits, uses or employs therein or permits or allows to be kept, exhibited, used or employed therein, or is concerned in interest in keeping, exhibiting, using or employing therein any book, device, apparatus or paraphernalia for the purpose of receiving, recording or registering bets or wagers as provided in paragraph (1) of this section, or of forwarding in any manner money, thing or consideration of value for the purpose of being bet or wagered as provided in paragraph (1) of this section; or

(3) The person records or registers bets or wagers, or receives, contracts or agrees to receive money or anything of value for the purpose or with the intent to bet or wager personally or for another person as provided in paragraph (1) of this section; or

(4) The person directly or indirectly bets or wagers, or promises to bet or wager, money or anything of value as provided in paragraph (1) of this section.

This section does not apply to a bet or wager made on a horse race within the enclosure of any race meeting licensed and conducted under the laws of this State, and made by or through the means of a pari-mutuel or totalizator pool, the conduct of which is licensed by the Delaware Racing Commission or other state licensing agency. Such exception need not be negatived in any indictment or information.

Advancing gambling in the first degree is a class A misdemeanor.

(11 Del. C. 1953, § 1403; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1404. Providing premises for gambling; class A misdemeanor; unclassified misdemeanor.

A person is guilty of providing premises for gambling when:

(1) The person lets, demises or transfers to another person any building, structure, room or rooms knowing that the same will be used for the purpose of committing any gambling offense; or

(2) The person knowingly permits any house, structure, building, room or rooms of which the person has possession or control to be used for the purpose of committing any gambling offense; or

(3) The person contributes to the support and maintenance of any house or place where gambling is carried on or conducted; or

(4) The person keeps or maintains any house or place where gambling is carried on.

Providing premises for gambling or contributing thereto is an unclassified misdemeanor, unless the accused has been convicted, within the previous 5 years, of the same offense or of an offense under § 663 or § 665 of this title as the same existed prior to July 1, 1973, in which case it is a class A misdemeanor.

(11 Del. C. 1953, § 1404; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1405. Possessing a gambling device; class A misdemeanor.

(a) A person is guilty of possessing a gambling device when the person knowingly manufactures, sells, transports, keeps, exhibits, manages, places, possesses or conducts or negotiates any transaction affecting or designed to effect ownership, custody or use of a slot machine or any other gambling device.

(b) Possessing a gambling device is a class A misdemeanor.

(c) A person is not guilty of a violation of this section if the device or machine is either:

(1) An antique slot machine which is not used for gambling purposes; or

(2) Any slot machine or gambling device which is manufactured (including, without limitation, the retrofitting or alteration of a finished machine or device), assembled, transported, kept, exhibited, managed, placed or possessed by a person within this State or which is the subject of any negotiation which involves a transaction affecting or designed to affect the ownership, custody or use of such machine or device by such person in this State where:

a. Such person is duly licensed to conduct a manufacturing or other business in this State; and

b. Such person is registered in accordance with the federal Gambling Devices Act of 1962 as amended (15 U.S.C. § 1171 et seq.) and is in the business of designing, assembling, manufacturing, selling, supplying, repairing or retrofitting slot machines, gambling devices or component parts thereof exclusively for lawful possession and use.

(d) For purposes of this section, a slot machine is an antique machine if such machine is at least 25 years old.

(e) For purposes of this section, a "video lottery machine," as defined in § 4803 of Title 29, which is owned or leased by the State for use in the Delaware video lottery shall not constitute either a slot machine or a gaming device.

(11 Del. C. 1953, § 1405; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 68 Del. Laws, c. 252, § 1; 69 Del. Laws, c. 375, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 421, §§ 1, 2; 77 Del. Laws, c. 219, § 4; 78 Del. Laws, c. 245, § 1.)

§ 1406. Being concerned in interest in keeping any gambling device; class A misdemeanor.

(a) A person is guilty of being concerned in interest in keeping any gambling device when:

(1) The person keeps or exhibits a gaming table, faro bank, sweat cloth, roulette table or other device under any denomination at which cards, dice or any other game of chance is played for money, or other thing of value or other gambling device of any kind whatsoever; or

(2) The person, with the intent that it shall be kept or exhibited for use by the public, buys, sells or distributes a gaming table, faro bank, sweat cloth or other gambling device; or

(3) The person is a partner or concerned in interest in the keeping or exhibiting of a gaming table, faro bank, sweat cloth or other gambling device.

(b) Being concerned in interest in keeping any gambling device is a class A misdemeanor.

(c) An antique slot machine, as defined in § 1405 of this title, is not a gambling device for purposes of this section.

(11 Del. C. 1953, § 1406; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 68 Del. Laws, c. 252, § 2; 70 Del. Laws, c. 186, § 1.)

§ 1407. Engaging in a crap game; violation.

A person is guilty of engaging in a crap game when the person takes part in or is knowingly present at the form of gambling commonly known as crap, in which money or other valuable things are played for by means of dice.

Engaging in a crap game is a violation.

(11 Del. C. 1953, § 1407; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1408. Merchandising plans are not gambling.

Sections 1401-1405 of this title are inapplicable to any plan for stimulating public interest in, or sale of, merchandise, services or exhibitions unless the plan requires that the chance to win a prize be paid for in money or something of actual pecuniary value or that some items be bought or to any lottery under state control for the purpose of raising funds.

(11 Del. C. 1953, § 1408; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 364, § 1.)

§ 1408A. Savings promotion raffle not gambling.

A savings promotion raffle that conforms with the requirement of § 933 of Title 5 is not gambling and does not constitute a lottery unless the chance to win a prize requires consideration. The deposit of a specified minimum amount of money in a savings account or other savings program that results in an entry in a savings promotion raffle is not consideration.

(81 Del. Laws, c. 13, § 2.)

§ 1409. Exemption of law-enforcement officer.

Nothing in subpart D of subchapter VII of this chapter shall apply to any law-enforcement officer or officer's agent while acting in the lawful performance of duty.

(11 Del. C. 1953, § 1409; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1410. [Reserved.]

§ 1411. Unlawfully disseminating gambling information; class A misdemeanor.

A person is guilty of unlawfully disseminating gambling information when:

(1) Being a public utility it knowingly furnishes to another person a private wire for use in disseminating information in furtherance of gambling or for gambling purposes; or

(2) The person knowingly uses a private wire in disseminating or receiving information in furtherance of gambling or for gambling purposes; or

(3) The person engages in the business of or receives compensation in any form for disseminating or receiving information in furtherance of gambling or for gambling purposes by means of a private wire or a call service.

Unlawfully disseminating gambling information is a class A misdemeanor.

(11 Del. C. 1953, § 1411; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1412. Revocation of service contracts or denial of application for service; exemption from liability.

(a) The Attorney General, if the Attorney General has reasonable cause to believe that any service furnished by a public utility is being used or will be used to disseminate information in furtherance of gambling or for gambling purposes, may give notice to the person who has contracted with or is applying to the public utility for such service that the Attorney General intends to seek a court order that the service contract be revoked or the application for service be denied.

(b) The notice permitted in subsection (a) of this section shall be served personally upon the person who has contracted with or is applying to the public utility for the service. If personal service is not reasonably possible, the notice may be posted in a conspicuous place on the premises to which the service is furnished. The notice shall specify the time and place where the hearing will be held, and the court before which it will be held.

(c) A hearing shall be held in the Superior Court at the time specified in the notice. At the hearing, evidence bearing on the use of the public utility service in question may be presented by the State and by or on behalf of the person who has contracted for or is applying for the service.

(d) If the Court, after hearing, determines that there is probable cause to believe that the service furnished by the public utility is being used or will be used to disseminate information in furtherance of gambling or for gambling purposes, it shall order that the contract to furnish the service be revoked or that the application for service be denied.

(e) No public utility shall be held liable at law or in equity for revocation of a contract, or denying an application for service, when ordered to do so as provided by this section.

(11 Del. C. 1953, § 1412; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1413. Exemption for operations of lottery under State control.

The sale, lease, transport, ownership, possession, exhibition, manufacture, servicing, marketing or use of a video lottery machine, sports lottery machine, table game equipment or any equipment, supplies, information or data in connection with the operations of a lottery under State control (including the operations of a video lottery agent in accordance with Chapter 48 of Title 29) shall not be a violation of §§ 1401-1412 of this title.

(77 Del. Laws, c. 219, § 27.)

§§ 1414-1420. [Reserved.]

§ 1421. Obstructions; service of notice.

If the Attorney General finds that access to a building, apartment or place, which the Attorney General has reasonable cause to believe is resorted to for the purpose of gambling in violation of the laws of this State, is barred by an obstruction, the Attorney General shall cause to be served in the manner provided by law for service of civil summons upon the occupant or owner a notice to appear before the Superior Court and to show cause why the unusual obstructions should not be removed.

(11 Del. C. 1953, § 1421; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1422. Posting of notice.

If the occupant or owner cannot be found, the prescribed notice shall be posted upon the outside of the premises.

(11 Del. C. 1953, § 1422; 58 Del. Laws, c. 497, § 1.)

§ 1423. Contents of notice.

The notice which is served personally upon the occupant or owner or is posted upon the outside of the premises shall in all cases designate the name of the Court in which the rule will be heard, and shall further contain the time and the date upon which the rule will be brought on for hearing.

(11 Del. C. 1953, § 1423; 58 Del. Laws, c. 497, § 1.)

§ 1424. Hearing.

At the time stated in the notice, a hearing shall be held in the Superior Court. At the hearing, evidence bearing on the matter may be presented by the State and by or on behalf of the person served with the notice or alleged to be the occupant or owner of the premises. The Court may grant a continuance if it is reasonably necessary in order that all relevant evidence may be heard.

(11 Del. C. 1953, § 1424; 58 Del. Laws, c. 497, § 1.)

§ 1425. Findings of Court; order for removal.

If the Court, after a hearing upon the requisite matters, finds that there is reasonable cause to believe that the premises are resorted to for the purpose of gambling and that access is barred by an obstruction, the Court shall order the occupant or owner to remove the obstruction.

(11 Del. C. 1953, § 1425; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 203, §§ 26, 31.)

§ 1426. Official removal upon noncompliance with removal order.

In the event that the obstructions are not removed within a period of 7 days after the order for removal, the Attorney General shall cause the obstructions to be removed from the premises or place.

(11 Del. C. 1953, § 1426; 58 Del. Laws, c. 497, § 1.)

§ 1427. Collection of removal expenses; status of contractor; amount of lien.

The expenses of a removal under § 1426 of this title shall be collected by the Attorney General in the manner provided by law for the filing and collection of a mechanic's lien.

(11 Del. C. 1953, § 1427; 58 Del. Laws, c. 497, § 1.)

§ 1428. Maintaining an obstruction; class A misdemeanor; a violation.

A person is guilty of maintaining an obstruction when, being the owner or occupant of a building or other place from which an obstruction has been removed as provided in §§ 1421-1427 of this title, the person again erects or permits the erection of an obstruction.

Maintaining an obstruction is a violation unless the accused has been convicted of the same offense within the previous 2 years, in which case it is a class A misdemeanor. The section does not limit the power of the State to seek the removal of the obstruction as provided in §§ 1421-1427 of this title.

(11 Del. C. 1953, § 1428; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§§ 1429, 1430. [Reserved.]

§ 1431. Telephone messages received or overheard by police as evidence.

In any prosecution for a gambling offense, evidence that a police officer, when making an arrest for a gambling offense, received or overheard telephone messages intended for the accused or an associate of the accused which tend to prove that gambling activity was being conducted is admissible. The gathering and disclosure of such evidence, including the contents of the telephone messages received or overheard, does not violate any law of this State.

(11 Del. C. 1953, § 1431; 58 Del. Laws, c. 497, § 1.)

§ 1432. Gambling; definitions.

(a) "Call service" means the furnishing of information upon request therefor or by prearrangement over general telegraphic, telephonic or teletypewriter exchange or toll service.

(b) “Dissemination” means the act of transmitting, distributing, advising, spreading, communicating, conveying or making known.

(c) “Gambling device” means any device, machine, paraphernalia or equipment which is used or usable in the playing phases of any gambling activity, whether the activity consists of gambling between persons or gambling by a person involving the playing of a machine. Lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices.

(d) “Gambling offense” means any offense defined in §§ 1401-1431 of this title.

(e) “Private wire” means service equipment, facilities, conduits, poles, wires, circuits, systems by means of which service is furnished for communication purposes, either through the medium of telephone, telegraph, Morse, teletypewriter, loudspeaker or any other means, or by which the voice or electrical impulses are sent over a wire, and which services are contracted for or leased for services between 2 or more points specifically designated, and are not connected to or available for general telegraphic, telephonic or teletypewriter exchange or toll service, and includes such services known as “special contract leased wire service,” “leased line,” “private line,” “private system,” “Morse line,” “private wire,” but does not include the usual and customary telephone or teletypewriter service by which the subscriber may be connected at each separate call to any other telephone or teletypewriter designated by the subscriber only through the general telephone or teletypewriter exchange system or toll service.

(f) “Public utility” means a person, partnership, association or corporation owning or operating in this State equipment or facilities for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

(g) “Obstruction” means a door, window, shutter, screen bar or grating of unusual strength, or any unnecessary number of doors, windows or obstructions other than what is usual and ordinary in the normal or usual use of a building, apartment or place, by which access to any building, apartment or place is barred.

(h) “Slot machine” means a gambling device which, as a result of the insertion of a coin or other object, operates, either completely automatically or with the aid of a physical act by the player, in such manner that, depending upon elements of chance, it may eject something of value.

(11 Del. C. 1953, § 1432; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.)

§§ 1433-1440. [Reserved.]

E Offenses Involving Deadly Weapons and Dangerous Instruments

§ 1441. License to carry concealed deadly weapons.

(a) A person of full age and good moral character desiring to be licensed to carry a concealed deadly weapon for personal protection or the protection of the person’s property may be licensed to do so when the following conditions have been strictly complied with:

(1) The person shall make application therefor in writing and file the same with the Prothonotary of the proper county, at least 15 days before the then next term of the Superior Court, clearly stating that the person is of full age and that the person is desirous of being licensed to carry a concealed deadly weapon for personal protection or protection of the person’s property, or both, and also stating the person’s residence and occupation. The person shall submit together with such application all information necessary to conduct a criminal history background check. The Superior Court may conduct a criminal history background check pursuant to the procedures set forth in Chapter 85 of Title 11 for the purposes of licensing any person pursuant to this section.

(2) At the same time the person shall file, with the Prothonotary, a certificate of 5 respectable citizens of the county in which the applicant resides at the time of filing the application. The certificate shall clearly state that the applicant is a person of full age, sobriety and good moral character, that the applicant bears a good reputation for peace and good order in the community in which the applicant resides, and that the carrying of a concealed deadly weapon by the applicant is necessary for the protection of the applicant or the applicant’s property, or both. The certificate shall be signed with the proper signatures and in the proper handwriting of each such respectable citizen.

(3) Every such applicant shall file in the office of the Prothonotary of the proper county the application verified by oath or affirmation in writing taken before an officer authorized by the laws of this State to administer the same, and shall under such verification state that the applicant’s certificate and recommendation were read to or by the signers thereof and that the signatures thereto are in the proper and genuine handwriting of each. Prior to the issuance of an initial license the person shall also file with the Prothonotary a notarized certificate signed by an instructor or authorized representative of a sponsoring agency, school, organization or institution certifying that the applicant: (i) has completed a firearms training course which contains at least the below-described minimum elements; and (ii) is sponsored by a federal, state, county or municipal law enforcement agency, a college, a nationally recognized organization that customarily offers firearms training, or a firearms training school with instructors certified by a nationally recognized organization that customarily offers firearms training. The firearms training course shall include the following elements:

a. Instruction regarding knowledge and safe handling of firearms;

b. Instruction regarding safe storage of firearms and child safety;

c. Instruction regarding knowledge and safe handling of ammunition;

d. Instruction regarding safe storage of ammunition and child safety;

e. Instruction regarding safe firearms shooting fundamentals;

f. Live fire shooting exercises conducted on a range, including the expenditure of a minimum of 100 rounds of ammunition;

g. Identification of ways to develop and maintain firearm shooting skills;

h. Instruction regarding federal and state laws pertaining to the lawful purchase, ownership, transportation, use and possession of firearms;

i. Instruction regarding the laws of this State pertaining to the use of deadly force for self-defense; and

j. Instruction regarding techniques for avoiding a criminal attack and how to manage a violent confrontation, including conflict resolution.

(4) At the time the application is filed, the applicant shall pay a fee of $65 to the Prothonotary issuing the same.

(5) a. The license issued upon initial application shall be valid for 3 years. On or before the date of expiration of such initial license, the licensee, without further application, may renew the same for the further period of 5 years upon payment to the Prothonotary of a fee of $65, and upon filing with said Prothonotary an affidavit setting forth that the carrying of a concealed deadly weapon by the licensee is necessary for personal protection or protection of the person's property, or both, and that the person possesses all the requirements for the issuance of a license and may make like renewal every 5 years thereafter; provided, however, that the Superior Court, upon good cause presented to it, may inquire into the renewal request and deny the same for good cause shown. No requirements in addition to those specified in this paragraph may be imposed for the renewal of a license.

b. Notwithstanding the time limitations in paragraph (a)(5) of this section, and notwithstanding any law, rule, or regulation to the contrary, any person licensed to carry a concealed deadly weapon pursuant to this section whose license expired in 2020 or 2021, may file for renewal of such license pursuant to paragraph (a)(5) of this section by satisfying all of the following conditions with the Prothonotary no later than December 31, 2022:

1. Filing an affidavit setting forth that the carrying of a concealed deadly weapon by the licensee is necessary for personal protection or protection of the person's property, or both;

2. The person possesses all the requirements for the issuance of a license; and

3. Payment of the $65 fee required by paragraph (a)(5)a. of this section.

(b) The Prothonotary of the county in which any applicant for a license files the same shall cause notice of every such application to be published once, at least 10 days before the next term of the Superior Court. The publication shall be made in a newspaper of general circulation published in the county. In making such publication it shall be sufficient for the Prothonotary to do the same as a list in alphabetical form stating therein simply the name and residence of each applicant respectively.

(c) The Prothonotary of the county in which the application for license is made shall lay before the Superior Court, at its then next term, all applications for licenses, together with the certificate and recommendation accompanying the same, filed in the Prothonotary's office, on the first day of such application.

(d) The Court may or may not, in its discretion, approve any application, and in order to satisfy the Judges thereof fully in regard to the propriety of approving the same, may receive remonstrances and hear evidence and arguments for and against the same, and establish general rules for that purpose.

(e) If any application is approved, as provided in this section, the Court shall endorse the word "approved" thereon and sign the same with the date of approval. If not approved, the Court shall endorse the words "not approved" and sign the same. The Prothonotary, immediately after any such application has been so approved, shall notify the applicant of such approval, and following receipt of the notarized certification of satisfactory completion of the firearms training course requirement as set forth in paragraph (a)(3) of this section above shall issue a proper license, signed as other state licenses are, to the applicant for the purposes provided in this section and for a term to expire on June 1 next succeeding the date of such approval.

(f) The Secretary of State shall prepare blank forms of license to carry out the purposes of this section, and shall issue the same as required to the several Prothonotaries of the counties in this State. The Prothonotaries of all the counties shall affix to the license, before lamination, a photographic representation of the licensee.

(g) The provisions of this section do not apply to the carrying of the usual weapon by the police or other peace officers.

(h) Notwithstanding any provision to the contrary, anyone retired as a police officer, as "police officer" is defined by § 1911 of this title, who is retired after having served at least 20 years in any law-enforcement agency within this State, or who is retired and remains currently eligible for a duty-connected disability pension, may be licensed to carry a concealed deadly weapon for the protection of that retired police officer's person or property after that retired police officer's retirement, if the following conditions are strictly complied with:

(1) If that retired police officer applies for the license within 90 days of the date of that retired police officer's retirement, the retired police officer shall pay a fee of $65 to the Prothonotary in the county where that retired police officer resides and present to the Prothonotary both:

a. A certification from the Attorney General's office, in a form prescribed by the Attorney General's office, verifying that the retired officer is in good standing with the law-enforcement agency from which the retired police officer is retired; and

b. A letter from the chief of the retired officer's agency verifying that the retired officer is in good standing with the law-enforcement agency from which the retired police officer is retired; or

(2) If that retired police officer applies for the license more than 90 days, but within 20 years, of the date of that retired police officer's retirement, the retired police officer shall pay a fee of $65 to the Prothonotary in the county where the retired police officer resides and present to the Prothonotary certification forms from the Attorney General's office, or in a form prescribed by the Attorney General's office, that:

a. The retired officer is in good standing with the law-enforcement agency from which that retired police officer is retired;

b. The retired officer's criminal record has been reviewed and that the retired police officer has not been convicted of any crime greater than a violation since the date of the retired police officer's retirement; and

c. The retired officer has not been committed to a psychiatric facility since the date of the retired police officer's retirement.

(i) Notwithstanding anything contained in this section to the contrary, an adult person who, as a successful petitioner seeking relief pursuant to Part D, subchapter III of Chapter 9 of Title 10, has caused a protection from abuse order containing a firearms prohibition authorized by § 1045(a)(8) of Title 10 or a firearms prohibition pursuant to § 1448(a)(6) of this title to be entered against a person for alleged acts of domestic violence as defined in § 1041 of Title 10, shall be deemed to have shown the necessity for a license to carry a deadly weapon concealed for protection of themselves pursuant to this section. In such cases, all other requirements of subsection (a) of this section must still be satisfied.

(j) Notwithstanding any other provision of this Code to the contrary, the State of Delaware shall give full faith and credit and shall otherwise honor and give full force and effect to all licenses/permits issued to the citizens of other states where those issuing states also give full faith and credit and otherwise honor the licenses issued by the State of Delaware pursuant to this section and where those licenses/permits are issued by authority pursuant to state law and which afford a reasonably similar degree of protection as is provided by licensure in Delaware. For the purpose of this subsection "reasonably similar" does not preclude alternative or differing provisions nor a different source and process by which eligibility is determined. Notwithstanding the forgoing, if there is evidence of a pattern of issuing licenses/permits to convicted felons in another state, the Attorney General shall not include that state under the exception contained in this subsection even if the law of that state is determined to be "reasonably similar." The Attorney General shall communicate the provisions of this section to the Attorneys General of the several states and shall determine those states whose licensing/permit systems qualify for recognition under this section. The Attorney General shall publish on January 15 of each year a list of all States which have qualified for reciprocity under this subsection. Such list shall be valid for one year and any removal of a State from the list shall not occur without 1 year's notice of such impending removal. Such list shall be made readily available to all State and local law-enforcement agencies within the State as well as to all then-current holders of licenses issued by the State of Delaware pursuant to this section.

(k) The Attorney General shall have the discretion to issue, on a limited basis, a temporary license to carry concealed a deadly weapon to any individual who is not a resident of this State and whom the Attorney General determines has a short-term need to carry such a weapon within this State in conjunction with that individual's employment for the protection of person or property. Said temporary license shall automatically expire 30 days from the date of issuance and shall not be subject to renewal, and must be carried at all times while within the State. However, nothing contained herein shall prohibit the issuance of a second or subsequent temporary license. The Attorney General shall have the authority to promulgate and enforce such regulations as may be necessary for the administration of such temporary licenses. No individual shall be issued more than 3 temporary licenses.

(*l*) All applications for a temporary license to carry a concealed deadly weapon made pursuant to subsection (k) of this section shall be in writing and shall bear a notice stating that false statements therein are punishable by law.

(m) Notwithstanding any other law or regulation to the contrary, any license issued pursuant to this section shall be void, and is automatically repealed by operation of law, if the licensee is or becomes prohibited from owning, possessing or controlling a deadly weapon as specified in § 1448 of this title.

(11 Del. C. 1953, § 1441; 58 Del. Laws, c. 497, § 1; 60 Del. Laws, c. 419, §§ 1-3; 67 Del. Laws, c. 41, § 1; 67 Del. Laws, c. 260, § 1; 68 Del. Laws, c. 9, §§ 1, 2; 68 Del. Laws, c. 410, §§ 1-3; 69 Del. Laws, c. 299, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 343, § 1; 71 Del. Laws, c. 246, § 1; 71 Del. Laws, c. 252, § 1; 72 Del. Laws, c. 61, § 6; 73 Del. Laws, c. 7, § 1; 73 Del. Laws, c. 252, § 7; 74 Del. Laws, c. 140, §§ 1-3; 77 Del. Laws, c. 230, §§ 1-4; 83 Del. Laws, c. 339, § 20.)

§ 1441A. State implementation of the federal Law Enforcement Officers Safety Act of 2004 (18 U.S.C. § 926B as amended in 2010 and 2013); carrying of concealed firearms by qualified law-enforcement officers.

(a) Notwithstanding any other provision of the law of any state or any political subdivision thereof, an individual who is a qualified law-enforcement officer and who is carrying the identification required by subsection (d) of this section may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b) of this section.

(b) This section shall not be construed to supersede or limit the laws of any state that:

(1) Permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) Prohibit or restrict the possession of firearms on any state or local government property, installation, building, base, or park.

(c) As used in this section, the term "qualified law-enforcement officer" means an employee of a governmental agency who:

(1) Is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under 10 U.S.C. § 807(b) (article 7(b) of the Uniform Code of Military Justice);

(2) Is authorized by the agency to carry a firearm;

(3) Is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;

(4) Meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;

(5) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(6) Is not prohibited by federal law from receiving a firearm.

(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is employed that identifies the employee as a police officer or law-enforcement officer of the agency.

(e) As used in this section, the term "firearm":

(1) Except as provided in this subsection, has the same meaning as in 18 U.S.C. § 921;

(2) Includes ammunition not expressly prohibited by federal law or subject to the provisions of the National Firearms Act [26 U.S.C. § 5801 et seq.]; and

(3) Does not include:

a. Any machinegun (as defined in § 5845 of the National Firearms Act [26 U.S.C. § 5845]);

b. Any firearm silencer (as defined in 18 U.S.C. § 921); and

c. Any destructive device (as defined in 18 U.S.C. § 921).

(f) For the purposes of this section, a law-enforcement officer of the Amtrak Police Department, a law-enforcement officer of the Federal Reserve, or a law-enforcement or police officer of the executive branch of the federal government qualifies as an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under 10 U.S.C. § 807(b) (article 7(b) of the Uniform Code of Military Justice).

(76 Del. Laws, c. 320, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 181, § 1.)

§ 1441B. State implementation of the federal Law Enforcement Officers Safety Act of 2004 (18 U.S.C. § 926C as amended in 2010 and 2013); carrying of concealed firearms by qualified retired law-enforcement officers.

(a) Notwithstanding any other provision of the law of any state or any political subdivision thereof, an individual who is a qualified retired law-enforcement officer and who is carrying the identification required by subsection (d) of this section may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b) of this section.

(b) This section shall not be construed to supersede or limit the laws of any state that:

(1) Permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) Prohibit or restrict the possession of firearms on any state or local government property, installation, building, base, or park.

(c) As used in this section, the term "qualified retired law-enforcement officer" means an individual who:

(1) Separated from service in good standing from service with a public agency as a law-enforcement officer;

(2) Before such separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest or apprehension under 10 U.S.C. § 807(b) (article 7(b) of the Uniform Code of Military Justice);

(3) a. Before such separation, served as a law-enforcement officer for an aggregate of 10 years or more; or

b. Separated from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(4) During the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law-enforcement officers, as determined by the former agency of the individual, the state in which the individual resides or, if the state has not established such standards, either a law-enforcement agency within the state in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state;

(5) a. Has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described in paragraph (d)(1) of this section; or

b. Has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification as described in paragraph (d)(1) of this section;

(6) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(7) Is not prohibited by federal law from receiving a firearm.

(d) The identification required by this subsection is:

(1) A photographic identification issued by the agency from which the individual separated from service as a law-enforcement officer that identifies the person as having been employed as a police officer or law-enforcement officer and indicates that the individual has, not less recently than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm; or

(2) a. A photographic identification issued by the agency from which the individual separated from service as a law-enforcement officer that identifies the person as having been employed as a police officer or law-enforcement officer; and

b. A certification issued by the state in which the individual resides or by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state that indicates that the individual has, not less than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the state or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state to have met:

1. The active duty standards for qualification in firearms training, as established by the state, to carry a firearm of the same type as the concealed firearm; or

2. If the state has not established such standards, standards set by any law-enforcement agency within that state to carry a firearm of the same type as the concealed firearm.

(e) As used in this section:

(1) The term "firearm":

a. Except as provided in this paragraph, has the same meaning as in 18 U.S.C. § 921;

b. Includes ammunition not expressly prohibited by federal law or subject to the provisions of the National Firearms Act [26 U.S.C. § 5801 et seq.]; and

c. Does not include:

1. Any machinegun (as defined in § 5845 of the National Firearms Act [26 U.S.C. § 5845]);

2. Any firearm silencer (as defined in 18 U.S.C. § 921); and

3. Any destructive device (as defined in 18 U.S.C. § 921); and

(2) The term "service with a public agency as a law-enforcement officer" includes service as a law-enforcement officer of the Amtrak Police Department, service as a law-enforcement officer of the Federal Reserve, or service as a law-enforcement or police officer of the executive branch of the federal government.

(3) The term "a firearm of the same type" means a revolver or a semi-automatic pistol.

(80 Del. Laws, c. 181, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1442. Carrying a concealed deadly weapon; class G felony; class D felony.

(a) A person is guilty of carrying a concealed deadly weapon when the person carries concealed a deadly weapon upon or about the person without a license to do so as provided by § 1441 of this title.

(b) Carrying a concealed deadly weapon is a class G felony, unless the deadly weapon is a firearm or a projectile weapon, in which case it is a class D felony.

(c) It shall be a defense that the defendant has been issued an otherwise valid license to carry a concealed deadly weapon pursuant to terms of § 1441 of this title, where:

(1) The license has expired,

(2) The person had applied for renewal of said license within the allotted time frame prior to expiration of the license, and

(3) The offense is alleged to have occurred while the application for renewal of said license was pending before the court.

(d) It shall be a defense that the defendant complied with § 1456(b) of this title.

(11 Del. C. 1953, § 1442; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 547, § 13; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 313, §§ 1, 6; 84 Del. Laws, c. 371, § 1; 84 Del. Laws, c. 525, § 4.)

§ 1443. Carrying a concealed dangerous instrument; class A misdemeanor.

(a) A person is guilty of carrying a concealed dangerous instrument when the person carries concealed a dangerous instrument upon or about the person.

(b) It shall be a defense that the defendant was carrying the concealed dangerous instrument for a specific lawful purpose and that the defendant had no intention of causing any physical injury or threatening the same.

(c) For the purposes of this section, disabling chemical spray, as defined in § 222 of this title, shall not be considered to be a dangerous instrument.

(d) Carrying a concealed dangerous instrument is a class A misdemeanor.

(11 Del. C. 1953, § 1443; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 547, § 14; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 374, § 6.)

§ 1444. Possessing a destructive weapon; class E felony.

(a) A person is guilty of possessing a destructive weapon when the person makes, sells, transfers, buys, receives, or has possession of any of the following:

(1) A bomb.

(2) A bombshell.

(3) A firearm silencer.

(4) A sawed-off shotgun.

(5) A machine gun or any other firearm or weapon which is adaptable for use as a machine gun.

(6) A bump stock, trigger crank, or rapid fire device.

a. "Bump stock" means an after-market device that increases the rate of fire achievable with a semi-automatic rifle by using energy from the recoil of the weapon to generate a reciprocating action that facilitates repeated activation of the trigger.

b. "Rapid fire device" means a part, kit, tool, accessory, or device that increases the rate of fire of a semi-automatic firearm to a rate of fire that mimics the rate of fire of a machine gun.

c. "Trigger crank" means an after-market device designed and intended to be added to a semi-automatic rifle as a crank operated trigger actuator capable of triggering multiple shots with a single rotation of the crank.

(b) (1) Possessing a destructive weapon listed in paragraphs (a)(1) through (a)(5) of this section is a class E felony. This section does not apply to members of the military forces or to members of a police force in this State duly authorized to carry a weapon of the type described; nor shall the provisions contained herein apply to authorized and certified (by an accredited state enforcement agency) state and federal wildlife biologists possessing firearm silencers for the purposes of wildlife disease or wildlife population control, or persons possessing machine guns for scientific or experimental research and development purposes, which machine guns have been duly registered under the National Firearms Act of 1968 (26 U.S.C. § 5801 et seq.).

(2) A person who is convicted of only having possession of a destructive weapon listed under paragraph (a)(6) of this section commits the following:

a. A class B misdemeanor for a first offense.

b. A class E felony for a second or subsequent offense.

(c) For purposes of this section:

(1) a. "Machine gun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.

b. "Machine gun" includes the frame or receiver of a machine gun, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if the parts are in the possession or under the control of a person.

(2) "Shotgun" means a weapon designed or redesigned, made, or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.

(3) "Sawed-off shotgun" means a shotgun having 1 or more barrels less than 18 inches in length or any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches.

(d) The Superior Court has exclusive jurisdiction over offenses under this section.

(e) (1) Any destructive weapon as defined in paragraph (a)(6) of this section shall be relinquished to a law-enforcement agency of this State and may be destroyed by the law-enforcement agency 30 days after relinquishment.

(2) Relinquishment to a law-enforcement agency is not a transfer or evidence of possession under paragraph (a)(6) of this section.

(f) [Repealed.]

(11 Del. C. 1953, § 1444; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 547, § 12; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 411, § 1; 81 Del. Laws, c. 269, §§ 1-3, 5, 6; 83 Del. Laws, c. 333, § 1.)

§ 1445. Unlawfully dealing with a dangerous weapon; unclassified misdemeanor; Class E or G felony.

(a) A person is guilty of unlawfully dealing with a dangerous weapon when:

(1) The person, who is not a qualified law-enforcement officer, possesses, sells, or in any manner has control of any of the following:

a. A weapon which by compressed air or by spring discharges or projects a pellet, slug or bullet, except a BB gun, paintball gun, or air gun which does not discharge or project a pellet or slug larger than a .177 caliber shot.

b. A pellet, slug or bullet, intending that it be used in any weapon prohibited by paragraph (a)(1)a. of this section

(2) The person sells, gives or otherwise transfers to a child under 16 years of age a BB gun, BB shot, or projectile weapon, unless the person is that child's parent or guardian, or unless the person first receives the permission of said parent or guardian.

(3) Being a parent, the person permits the person's child under 16 years of age to have possession of a BB gun or projectile weapon, unless under the direct supervision of a person 21 years of age or older.

(4) The person sells, gives or otherwise transfers to a person under 21 years of age a firearm or ammunition for a firearm, unless permitted by § 1448 of this title.

(5) The person sells, gives or otherwise transfers a firearm or projectile weapon to any person knowing that said person intends to commit any felony, class A misdemeanor or drug related criminal offense while in possession of the firearm or projectile weapon.

(6) [Repealed.]

(b) As used in this section, "qualified law-enforcement officer" means as defined in § 1441A of this title.

(c) Unlawfully dealing with a dangerous weapon is an unclassified misdemeanor, unless the person is convicted under paragraph (a)(4) of this section, in which case it is a class G felony, or unless the person is convicted under paragraph (a)(5) of this section, in which case it is a class E felony.

(d) The Superior Court has exclusive jurisdiction over a violation of paragraphs (a)(3) and (a)(6) [repealed] of this section.

(11 Del. C. 1953, § 1445; 58 Del. Laws, c. 497, § 1; 64 Del. Laws, c. 44, § 1; 67 Del. Laws, c. 130, § 8; 69 Del. Laws, c. 312, §§ 1-3; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 329, § 1, § 3; 84 Del. Laws, c. 525, § 5; 84 Del. Laws, c. 525, § 6.)

§ 1446. Unlawfully dealing with a switchblade knife; unclassified misdemeanor [Repealed].

(11 Del. C. 1953, § 1446; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; repealed by 85 Del. Laws, c. 119, § 2, effective July 30, 2025.)

§ 1446A. Undetectable knives; commercial manufacture, import for commercial sale, or offers for commercial sale; or possession.

(a) Any person in this state who commercially manufactures or causes to be commercially manufactured, or who knowingly imports into the state for commercial sale, keeps for commercial sale, or offers or exposes for commercial sale, or who possesses any undetectable knife is guilty of a class G felony. As used in this section, an "undetectable knife" means any knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict serious physical injury or death that is commercially manufactured to be used as a weapon and is not detectable by a metal detector or magnetometer because there is no material permanently affixed that would be detectable by a metal detector or magnetometer, either handheld or otherwise, that is set at standard calibration.

(b) Notwithstanding any other provision of law, all knives or other instruments with or without a handguard that are capable of ready use as a stabbing weapon that may inflict serious physical injury or death that are commercially manufactured in this state that utilize materials that are not detectable by a metal detector or magnetometer, shall be manufactured to include permanently installed materials that will ensure they are detectable by a metal detector or magnetometer, either handheld or otherwise, that is set at standard calibration.

(c) This section shall not apply to the manufacture or importation of undetectable knives for sale to a law-enforcement or military entity nor shall this section apply to the subsequent sale of these knives to law enforcement or military entity.

(d) This section shall not apply to the manufacture or importation of undetectable knives for sale to federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that the undetectable knives are properly housed and secured from unauthorized handling, nor shall this section apply to the subsequent sale of the knives to these societies, museums, and collections.

(75 Del. Laws, c. 348, § 1.)

§ 1447. Possession of a deadly weapon during commission of a felony; class B felony.

(a) A person who is in possession of a deadly weapon during the commission of a felony is guilty of possession of a deadly weapon during commission of a felony.

Possession of a deadly weapon during commission of a felony is a class B felony.

(b), (c) [Repealed.]

(d) Every person charged under this section over the age of 16 years may be tried as an adult pursuant to §§ 1010 and 1011 of Title 10, notwithstanding any contrary provision of statutes governing the Family Court or any other state law.

(e) A person may be found guilty of violating this section notwithstanding that the felony for which the person is convicted and during which the person possessed the deadly weapon is a lesser included felony of the one originally charged.

(11 Del. C. 1953, § 1447; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 203, § 34; 59 Del. Laws, c. 547, § 15; 60 Del. Laws, c. 306, §§ 1, 2; 63 Del. Laws, c. 412, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 107, § 1; 81 Del. Laws, c. 199, § 3; 82 Del. Laws, c. 66, § 2.)

§ 1447A. Possession of a firearm or projectile weapon during commission of a felony; class B felony.

(a) A person who is in possession of a firearm or projectile weapon during the commission of a felony is guilty of possession of a firearm or projectile weapon during the commission of a felony. Possession of a firearm or projectile weapon during the commission of a felony is a class B felony.

(b) A person convicted under subsection (a) of this section shall receive a minimum sentence of 3 years at Level V, notwithstanding the provisions of § 4205(b)(2) of this title.

(c) A person convicted under subsection (a) of this section, and who has been at least twice previously convicted of a felony in this State or elsewhere, shall receive a minimum sentence of 5 years at Level V, notwithstanding the provisions of §§ 4205(b)(2) and 4215 of this title.

(d), (e) [Repealed.]

(f) Every person charged under this section over the age of 16 years who, following an evidentiary hearing where the Superior Court finds proof positive or presumption great that the accused used, displayed, or discharged a firearm or projectile weapon during the commission of a Title 11 or a Title 31 violent felony as set forth in § 4201(c) of this title, shall be tried as an adult, notwithstanding any contrary provisions or statutes governing the Family Court or any other state law. The provisions of this section notwithstanding, the Attorney General may elect to proceed in Family Court.

(g) A person may be found guilty of violating this section notwithstanding that the felony for which the person is convicted and during which the person possessed the firearm or projectile weapon is a lesser included felony of the one originally charged.

(69 Del. Laws, c. 229, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 596, § 7; 73 Del. Laws, c. 107, §§ 2, 3; 81 Del. Laws, c. 252, § 1; 82 Del. Laws, c. 66, § 2; 84 Del. Laws, c. 525, § 7.)

§ 1448. Possession and purchase of deadly weapons by persons prohibited; penalties.

(a) Except as otherwise provided in this section, the following persons are prohibited from purchasing, owning, possessing, or controlling a deadly weapon or ammunition for a firearm within the State:

(1) Any person who has been convicted in this State or other jurisdiction of a felony or a crime of violence involving physical injury to another person, whether or not armed with or while possessing any weapon during the commission of the felony or crime of violence.

(2) Any person who meets any of the following:

a. Has been involuntarily committed for a mental condition under Chapter 50 of Title 16, unless the person can demonstrate that the person is no longer prohibited from possessing a firearm or projectile weapon under § 1448A(*l*) of this title.

b. For a crime of violence, has been found not guilty by reason of insanity or guilty but mentally ill, including any juvenile who has been found not guilty by reason of insanity or guilty but mentally ill, unless such person can demonstrate that such person is no longer prohibited from possessing a firearm or projectile weapon under § 1448A(*l*) of this title.

c. For a crime of violence, has been found mentally incompetent to stand trial, including any juvenile who has been found mentally incompetent to stand trial, unless there has been a subsequent finding that the person has become competent, or unless such person can demonstrate that such person is no longer prohibited from possessing a firearm or projectile weapon under § 1448A(*l*) of this title.

d. Is the subject of an order of relinquishment issued under § 1448C of this title.

(3) Any person who has been convicted for the unlawful use, possession or sale of a narcotic, dangerous drug or central nervous system depressant or stimulant as those terms were defined prior to the effective date of the Uniform Controlled Substances Act in June 1973 or of a narcotic drug or controlled substance as defined in Chapter 47 of Title 16.

(4) Any person who, as a juvenile, has been adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, until that person reaches the age of 25.

(5) Any person under the age of 21.

a. This paragraph (a)(5) shall not apply to the purchase, owning, possession, or control of the following deadly weapons:

1. A shotgun as defined in § 1444(c) of this title or ammunition for a shotgun.

2. A muzzle-loading rifle as defined in § 704(f) of Title 7.

3. Deadly weapons, including projectile weapons other than firearms if the person is 18 years of age or older.

b. This paragraph (a)(5) shall not apply to any of the following persons 18 years of age or older:

1. An active member of the Armed Forces of the United States or the National Guard.

2. A qualified law-enforcement officer as defined in § 1441A of this title.

3. A person who has license to carry a concealed deadly weapon pursuant to § 1441 of this title.

c. This paragraph (a)(5) shall not apply to any person under the age of 21 who does any of the following:

1. Possesses or controls a firearm or a projectile weapon for the purpose of engaging in lawful hunting, instruction, sporting, or recreational activity while under the direct supervision of a person 21 years of age or older.

2. Possesses or controls a firearm for the purpose of engaging in lawful hunting and is in compliance with § 704(g) of Title 7.

3. Possesses or controls a firearm or projectile weapon for the purpose of transporting the firearm or projectile weapon to the location of a lawful hunting, instruction, sporting, or recreational activity, for which the person is authorized to possess or control the firearm or projectile weapon under paragraph (a)(5)c.1. of this section.

d. It is not a violation of this paragraph (a)(5) if a person under the age of 21 possesses or uses a firearm or projectile weapon during the use of force upon or towards another person if such use of force is justifiable pursuant to § 464, § 465, § 466, or § 469 of this title.

e. [Repealed.]

(6) Any person who knows that the person is subject to a Family Court protection from abuse order, but only for so long as the order remains in effect, except that this paragraph shall not apply to a contested order issued solely upon § 1041(1)d., e., or i. of Title 10, or any combination thereof.

(7) Any person who has been convicted in any court of any misdemeanor crime of domestic violence. For purposes of this paragraph, the term "misdemeanor crime of domestic violence" means any misdemeanor offense that:

a. Was committed by a member of the victim's family, as "family" is defined in § 901 of Title 10 (regardless, however, of the state of residence of the parties); by a former spouse of the victim; by a person who cohabited with the victim at the time of or within 3 years prior to the offense; by a person with a child in common with the victim; or by a person with whom the victim had a substantive dating relationship, as defined in § 1041 of Title 10, at the time of or within 3 years prior to the offense,

b. Is an offense as defined under § 601, § 602, § 603, § 611, § 614, § 621, § 625, § 628A, § 763, § 765, § 766, § 767, § 781, § 785 or § 791 of this title, or any similar offense when committed or prosecuted in another jurisdiction.

(8) Any person who, knowing that such person is the defendant or co-defendant in any criminal case in which that person is alleged to have committed any felony under the laws of this State, the United States or any other state or territory of the United States, becomes a fugitive from justice by failing to appear for any scheduled court proceeding pertaining to such felony for which proper notice was provided or attempted. It is no defense to a prosecution under this paragraph that the person did not receive notice of the scheduled court proceeding.

(9) Any person, if the deadly weapon is a semi-automatic or automatic firearm, or a handgun, who, at the same time, possesses a controlled substance in violation of § 4763 of Title 16.

(10) Except for "antique firearms" any validly seized deadly weapons or ammunition from a person prohibited as a result of a felony conviction under Delaware law, federal law or the laws of any other state, or as otherwise prohibited under this subsection (a) of this section may be disposed of by the law enforcement agency holding the weapon or ammunition, pursuant to § 2311 of this title.

a. "Antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily restored to a firing condition.

b. A person prohibited under this section has the burden of proving that the subject firearm is an antique firearm as defined in paragraph (a)(10)a. of this section subject to an exemption under this section and § 2311 of this title.

(11) Any person who is subject to a lethal violence protective order, issued under § 7704 of Title 10, but only for so long as that order remains in effect or is not vacated or otherwise terminated under Chapter 77 of Title 10.

(12) Any person who knows that the person is the subject of an outstanding arrest warrant, or post-arrest charges or an active indictment or information, for any felony under the laws of this State, the United States, or any other state or territory of the United States, or for a misdemeanor crime of domestic violence under paragraph (a)(7) of this section, is prohibited from purchasing a firearm or projectile weapon.

(b) Any prohibited person as set forth in subsection (a) of this section who knowingly possesses, purchases, owns or controls a deadly weapon or ammunition for a firearm while so prohibited shall be guilty of possession of a deadly weapon or ammunition for a firearm by a person prohibited.

(c) Possession of a deadly weapon by a person prohibited is a class F felony, unless said deadly weapon is a firearm or ammunition for a firearm, and the violation is one of paragraphs (a)(1)-(8) of this section, in which case it is a class D felony, or unless the person is eligible for sentencing pursuant to subsection (e) of this section, in which case it is a class C felony. As used herein, the word "ammunition" shall mean 1 or more rounds of fixed ammunition designed for use in and capable of being fired from a pistol, revolver, shotgun or rifle but shall not mean inert rounds or expended shells, hulls or casings.

(d) Any person who is a prohibited person solely as the result of a conviction for an offense which is not a felony shall not be prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm if 5 years have elapsed from the date of conviction.

(e) (1) Notwithstanding any provision of this section or Code to the contrary, any person who is a prohibited person as described in this section and who knowingly possesses, purchases, owns or controls a firearm, projectile weapon, or destructive weapon while so prohibited shall receive a minimum sentence of:

a. Three years at Level V, if the person has previously been convicted of a violent felony;

b. Five years at Level V, if the person does so within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or

c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.

(2) Any person who is a prohibited person as described in this section because of a conviction for a violent felony and who, while in possession or control of a firearm or projectile weapon in violation of this section, negligently causes serious physical injury to or the death of another person through the use of the firearm or projectile weapon shall be guilty of a class B felony and shall receive a minimum sentence of:

a. Four years at Level V; or

b. Six years at Level V, if the person causes such injury or death within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or

c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.

d. Nothing in this paragraph shall be deemed to be a related or included offense of any other provision of this Code. Nothing in this paragraph shall be deemed to preclude prosecution or sentencing under any other provision of this Code nor shall this paragraph be deemed to repeal any other provision of this Code.

(3) Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title. For the purposes of this subsection, "violent felony" means any felony so designated by § 4201(c) of this title, or any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to any of the offenses designated as a violent felony by § 4201(c) of this title.

(4) Any sentence imposed for a violation of this subsection shall not be subject to suspension and no person convicted for a violation of this subsection shall be eligible for good time, parole or probation during the period of the sentence imposed.

(f) (1) Upon conviction, any person who is a prohibited person as described in paragraph (a)(5) of this section and who is 15 years of age or older, but not yet 18 years of age, is declared a child in need of mandated institutional treatment and shall, for a first offense, receive a minimum sentence of 6 months of Level V incarceration or institutional confinement, and shall receive a minimum sentence of 1 year of Level V incarceration or institutional confinement for a second and each subsequent offense, which shall not be subject to suspension. Any sentence imposed pursuant to this subsection shall not be subject to §§ 4205(b) and 4215 of this title.

(2) The penalties prescribed by this subsection and subsection (g) of this section shall be imposed regardless of whether or not the juvenile is determined to be amenable to the rehabilitative process of the Family Court pursuant to § 1010(c) of Title 10 or any successor statute.

(g) In addition to the penalties set forth in subsection (f) of this section, a person who is a prohibited person as described in paragraph (a)(5) of this section and who is 14 years of age or older, but not yet 18 years of age, shall, upon conviction of a first offense, be required to view a film or slide presentation depicting the damage and destruction inflicted upon the human body by a projectile fired from a firearm or projectile weapon, and shall be required to meet with, separately or as part of a group, a victim of a violent crime, or with the family of a deceased victim of a violent crime. The Division of Youth Rehabilitative Service, with the cooperation of the Division of Forensic Science and the Victims' Compensation Assistance Program, shall be responsible for the implementation of this subsection.

(11 Del. C. 1953, § 1448; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 68 Del. Laws, c. 422, § 1; 69 Del. Laws, c. 313, §§ 1, 2; 69 Del. Laws, c. 441, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 230, §§ 1-5; 71 Del. Laws, c. 358, §§ 1, 2; 72 Del. Laws, c. 61, §§ 1, 2; 74 Del. Laws, c. 106, § 7; 75 Del. Laws, c. 78, § 1; 76 Del. Laws, c. 99, § 1; 76 Del. Laws, c. 101, §§ 1-5; 78 Del. Laws, c. 13, §§ 5, 6; 78 Del. Laws, c. 135, §§ 6-8; 78 Del. Laws, c. 137, § 5; 78 Del. Laws, c. 168, § 6; 79 Del. Laws, c. 124, §§ 1, 2; 79 Del. Laws, c. 188, § 1; 79 Del. Laws, c. 265, § 10; 80 Del. Laws, c. 190, § 2; 81 Del. Laws, c. 232, § 1; 81 Del. Laws, c. 253, § 2; 81 Del. Laws, c. 274, § 3; 83 Del. Laws, c. 245, § 1; 83 Del. Laws, c. 329, § 1; 83 Del. Laws, c. 329, § 3; 84 Del. Laws, c. 24, § 9; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 216, § 1; 84 Del. Laws, c. 514, § 19, § 20; 84 Del. Laws, c. 525, §§ 8, 9.)

§ 1448A. Background checks and handgun qualified purchaser permit required for sales of firearms [For application of this section, see 84 Del. Laws, c. 259, § 5].

(a) (1) A licensed importer, licensed manufacturer, or licensed dealer may not sell, transfer, or deliver from inventory any firearm to any other person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, without conducting a background check by the State Bureau of Identification, through the Firearm Transaction Approval Program under subchapter VI of Chapter 85 of this title, to determine whether the transfer of a firearm to any person who is not licensed under 18 U.S.C. § 923 would be in violation of federal or state law.

(2) A transferor may not sell, transfer, or deliver from inventory a handgun to any other person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, unless the buyer or transferee has a valid handgun qualified purchaser permit issued by the State Bureau of Identification under § 1448D of this title.

(3) For the purposes of this section:

a. "Handgun" means a pistol, revolver, or other firearm designed to be readily capable of being fired when held in 1 hand.

b. "Transferor" means a licensed dealer, licensed manufacturer, or licensed importer, or employee thereof, or any other person who sells, transfers or delivers a firearm.

(b) A licensed importer, licensed manufacturer, or licensed dealer may not sell, transfer, or deliver from inventory any firearm to any other person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, unless and until being informed that it may "proceed" with the sale, transfer, or delivery from inventory of a firearm by the State Bureau of Identification, through the Firearm Transaction Approval Program under subchapter VI of Chapter 85 of this title, following a request for a background check under subsection (a) of this section or 25 days have elapsed from the date of the request for a background check and a denial has not occurred.

(c) For purposes of this section, "firearm" means as defined in § 8571 of this title.

(d) [Repealed.]

(e) This section does not apply to any of the following:

(1) Any firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system manufactured in or before 1898.

(2) Any replica of any firearm described in paragraph (e)(1) of this section if the replica meets 1 of the following:

a. Is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition.

b. Uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(3) Any shotgun, which is defined as a firearm designed or intended to be fired from the shoulder and designed or made to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(4) The return, by a licensed pawnbroker, of a firearm to the person from whom it was received.

(5) Transactions in which the potential buyer or transferee holds a valid concealed deadly weapons license under §§ 1441, 1441A, and 1441B of this title.

(6) Transactions involving a "law-enforcement officer" as defined by § 222 of this title, which include transactions by a "law-enforcement agency," as defined under § 8584 of this title, for firearms to be used by law-enforcement officers employed by the law-enforcement agency in the performance of the law-enforcement officers' official duties.

(f) A transferor who wilfully and intentionally requests a background check from the State Bureau of Identification, through the Firearm Transaction Approval Program under subchapter VI of Chapter 85 of this title, for any purpose other than compliance with subsection (a) of this section, or § 1441(a)(1) or § 1448B(a) of this title, or wilfully and intentionally disseminates any information from the background check to any person other than the subject of such information or discloses to any person the unique identification number is guilty of a class A misdemeanor. The Superior Court has exclusive jurisdiction for all offenses under this subsection.

(g) Any person who, in connection with the purchase, transfer, or attempted purchase or transfer of a firearm pursuant to subsection (a) of this section or § 1448B(a) of this title, wilfully and intentionally makes any materially false oral or written statement or wilfully and intentionally furnishes or exhibits any false identification intended or likely to deceive the licensee is guilty of a class G felony.

(h) A transferor who wilfully and intentionally sells or delivers a firearm in violation of this section is guilty of a class A misdemeanor. A second or subsequent offense by an individual is a class G felony. The Superior Court has exclusive jurisdiction for all offenses under this subsection.

(i) The SBI shall provide to the judiciary committees of the Senate and House of Representatives an annual report including the number of inquiries made under this section and § 1448B of this title for the prior calendar year. The report must include the number of inquiries received from licensees, the number of inquiries resulting in a determination that the potential buyer or transferee was prohibited from receipt or possession of a firearm under § 1448 of this title or federal law, and the estimated costs of administering the Firearm Transaction Approval Program under subchapter VI of Chapter 85 of this title.

(j) Notwithstanding Chapter 89 of this title, Chapter 10 of Title 29, and other laws of this State, the SBI shall release records and data required by this section and by § 1448B of this title. The SBI may not release or disclose criminal records or data except as specified in this section and in § 1448B of this title.

(k) Records, data, information, or reports containing the name, address, date of birth, or other identifying data of either the transferor or transferee or which contain the make, model, caliber, serial number, or other identifying data of any firearm which are required, authorized, or maintained under this section, § 1448B of this title, or by Chapter 9 of Title 24, are not subject to disclosure or release under the Freedom of Information Act, Chapter 100 of Title 29.

(*l*) *Relief from Disabilities Program. —*

A person who is subject to the disabilities of 18 U.S.C. § 922(d)(4) and (g)(4) or of § 1448(a)(2) of this title, except a person subject to an order for relinquishment under § 1448C(d)(1) of this title, because of an adjudication or commitment under the laws of this State may petition for relief from a firearms or projectile weapons prohibition from the Relief from Disabilities Board. The Relief from Disabilities Board shall be comprised of 3 members, with the chairperson appointed by and serving at the pleasure of the Secretary of Safety and Homeland Security, and 2 members appointed by and serving at the pleasure of the Secretary of the Department of Health and Social Services, 1 of whom shall be a licensed psychiatrist.

(1) The Board shall consider the petition for relief in accordance with all of the following:

a. The Board shall give the petitioner the opportunity to present evidence to the Board in a closed and confidential hearing on the record.

b. The Board shall maintain a record of the hearing for purposes of appellate review.

(2) In determining whether to grant relief, the Board shall consider evidence regarding all of the following:

a. The circumstances regarding the firearms or projectile weapons disabilities pursuant to § 1448(a)(2) of this title or18 U.S.C. § 922(d)(4) and (g)(4).

b. The petitioner's record, which must include, at a minimum, the petitioner's mental health record, including a certificate of a medical doctor or psychiatrist licensed in this State that the person is no longer suffering from a mental disorder which interferes or handicaps the person from handling deadly weapons.

c. Criminal history records.

d. The petitioner's reputation as evidenced through character witness statements, testimony, or other character evidence.

(3) The Board shall have the authority to require that the petitioner undergo a clinical evaluation and risk assessment, which it may also consider as evidence in determining whether to approve or deny the petition for relief.

(4) After a hearing on the record, the Board shall grant relief if it finds, by a preponderance of the evidence, all of the following apply:

a. The petitioner will not be likely to act in a manner dangerous to public safety.

b. Granting the relief will not be contrary to the public interest.

(5) The Board shall issue its decision in writing explaining the reasons for a denial or grant of relief.

(6) Any person whose petition for relief has been denied by the Relief from Disabilities Board has a right to a de novo judicial review in the Superior Court. The Superior Court shall consider the record of the Board hearing on the petition for relief, the decision of the Board, and, at the Court's discretion, any additional evidence it deems necessary to conduct its review.

(7) On notice that a petition for relief has been granted, the Department of Safety and Homeland Security shall, as soon as practicable, do both of the following:

a. Cause the petitioner's record to be updated, corrected, modified, or removed from any database maintained and made available to NICS and SBI to reflect that the petitioner is no longer subject to a firearms or projectile weapons prohibition as it relates to § 1448(a)(2) of this title or18 U.S.C. § 922(d)(4) and (g)(4).

b. Notify the Attorney General of the United States and the Attorney General of this State that the petitioner is no longer subject to a firearms or projectile weapons prohibition under § 1448(a)(2) of this title or18 U.S.C. § 922(d)(4) and (g)(4).

(m) The SBI shall adopt regulations, consistent with federal law, relating to compliance with NICS, including issues relating to the transmission of data, the transfer of existing data in the existing state criminal background check database, and the relief from disabilities process under subsection (*l*) of this section. In preparing such regulations, the SBI shall consult with the Department of Health and Social Services, the courts, the Department of Children, Youth and Their Families, the Department of State, and such other entities as may be necessary or advisable. Regulations adopted under this section must include provisions to ensure the identity, confidentiality, and security of all records and data provided under this section.

(67 Del. Laws, c. 414, § 1; 69 Del. Laws, c. 224, § 3; 69 Del. Laws, c. 293, §§ 1-5; 70 Del. Laws, c. 20, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 104, § 1; 78 Del. Laws, c. 137, §§ 6-13; 79 Del. Laws, c. 20, §§ 2-7; 80 Del. Laws, c. 273, § 1; 81 Del. Laws, c. 232, § 3; 83 Del. Laws, c. 283, § 11; 83 Del. Laws, c. 330, § 2; 83 Del. Laws, c. 332, § 2; 84 Del. Laws, c. 259, § 2; 84 Del. Laws, c. 525, § 10; 85 Del. Laws, c. 234, § 2.)

§ 1448B. Background checks and handgun qualified purchaser permit required for sales of firearms — Unlicensed persons [For application of this section, see 84 Del. Laws, c. 259, § 5].

(a)(1) An unlicensed person may not sell or transfer any firearm to any other unlicensed person without having conducted a background check through a licensed firearms dealer in accordance with § 1448A of this title and § 904A of Title 24 to determine whether the sale or transfer would be in violation of federal or state law, and until the licensed firearms dealer has been informed that the sale or transfer of the firearm may "proceed" by the State Bureau of Identification, through the Firearm Transaction Approval Program under subchapter VI of Chapter 85 of this title or 25 days have elapsed from the date of the request for a background check and a denial has not occurred.

(2) An unlicensed person may not sell or transfer a handgun to any other unlicensed person unless the potential purchaser or transferee has a valid handgun qualified purchaser permit issued by the State Bureau of Identification under § 1448D of this title.

(b) For purposes of this section:

(1) "Handgun" means a pistol, revolver, or other firearm designed to be readily capable of being fired when held in 1 hand.

(2) "Licensed dealer" means any person licensed as a deadly weapons dealer under Chapter 9 of Title 24 and 18 U.S.C. § 921 et seq.

(3) "Firearm" means as defined under § 8571 of Title 11.

(4) "Prospective buyer" includes a prospective transferee.

(5) "Prospective seller" includes a prospective transferor.

(6) "Transfer" means assigning, pledging, leasing, loaning, giving away, or otherwise disposing of, but does not include any of the following:

a. The loan of a firearm for any lawful purpose, for a period of 14 days or less, by the owner of the firearm to a person known personally to the owner.

b. A temporary transfer for any lawful purpose that occurs while in the continuous presence of the owner of the firearm, if the temporary transfer does not exceed 24 hours in duration.

c. The transfer of a firearm for repair, service, or modification to a licensed gunsmith or other person lawfully engaged in such activities as a regular course of trade or business.

d. A transfer that occurs by operation of law or because of the death of a person for whom the prospective transferor is an executor or administrator of an estate or a trustee of a trust created in a will.

(7) “Unlicensed person” means any person who is not a licensed importer, licensed manufacturer, or licensed dealer.

(c) This section does not apply to any of the following:

(1) Transactions in which the prospective buyer is a parent, mother-in-law, father-in-law, stepparent, legal guardian, grandparent, child, daughter-in-law, son-in-law, stepchild, grandchild, sibling, sister-in-law, brother-in-law, spouse, or civil union partner of the seller or transferor.

(2) Any firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898.

(3) Any replica of any firearm described in paragraph (c)(2) of this section if the replica meets 1 of the following:

a. Is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition.

b. Uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(4) Any muzzle-loading firearm designed for hunting or competitive shooting not requiring a criminal background check under federal law.

(5) Transactions in which the prospective buyer is a qualified law-enforcement officer, as defined in § 1441A of this title, or a qualified retired law-enforcement officer, as defined in § 1441B of this title.

(6) Transactions in which the prospective buyer holds a current and valid concealed carry permit issued by the Superior Court under § 1441 of this title.

(7) Transactions in which the prospective buyer is a bona fide member or adherent of an organized church or religious group, the tenets of which prohibit photographic identification. Notwithstanding this paragraph (c)(7), an unlicensed person may not sell or transfer any firearm to the prospective buyer without having a background check conducted under subsection (f) of this section to determine whether the sale or transfer would be in violation of federal or state law.

(8) Transactions involving the sale or transfer of a curio or relic to a licensed collector, as such terms are defined in 27 C.F.R. § 478.11.

(9) Transactions involving the sale or transfer of a firearm to an authorized representative of the State or any subdivision thereof as part of an authorized voluntary gun buyback program.

(10) Transactions in which the prospective buyer is a “law-enforcement agency” as defined under § 8584 of this title, and is obtaining firearms to be used by law-enforcement officers employed by the law-enforcement agency in the performance of the law-enforcement officers’ official duties.

(d) Notwithstanding anything to the contrary in this section, a fee for a background check may not be charged for the return of a firearm to its owner that has been repaired, serviced, or modified by a licensed gunsmith or other person lawfully engaged in such activities as a regular course of trade or business.

(e) Any person who knowingly sells or transfers a firearm in violation of this section is guilty of a class A misdemeanor. Any subsequent offense is a class G felony. The Superior Court has exclusive jurisdiction for all offenses under this section.

(f) The State Bureau of Identification (the “Bureau”) shall facilitate the sale or transfer of any firearm in which the prospective buyer is a bona fide member or adherent of an organized church or religious group, the tenets of which prohibit photographic identification, under the following procedure:

(1) The prospective buyer and prospective seller shall jointly appear at the Bureau during regular hours of business, and shall inform the Bureau of their desire to avail themselves of this section. The actual cost of the background check must be paid by either the prospective buyer or prospective seller.

(2) The prospective buyer shall submit fingerprints and other necessary information to complete a background check under the Firearm Transaction Approval Program under subchapter VI of Chapter 85 of this title. In addition, the prospective buyer shall submit to the Bureau a signed affidavit stating that photographic identification conflicts with the tenets of an organized church or religious group of which the prospective buyer is a bona fide member.

(3) If the background check under paragraph (f)(2) of this section reveals that the prospective buyer is prohibited from possessing, purchasing, or owning a firearm, the Bureau shall inform the prospective buyer and prospective seller of that fact and the transfer may not take place.

(4) The Bureau shall maintain a record of all background checks conducted under this section to the same extent as is required of licensed dealers under Chapter 9 of Title 24.

(5) The Bureau may promulgate such reasonable forms and regulations consistent with federal law, as may be necessary or desirable to administer and enforce this subsection.

(79 Del. Laws, c. 20, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 273, § 2; 81 Del. Laws, c. 79, § 14; 83 Del. Laws, c. 330, § 3; 84 Del. Laws, c. 259, § 3; 85 Del. Laws, c. 234, § 4.)

§ 1448C. Civil procedures to relinquish a firearm, projectile weapon, or ammunition.

(a) For the purposes of this section:

(1) “Ammunition” means as defined in § 1448(c) of this title.

(2) “Dangerous to others” means that by reason of mental condition there is a substantial likelihood that the person will inflict serious bodily harm upon another person within the reasonably foreseeable future. This determination must take into account a person’s history, recent behavior, and any recent act or threat.

(3) “Dangerous to others or self” means as “dangerous to others” and “dangerous to self” are defined in this subsection.

(4) “Dangerous to self” means that by reason of mental condition there is a substantial likelihood that the person will sustain serious bodily harm to oneself within the reasonably foreseeable future. This determination must take into account a person’s history, recent behavior, and any recent act or threat.

(5) “Law-enforcement agency” means an agency established by this State, or by any county or municipality within this State, to enforce criminal laws or investigate suspected criminal activity.

(b) If, after October 30, 2018, a law-enforcement agency receives a written report about an individual under § 5402 or § 5403 of Title 16, the law-enforcement agency shall determine if there is probable cause that the individual is dangerous to others or self and in possession of a firearm, projectile weapon, or ammunition.

(1) a. If the law-enforcement agency determines that there is probable cause that the individual is dangerous to others or self and in possession of a firearm, projectile weapon, or ammunition, the law-enforcement agency shall do both of the following:

1. Immediately seek an order from the Justice of the Peace Court that the individual relinquish a firearm, projectile weapon, or ammunition owned, possessed, or controlled by the individual.

2. Immediately refer the report under § 5402 or § 5403 of Title 16 and its investigative findings to the Department of Justice.

b. In making the probable cause determination under paragraph (b)(1)a. of this section, a law-enforcement agency must determine if the individual is subject to involuntary commitment under § 5009, § 5011, or § 5013 of Title 16. If the individual is subject of involuntary commitment, the law-enforcement agency may not seek an order under this paragraph (b)(1).

(2) The Department of Justice may, upon review of the report and the law-enforcement agency’s investigative findings, petition the Superior Court for an order that the individual relinquish a firearm, projectile weapon, or ammunition owned, possessed, or controlled by the individual. The Department of Justice must file 1 of the following with the Superior Court within 30 days after the entry of the Justice of the Peace Court’s order under paragraph (d)(1) of this section:

a. A petition under this paragraph (b)(2).

b. A petition requesting additional time to file a petition under this paragraph (b)(2) for good cause shown.

1. If the Superior Court denies the Department of Justice’s request for additional time to file a petition under this paragraph (b)(2)b., the Department of Justice has either the remainder of the 30 days provided by this paragraph (b)(2) or 7 days from the date of the Superior Court’s denial, whichever is longer, to file a petition with Superior Court under this paragraph (b)(2).

2. If the Superior Court approves the Department of Justice’s request for additional time to file a petition under this paragraph (b)(2)b., the Court may not grant the Department more than 15 days to file the petition from the date of the Court’s approval.

(3) If the Department of Justice does not file a petition with Superior Court under paragraph (b)(2) of this section within the timeframes under paragraph (b)(2) of this section, the Justice of the Peace Court’s order is void and a law-enforcement agency holding the firearm, projectile weapon, or ammunition of the individual subject to the order must return the firearm, projectile weapon, or ammunition to the individual.

(c) (1) The following procedures govern a proceeding under paragraph (b)(1)a. of this section:

a. The Justice of the Peace Court shall immediately hear a request for an order under paragraph (b)(1)a. of this section.

b. The law enforcement agency has the burden of demonstrating that proof by a preponderance of the evidence exists to believe that the individual subject to a report under § 5402 or § 5403 of Title 16 is dangerous to others or self and in possession of a firearm, projectile weapon, or ammunition.

c. The individual does not have the right to be heard or to notice that the law-enforcement agency has sought an order under paragraph (b)(1)a. of this section.

(2) The following procedures govern a proceeding under paragraph (b)(2) of this section:

a. The individual has the right to be heard.

b. If a hearing is requested, it must be held within 15 days of the Department of Justice’s filing of the petition under paragraph (b)(2) of this section, unless extended by the Court for good cause shown.

c. If a hearing is held, the individual has the right to notice of the hearing, to present evidence, and to cross examine adverse witnesses.

d. If a hearing is held, the hearing must be closed to the public and testimony and evidence must be kept confidential, unless the individual requests the hearing be public.

e. If a hearing is held, the hearing must be on the record to allow for appellate review.

f. The Department of Justice has the burden of proving by clear and convincing evidence that the individual is dangerous to others or self.

(3) a. The Justice of the Peace Court may adopt additional rules governing proceedings under paragraph (b)(1)a. of this section.

b. The Superior Court may adopt additional rules governing proceedings under paragraph (b)(2) of this section.

(d) (1) If the Justice of the Peace Court finds, by a preponderance of the evidence, that an individual is dangerous to others or self, the Court shall order the individual to relinquish a firearm, projectile weapon, or ammunition owned, possessed, or controlled by the individual. The Court may do any of the following through its order:

a. Require the individual to relinquish to a law-enforcement agency receiving the Court's order a firearm, projectile weapon, or ammunition owned, possessed, or controlled by the individual.

b. Prohibit the individual from residing with another individual who owns, possesses, or controls a firearm, projectile weapon, or ammunition. Nothing in this section may be construed to impair or limit the rights, under the Second Amendment to the United States Constitution or article I, § 20 of the Delaware Constitution, of an individual who is not the subject of the Court's order of relinquishment.

c. Direct a law-enforcement agency having jurisdiction where the individual resides or a firearm, projectile weapon, or ammunition is located to immediately search for and seize a firearm, projectile weapon, or ammunition owned, possessed, or controlled by the individual.

(2) If the Superior Court finds by clear and convincing evidence that an individual is dangerous to others or self, the Court shall order the individual to relinquish a firearm, projectile weapon, or ammunition owned, possessed, or controlled by the individual. The Court may do any of the following through its order:

a. Require the individual to relinquish to a law-enforcement agency receiving the Court's order a firearm, projectile weapon, or ammunition owned, possessed, or controlled by the individual.

b. Allow the individual to voluntarily relinquish to a law-enforcement agency receiving the Court's order a firearm, projectile weapon, or ammunition owned, possessed, or controlled by the individual.

c. Allow the individual to relinquish a firearm, projectile weapon, or ammunition owned, possessed, or controlled by the individual to a designee of the individual. A designee of the individual must not reside with the individual and must not be a person prohibited under § 1448 of this title. The Court must find that the designee of the individual will keep the firearm, projectile weapon, or ammunition owned, possessed, or controlled by the individual out of the possession of the individual.

d. Prohibit the individual from residing with another individual who owns, possesses, or controls a firearm, projectile weapon, or ammunition. Nothing in this section may be construed to impair or limit the rights, under the Second Amendment to the United States Constitution or article I, § 20 of the Delaware Constitution, of an individual who is not the subject of the Court's order of relinquishment.

e. Direct a law-enforcement agency having jurisdiction where the individual resides or a firearm, projectile weapon, or ammunition is located to immediately search for and seize a firearm, projectile weapon, or ammunition of the individual if the Department of Justice shows that the individual has ownership, possession, or control of a firearm, projectile weapon, or ammunition.

(e) (1) An individual subject to the Superior Court's order of relinquishment may petition the Relief from Disabilities Board for an order to return a firearm, projectile weapon, or ammunition under § 1448A(*l*) of this title.

(2) If the basis for relinquishment under this section is removed by the Relief from Disabilities Board established by § 1448A(*l*) of this title, a firearm, projectile weapon, or ammunition taken from the individual must be restored in a timely manner without the additional requirement of petitioning under § 1448A(*l*) of this title.

(f) Any party in interest aggrieved by a decision of the Superior Court's order of relinquishment under this section may appeal the decision to the Supreme Court.

(g) (1) The State Police and the Department of Justice shall work with county and municipal law-enforcement agencies and the Department of Health and Social Services, and its Division of Substance Abuse and Mental Health, to develop appropriate internal policies and regulations to ensure that personnel who act under this section are trained on appropriate mental health risk assessment procedures and to look for histories of violence.

(2) The Supreme Court, Superior Court, Justice of the Peace Court, Department of Justice, State Police, State Bureau of Identification, Delaware Criminal Justice Information System Board of Managers, and the Department of Health and Social Services may promulgate rules and regulations to carry out the purposes of this section, § 1448(a)(2) of this title, and §§ 5402 and 5403 of Title 16.

(81 Del. Laws, c. 232, § 2; 82 Del. Laws, c. 122, § 1; 84 Del. Laws, c. 525, § 11.)

§ 1448D. Handgun qualified purchaser permit required to purchase handguns [For application of this section, see 84 Del. Laws, c. 259, § 5].

(a) For purposes of this section:

(1) "Director" means the Director of the State Bureau of Identification.

(2) "Handgun" means a pistol, revolver, or other firearm designed to be readily capable of being fired when held in 1 hand.

(3) "Qualified law-enforcement officer" means as defined under § 1441A(c) of this title.

(4) "Qualified retired law-enforcement officer" means as defined under § 1441B(c) of this title.

(5) "SBI" means the State Bureau of Identification within the Division of State Police.

(b) The SBI shall, on application, issue a handgun qualified purchaser permit to all of the following:

(1) A person not disqualified under subsection (f) of this section.

(2) A person who the Director determines to be 1 of the following:

a. A qualified law-enforcement officer.

b. A qualified retired law-enforcement officer.

(c) (1) A person applying for a handgun qualified purchaser permit as a qualified law-enforcement officer, as a "law-enforcement agency," as defined under § 8584 of this title, for a handgun to be used by law-enforcement officers employed by the law-enforcement agency in the performance of the law-enforcement officers' official duties, or a qualified retired law-enforcement officer is not subject to paragraphs (f)(1) or (f)(4) or subsection (h) of this section.

(2) A person who holds a valid license to carry concealed deadly weapons issued by the Superior Court under § 1441 of this title is not required to apply for a handgun qualified purchaser permit under this section before purchasing a handgun.

(d) (1) A person's application for a handgun qualified purchaser permit must be in the form prescribed by the SBI and include all of the following information about the person:

a. Name.

b. Residence.

c. Employer.

d. Date of birth.

e. Sex.

f. Gender.

g. Physical description, including distinguishing physical characteristics.

h. Race.

i. Ethnicity.

j. National origin.

k. English language proficiency.

(2) An application must include a sworn, written affirmation that the person is not prohibited from possessing a firearm under § 1448 of this title or any other provision of state or federal law.

(e) Applications must be made available by the SBI and licensed dealers.

(f) Except as otherwise provided under this chapter, the Director may not issue a handgun qualified purchaser permit to any of the following:

(1) A person under the age of 21.

(2) A person who is prohibited from purchasing, owning, possessing, or controlling a deadly weapon under § 1448 of this title.

(3) If supported by probable cause, a person who poses a danger of causing physical injury to self or others by owning, purchasing, or possessing firearms.

(4) A person who, in the 5 years before the date of application, has not completed a firearms training course that is sponsored by a federal, state, county, or municipal law-enforcement agency; a college; a nationally-recognized organization that customarily offers firearms training; or a firearms training school with instructors certified by a nationally-recognized organization that customarily offers firearms training. The firearms training course must consist of at least all of the following:

a. Instruction regarding knowledge and safe handling of firearms.

b. Instruction regarding safe storage of firearms and child safety.

c. Instruction regarding knowledge and safe handling of ammunition.

d. Instruction regarding safe storage of ammunition and child safety.

e. Instruction regarding safe firearms shooting fundamentals.

f. Live fire shooting exercises conducted on a range, including the expenditure of a minimum of 100 rounds of ammunition.

g. Identification of ways to develop and maintain firearm shooting skills.

h. Instruction regarding federal and state laws pertaining to the lawful purchase, ownership, transportation, use, and possession of firearms.

i. Instruction regarding the laws of this State pertaining to the use of deadly force.

j. Instruction regarding techniques for avoiding a criminal attack and how to manage a violent confrontation, including conflict resolution.

k. Instruction regarding suicide prevention.

(5) A person who is otherwise prohibited from purchasing or possessing firearms under the law of this State or federal law.

(g) The following persons are exempt from the training requirements of this section:

(1) Qualified law-enforcement officers;

(2) Qualified retired law-enforcement officers;

(3) Sheriffs and deputy sheriffs if otherwise qualified under this section;

(4) Persons licensed to carry a concealed deadly weapon under § 1441 of this title;

(5) Federal firearms licensees and Delaware deadly weapons dealers licensed and regulated under Chapter 9 of Title 24;

(6) Armored car guards and security personnel licensed and regulated under Chapter 13 of Title 24;

(7) Constables commissioned and regulated under Chapter 56 of Title 24;

(8) Delaware correctional officers;

(9) Members of the United States Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard and the reserve elements thereof, including members of the Delaware National Guard;

(10) Instructors certified by the National Rifle Association of America;

(11) Persons holding a valid Delaware hunter safety certification card;

(12) Competitive shooters holding competitor classification cards issued by the National Rifle Association of America, the International Defensive Pistol Association, the International Practical Shooting Confederation, or the United States Practical Shooting Association.

(h) A person must submit an application for a handgun qualified purchaser permit to the SBI, who shall investigate the application and, unless grounds exist for the denial thereof, grant the handgun qualified purchaser permit within 30 days from the date of receipt of the application.

(1) The SBI shall take the fingerprints of each person who applies for a handgun qualified purchaser permit and compare the fingerprints with any records of fingerprints in this State. The SBI shall conduct a search of the Delaware Criminal Justice Information System to determine if the applicant is prohibited under the law of this State or federal law from purchasing or possessing a firearm. The SBI shall submit the person's fingerprints to the Federal Bureau of Investigation with a request that a search of the National Instant Criminal Background Check System be conducted.

(2) a. In investigating the application, the SBI shall contact the local law-enforcement agencies of the county or municipality in which the person resides and inquire as to any facts and circumstances relevant to the person's qualification for a handgun qualified purchaser permit.

b. If an applicant has resided in the applicant's county or municipality of residence for less than 5 years, the SBI shall contact the local law-enforcement agency of each county or municipality in which the applicant has resided for the previous 5 years and inquire as to any facts and circumstances relevant to the person's qualification for a handgun qualified purchaser permit.

(i) If the Director determines that a person does not qualify under subsection (b) of this section for a handgun qualified purchaser permit, the Director shall deny the application and notify the person, in writing, setting forth the specific reasons for the denial.

(j) (1) A handgun qualified purchaser permit is valid for a period of 2 years from the date of issuance.

(2) A handgun qualified purchaser permit must consist of a unique permit number that corresponds to information retained by the SBI and including, at minimum, the following:

a. The full name and address of the person issued the handgun qualified purchaser permit.

b. The date on which the handgun qualified purchaser permit expires.

c. Any other information required by state law.

(3) A person issued a handgun qualified purchaser permit may purchase handguns using the handgun qualified purchaser permit while the handgun qualified purchaser permit is valid.

(k) A handgun qualified purchaser permit is void if, at any time following the issuance of a handgun qualified purchaser permit, any of the following apply to a person issued the handgun qualified purchaser permit:

(1) The person becomes disqualified for any reason under subsection (f) of this section.

(2) The person is no longer a qualified law-enforcement officer or a qualified retired law-enforcement officer.

(*l*) (1) The Director may revoke a handgun qualified purchaser permit at any time on a finding that any of the following apply to a person issued the handgun qualified purchaser permit:

a. The person is disqualified for any reason under subsection (f) of this section.

b. The person is no longer a qualified law-enforcement officer or a qualified retired law-enforcement officer.

(2) The Director shall give written notice of revocation without unnecessary delay to the person issued the handgun qualified purchaser permit, the State Police, and local law-enforcement agencies of the county or municipality in which the person resides.

(3) If the Director has given written notice of revocation and there is probable cause to believe that the person issued the handgun qualified purchaser permit has handguns purchased with the handgun qualified purchaser permit in the person's custody, possession, or control, the State Police or a local law-enforcement agency shall take action to ensure surrender or removal of the handguns.

(m) (1) A person aggrieved by the denial or revocation of a handgun qualified purchaser permit may request a hearing in the Justice of the Peace Court for the county in which the person resides.

a. The request for a hearing must be made in writing within 30 days of the denial of the application for the handgun qualified purchase permit or the revocation of the handgun qualified purchase permit.

b. The person shall deliver a copy of the person's request for a hearing to the Director and any chief of police of the county or municipality in which the person resides.

c. The hearing must be held and a record made thereof within 21 days of the receipt of the application for a hearing by a Justice of the Peace.

d. A filing fee is not required to obtain a hearing.

e. The Justice of the Peace Court shall designate a simple form to initiate an appeal.

(2) The Justice of the Peace Court's decision may be appealed to the Superior Court for a hearing de novo. The appeal must be filed within 15 days. The Superior Court shall schedule the de novo hearing within 15 days of the filing of the appeal.

(n) Not later than November 16, 2026, and annually thereafter, the Director shall submit to the House and Senate committees on the Judiciary a report that includes all of the following, with respect to the preceding year:

(1) The number of applications submitted for a handgun qualified purchaser permit, the number of handgun qualified purchase permits issued, and the number of applications denied.

(2) The number of hearings requested by applicants aggrieved by a denial or revocation of a handgun qualified purchaser permit and the disposition of those hearings.

(3) The number of handgun qualified purchaser permits revoked by the Director.

(4) The number of cases in which the State Police or a local law-enforcement agency has taken action to remove handguns purchased with a handgun qualified purchase permit that was subsequently revoked and the number of handguns recovered.

(5) Demographic data on applicants seeking a handgun qualified purchaser permit, including race, ethnicity, national origin, sex, gender, age, disability, and English language proficiency.

(6) Demographic data on applicants aggrieved by a denial or revocation for a handgun qualified purchaser permit, including race, ethnicity, national origin, sex, gender, age, disability, and English language proficiency.

(o) (1) After a permit has been issued or a denial has become final, SBI may not retain any records relating to the application or permit other than the name and date of birth of the applicant, the date the permit was issued or the denial became final, and the date of the firearms training course completed by the applicant.

(2) Applications and any other information gathered under this section are not "public records" for purposes of the Freedom of Information Act, Chapter 100 of Title 29.

(p) An individual identified under subsection (g) of this section is exempt from the training requirement only if the firearm training undertaken pursuant to their employment meets all the requirements of paragraph (f)(4) of this section.

(q) The SBI may adopt regulations to administer, implement, and enforce this section.

(84 Del. Laws, c. 259, § 1; 85 Del. Laws, c. 234, § 5.)

§ 1449. Wearing body armor during commission of felony; class B felony.

(a) A person who wears body armor during the commission of a felony is guilty of wearing body armor during the commission of a felony.

(b) Notwithstanding § 4205 of this title, the minimum sentence for violation of this section shall be not less than 3 years which minimum sentence shall not be subject to suspension and no person convicted for a violation of this section shall be eligible for parole or probation during such 3 years.

(c) Any sentence imposed upon conviction for wearing body armor during the commission of a felony shall not run concurrently with any other sentence. In any instance where a person is convicted of a felony, together with the conviction for wearing body armor during the commission of a felony, such person shall serve the sentence for the felony itself before beginning the sentence imposed for wearing body armor during the commission of such felony.

(d) Every person charged under this section over the age of 16 years may be tried as an adult pursuant to §§ 1010 and 1011 of Title 10, notwithstanding any contrary provision of statutes governing the Family Court or any other state law.

(e) As used in this section, the term "body armor" means any material designed to provide bullet penetration resistance.

(f) A person may be found guilty of violating this section notwithstanding that the felony for which the person is convicted and during which the person wore body armor is a lesser included felony of the one originally charged.

(g) Wearing body armor during the commission of a felony is a class B felony.

(63 Del. Laws, c. 368, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 199, § 5.)

§ 1450. Receiving a stolen firearm; class F felony.

A person is guilty of receiving a stolen firearm if the person intentionally receives, retains or disposes of a firearm of another person with intent to deprive the owner of it or to appropriate it, knowing that it has been acquired under circumstances amounting to theft, or believing that it has been so acquired. Receiving a stolen firearm is a class F felony. Knowledge that a firearm has been acquired under circumstances amounting to theft may be presumed in the case of a person who acquires it for a consideration which the person knows is substantially below its reasonable value.

(64 Del. Laws, c. 38, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1451. Theft of a firearm; class F felony.

(a) A person is guilty of theft of a firearm when the person takes, exercises control over or obtains a firearm of another person intending to deprive the other person of it or appropriate it.

(b) Theft of a firearm is a class F felony.

(64 Del. Laws, c. 37, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1452. Unlawfully dealing with knuckles-combination knife; class B misdemeanor.

A person is guilty of unlawfully dealing with a knuckles-combination knife when the person sells, offers for sale or has in possession a knife, the blade of which is supported by a knuckle ring grip handle.

Unlawfully dealing with a knuckles-combination knife is a class B misdemeanor.

(65 Del. Laws, c. 465, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1453. Unlawfully dealing with martial arts throwing star; class B misdemeanor.

A person is guilty of unlawfully dealing with a martial arts throwing star when the person sells, offers for sale or has in possession a sharp metal throwing star.

Unlawfully dealing with a martial arts throwing star is a class B misdemeanor.

(65 Del. Laws, c. 465, § 1; 67 Del. Laws, c. 130, § 8.)

§ 1454. Giving a firearm or projectile weapon to person prohibited; class F felony.

A person is guilty of giving a firearm or projectile weapon to certain persons prohibited when the person sells, transfers, gives, lends or otherwise furnishes a firearm or projectile weapon to a person knowing that said person is a person prohibited as is defined in § 1448 of this title.

Giving a firearm or projectile weapon to certain persons prohibited is a class F felony.

(68 Del. Laws, c. 47, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 525, § 12.)

§ 1455. Engaging in a firearm or projectile weapon transaction on behalf of another; class E felony; class C felony.

(a) A person is guilty of engaging in a firearm or projectile weapon transaction on behalf of another when the person purchases or obtains a firearm or projectile weapon on behalf of a person not qualified to legally purchase, own or possess a firearm or projectile weapon in this State or for the purpose of selling, giving or otherwise transferring a firearm or projectile weapon to a person not legally qualified to purchase, own or possess a firearm or projectile weapon in this State.

(b) Engaging in a firearm or projectile weapon transaction on behalf of another is a class E felony for the first offense, and a class C felony for each subsequent like offense.

(c) (1) A federal firearms licensee who suspects a person engaged in a firearm or projectile weapon transaction may be violating this section may alert SBI through the same hotline established under § 8572 of this title for background checks.

(2) Upon receiving notice of a possible transaction in violation of this section, SBI shall forward information relating to the transaction to the appropriate law-enforcement agency for further investigation.

(69 Del. Laws, c. 220, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 228, § 1; 83 Del. Laws, c. 330, § 4; 84 Del. Laws, c. 525, § 13.)

§ 1456. Unsafe storage of a firearm or projectile weapon; class A or B misdemeanor.

(a) (1) A person is guilty of unsafe storage of a firearm or projectile weapon when the person intentionally or recklessly stores or leaves a loaded firearm or projectile weapon in a place other than a vehicle within the reach or easy access of an unauthorized person, the unauthorized person obtains the firearm or projectile weapon, and all of the following applies:

a. The firearm or projectile weapon was not stored in a locked box or container. This paragraph(a)(1)a. does not apply to a projectile weapon that was stored in a way to render the projectile weapon not readily operable.

b. The firearm or projectile weapon was not disabled with a tamper-resistant trigger lock which was properly engaged so as to render the firearm or projectile weapon inoperable by a person other than the owner or other lawfully-authorized user. This paragraph (a)(1)b. does not apply to a projectile weapon that cannot be fitted with a trigger lock.

c. The firearm or projectile weapon was not stored in a location that a reasonable person would have believed to be secure from access by an unauthorized person.

d. The unauthorized person did not obtain the firearm or projectile weapon as the result of an unlawful entry by any person.

(2) For the purposes of this section:

a. "Locked container" means a secure container that is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device that when properly engaged to renders the firearm inaccessible by any individual other than the owner or an authorized person. "Locked container" does not include the glove compartment of a motor vehicle, unless the glove compartment can be manually locked to render the firearm inaccessible by any individual other than the owner or an authorized person.

b. "Not readily operable" means that the projectile weapon is disassembled, broken down, or stored in a manner to prevent its immediate use.

c. "Stores or leaves" does not mean when the firearm or projectile weapon is carried by or under the control of the owner or other lawfully-authorized user.

d. "Unauthorized person" means a child or person prohibited by state or federal law from owning or possessing a firearm or projectile weapon.

(b) A person is guilty of unsafe storage of a firearm in a vehicle when the person knowingly leaves a firearm unattended in a vehicle, and the firearm is not stored in any of the following:

(1) A locked box or container.

(2) A locked firearms rack that is on a motor vehicle.

(3) Locked in the trunk of the vehicle.

(c) (1) Unsafe storage of a firearm or projectile weapon is a class B misdemeanor if paragraphs (c)(2)a., b., or c. of this section do not apply.

(2) Unsafe storage of a firearm or projectile weapon is a class A misdemeanor if the unauthorized person does any of the following:

a. Commits or attempts to commit a crime with the firearm or projectile weapon.

b. Uses the firearm or projectile weapon to inflict serious physical injury or death upon any person, including the unauthorized person.

c. Transfers or attempts to transfer the firearm or projectile weapon to another unauthorized person.

(d) (1) Unsafe storage of a firearm in a vehicle under subsection (b) of this section is a class B misdemeanor if paragraph (d)(2) a., b., or c. of this section do not apply.

(2) Unsafe storage of a firearm in a vehicle is a class A misdemeanor if an unauthorized person obtains the firearm, and the unauthorized person does any of the following with the firearm:

a. Commits or attempts to commit a crime with the firearm.

b. Uses the firearm to inflict serious physical injury or death upon any person.

c. Transfers or attempts to transfer the firearm to an unauthorized person.

(e) The Superior Court has jurisdiction over an offense under this section.

(f) It is not an offense under this section if the firearm was manufactured in or before the year 1899 or is a replica of such firearm if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition.

(g) It is not a defense to subsection (b) of this section that the defendant has been issued an otherwise valid license to carry a concealed deadly weapon pursuant to terms of § 1441 of this title.

(69 Del. Laws, c. 360, § 1; 70 Del. Laws, c. 186, § 1; 82 Del. Laws, c. 35, § 1; 84 Del. Laws, c. 371, § 1; 84 Del. Laws, c. 525, § 14.)

§ 1457. Possession of a weapon in a Safe Recreation Zone; class D, E, or F felony; class A or B misdemeanor.

(a) Any person who commits any of the offenses described in subsection (b) of this section, or any juvenile who possesses a firearm or projectile weapon and does so while in or on a "Safe Recreation Zone" shall be guilty of the crime of possession of a weapon in a Safe Recreation Zone.

(b) The underlying offenses in Title 11 shall be:

(1) *Section 1442.* — Carrying a concealed deadly weapon; class G felony; class D felony.

(2) *Section 1444.* — Possessing a destructive weapon; class E felony.

(3) *Section 1446.* — Unlawfully dealing with a switchblade knife; unclassified misdemeanor.

(4) *Section 1448.* — Possession and purchase of deadly weapons by persons prohibited; class F felony.

(5) *Section 1452.* — Unlawfully dealing with knuckles-combination knife; class B misdemeanor.

(6) *Section 1453.* — Unlawfully dealing with martial arts throwing star; class B misdemeanor.

(7) *Section 1466.* —

Manufacture, sale, transport, transfer, purchase, receipt, and possession of assault weapons; class E or F felony.

(c) For the purpose of this section:

(1) "Constable" means an individual who licensed under Chapter 56 of Title 24.

(2) "Firearm" means as defined in § 222 of this title and includes a destructive weapon as defined in § 1444(a) and (c) of this title and includes BB guns.

(3) "Police officer" means as defined in § 8401 of this title.

(4) "Safe Recreation Zone"means any building or structure owned, operated, leased or rented by any county or municipality, or by the State, or by any board, agency, commission, department, corporation or other entity thereof, or by any private organization, which is utilized as a recreation center, athletic field or sports stadium.

(d) Nothing in this section shall be construed to preclude or otherwise limit a prosecution of or conviction for a violation of this chapter or any other provision of law. A person may be convicted both of the crime of possession of a weapon in a Safe Recreation Zone and of the underlying offense as defined elsewhere by the laws of the State.

(e) It shall not be a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place on or in a Safe Recreation Zone.

(f), (g) [Repealed.]

(h) This section does not apply to any of the following:

(1) A police officer.

(2) A constable employed by a recreation zone who is acting in that capacity within a Safe Recreation Zone.

(i) [Repealed.]

(j) The penalty for possession of a weapon in a Safe Recreation Zone shall be:

(1) If the underlying offense is a class B misdemeanor, the crime shall be a class A misdemeanor;

(2) If the underlying offense is an unclassified misdemeanor, the crime shall be a class B misdemeanor;

(3) If the underlying offense is a class E, F, or G felony, the crime shall be one grade higher than the underlying offense.

(4) If the underlying offense is a class D felony, the crime shall also be a class D felony.

(5), (6) [Repealed.]

(70 Del. Laws, c. 213, § 1; 74 Del. Laws, c. 131, §§ 1-4; 76 Del. Laws, c. 326, § 1; 77 Del. Laws, c. 64, §§ 1, 2; 77 Del. Laws, c. 313, §§ 4, 5; 81 Del. Laws, c. 99, § 1; 81 Del. Laws, c. 194, § 1; 81 Del. Laws, c. 425, § 5; 83 Del. Laws, c. 246, § 1; 83 Del. Laws, c. 328, § 2; 84 Del. Laws, c. 175, § 1; 84 Del. Laws, c. 249, § 1; 84 Del. Laws, c. 525, § 15.)

§ 1457A. Possession of a firearm or projectile weapon in a Safe School Zone; class E felony.

(a) As used in this section:

(1) "Constable" means as licensed under Chapter 56 of Title 24.

(2) "Firearm" means as defined in § 222 of this title and includes a destructive weapon as defined in § 1444(a) and (c) of this title and includes BB guns.

(3) "Police officer" means as defined in § 8401 of this title.

(4) "Qualified retired law-enforcement officer" means as defined in § 1441B of this title.

(5) "Safe School Zone" means all of the following:

a. Any building, structure, athletic field, sports stadium, or real property owned, operated, leased, or rented by any public or private school including any kindergarten, elementary, secondary, or vocational-technical school.

b. Any motor vehicle owned, operated, leased, or rented by any public or private school including any kindergarten, elementary, secondary, or vocational-technical school.

(b) Any person who knowingly possesses a firearm or projectile weapon while in a Safe School Zone shall be guilty of the crime of possession of a firearm or projectile weapon in a Safe School Zone.

(c) Subsection (b) of this section does not apply to any of the following:

(1) A police officer.

(2) A constable employed by a school or school district who is acting in an official capacity in a Safe School Zone.

(3) An active-duty member of the United States Armed Forces or Delaware National Guard who is acting in an official capacity in a Safe School Zone.

(4) A holder of a valid license to carry concealed deadly weapons under § 1441 of this title, but only if the firearm or projectile weapon is in a motor vehicle.

(5) An employee of the Department of Services for Children, Youth, and Their Families who is acting in an official capacity in a Safe School Zone and who is authorized by the Secretary of the Department to carry a firearm or projectile weapon while acting in the employee's official capacity.

(6) A probation and parole officer who is acting in an official capacity in a Safe School Zone.

(7) A qualified retired law-enforcement officer who is employed or contracted by a school or school district to assist with security or investigations and who is acting in an official capacity in a Safe School Zone.

(d) Subsection (b) of this section does not apply in any of the following circumstances:

(1) On private property not part of school grounds.

(2) A firearm in a locked container or locked firearms rack that is in or on a motor vehicle.

(3) When engaged in any of the following:

a. Lawful hunting.

b. Firearm or projectile weapon instruction.

c. Firearm or projectile weapon-related sports on public lands, other than those belonging to a public or private school.

d. Projectile weapon-related sports on lands belonging to a public or private school authorized by the public or private school.

(e) A person who violates this section is guilty of a class E felony.

(f) If an elementary or secondary school student possesses a firearm or projectile weapon in a Safe School Zone other than under paragraph (d)(3)d. of this section, in addition to any other penalties contained in this section, the student shall be expelled by the local school board or charter school board of directors for a period of not less than 180 days unless otherwise provided for in federal or state law. The local school board or charter school board of directors may, on a case-by-case basis, modify the terms of the expulsion to less than 180 days.

(84 Del. Laws, c. 175, § 1; 84 Del. Laws, c. 249, § 1; 84 Del. Laws, c. 525, § 16.)

§ 1457B. Possession of a firearm or projectile weapon at a polling place; class A misdemeanor.

(a) As used in this section:

(1) a. "Election day" means a day on which in-person voting is offered at a polling place, and includes early voting under Chapter 54 of Title 15, for any of the following elections:

1. Primary, general, or special election.

2. School election conducted by the Department of Elections pursuant to Title 14 or Title 15.

3. Municipal election conducted in accordance with the municipality's charter, ordinance, or code.

b. "Election day" includes 2 hours before the polls open until 2 hours after the polls close.

(2) [Repealed.]

(3) a. "Polling place" means 1 of the following locations in the State:

1. Designated by the Department of Elections for in-person voting under §§ 4512 and 5402 of Title 15.

2. Designated in accordance with a municipality's charter, ordinance, or code for in-person voting on an election day.

3. Designated by the Department of Elections for the tabulation and counting of votes.

4. Department of Elections office locations where sealed absentee ballot envelopes may be returned under the provisions of § 5507 of Title 15.

b. "Polling place" shall not mean an area outside of the actual polling place, such as parking areas or adjoining structures that are not part of the polling place.

(b) Except as otherwise provided under subsection (c) of this section, a person who knowingly possesses a firearm or projectile weapon at a polling place on election day is guilty of possession of a firearm or projectile weapon at a polling place.

(c) Subsection (b) of this section does not apply if at the time of an alleged violation the person is any of the following:

(1) Legally in possession of a firearm or projectile weapon within a private residence located at a polling place.

(2) Engaged in lawful hunting, firearm or projectile weapon instruction, or firearm or projectile weapon-related sports on public lands that are designated for such activity, other than those being used as a polling place on election day.

(3) Employed as any of the following:

a. A law-enforcement officer.

b. A "commissioned security guard," as defined under § 1302 of Title 24, who is acting in an official capacity at a polling place on election day.

c. A constable, as licensed under Chapter 56 of Title 24, who is acting in an official capacity at a polling place on election day.

d. An active-duty member of the United States Armed Forces or Delaware National Guard, who is acting in an official capacity at a polling place on election day.

(d) It is an affirmative defense that a person was legally in possession of a firearm or projectile weapon and was only traveling through the polling place to reach private property located therein or to leave private property therein to reach a location outside the polling place. This defense is not available to any person who committed any of the following acts or conspired to commit any of the following acts:

(1) Intimidation of voters

(2) Interference with the election.

(3) Traveling through the polling place with a firearm or projectile weapon for any purpose other than reaching a permitted destination.

(e) It is not a defense if the person was unaware that the person possessed a firearm or projectile weapon at a polling place on election day.

(f) Possession of a firearm or projectile weapon at a polling place is a class A misdemeanor.

(g) The Superior Court has exclusive jurisdiction over offenses under this section.

(h) The Department of Elections shall post signs at the entrance of each polling place on election day to notify the public that firearms and projectile weapons are not permitted at the polling place.

(84 Del. Laws, c. 176, § 1; 84 Del. Laws, c. 525, § 17.)

§ 1457C. Possession of firearm in a college or university safe zone; class A misdemeanor.

(a) As used in this section:

(1) a. "College or university safe zone" means all of the following:

1. Any building, structure, athletic field, sports stadium or real property owned, operated, leased, or rented by any public or private college or university.

2. Any motor vehicle owned, operated, leased, or rented by any public or private college or university.

b. "College or university safe zone" does not include state or locally owned or maintained roads, streets, and pedestrian routes and bike paths pertaining to those roads or streets, running through or adjacent to premises or property owned, operated, or controlled by any public or private college or university, which are open full time to public vehicular traffic.

(2) "Commissioned security guard" means as defined in § 1302 of Title 24.

(3) "Constable" means a person licensed under Chapter 56 of Title 24.

(4) "Firearm" means as defined in § 222 of this title and includes a destructive weapon as defined in § 1444 of this title and includes a BB gun.

(5) "Police officer" means as defined in § 8401 of this title.

(6) "Qualified law-enforcement officer" means as defined in § 1441A of this title.

(7) "Qualified retired law-enforcement officer" means as defined in § 1441B of this title.

(b) Any person who knowingly possesses a firearm while in or on a college or university safe zone is guilty of the crime of possession of a firearm in a college or university safe zone.

(c) Subsection (b) of this section does not apply to any of the following:

(1) A police officer.

(2) A qualified law-enforcement officer who is acting in an official capacity.

(3) A constable or commissioned security guard employed by a college or university who is acting in an official capacity.

(4) An active-duty member of the United States Armed Forces or Delaware National Guard who is acting in an official capacity.

(5) A holder of a valid license to carry concealed deadly weapons under § 1441 of this title but only if the firearm is in a vehicle.

(6) An employee of the Department of Services for Children, Youth, and Their Families who is authorized by the Secretary of the Department to carry a firearm, while acting in the employee's official capacity.

(7) A probation and parole officer acting within the officer's official capacity.

(8) A qualified retired law-enforcement officer.

(9) An individual who has written authorization to possess a firearm from the college or university administration or a designated representative of the college or university administration.

(d) Subsection (b) of this section does not apply to possession of a firearm in the following circumstances:

(1) Possession of a firearm if the firearm is in a locked container or locked firearms rack that is in or on a motor vehicle.

(2) When engaged in lawful hunting, firearm instruction, or firearm-related sports at a time, place, and manner authorized by a college or university.

(e) A person who violates this section is guilty of a class A misdemeanor.

(f) The Superior Court has jurisdiction of an offense under this section.

(84 Del. Laws, c. 369, § 1.)

§ 1458. Removing a weapon from the possession of a law-enforcement officer; class C felony.

(a) A person shall not knowingly or recklessly remove or attempt to remove a firearm or projectile weapon, disabling chemical spray, baton or other deadly weapon from the possession of another person or deprive the other person of its use if:

(1) The person has knowledge or reason to know that the other person is employed as:

a. A law-enforcement officer including, but not limited to, all those defined as "police officer" in § 1911(a) of this title, who is authorized by law to make arrests;

b. A sheriff, deputy sheriff, constable, judicial assistant, court bailiff or other court security officer or court bailiff;

c. An employee of the Department of Correction, the Division of Parole and Probation or the Department of Youth Rehabilitative Services;

d. A special investigator or state detective with the Delaware Department of Justice, Office of the Attorney General; or

e. An armored car guard licensed pursuant to § 1317 or § 1320 of Title 24; and

(2) The other person is lawfully acting within the course and scope of that other person's employment.

(b) A person who violates this section is guilty of a class C felony.

(71 Del. Laws, c. 62, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 374, § 7; 84 Del. Laws, c. 525, § 18.)

§ 1459. Possession of a weapon with a removed, obliterated or altered serial number.

(a) No person shall knowingly transport, ship, possess or receive any firearm or firearm frame or receiver with the knowledge that the importer's or manufacturer's serial number has been removed, obliterated or altered in a manner that has disguised or concealed the identity or origin of the firearm.

(b) This section shall not apply to a firearm manufactured prior to 1973.

(c) Possessing, transporting, shipping or receiving a firearm with a removed, obliterated or altered serial number pursuant to this section is a class D felony.

(71 Del. Laws, c. 251, § 1; 83 Del. Laws, c. 246, § 2.)

§ 1459A. Possession of an unfinished firearm frame or receiver with no serial number.

(a) No person shall knowingly transport, ship, transfer, or sell an unfinished firearm frame or receiver unless all of the following apply:

(1) The person is a federally-licensed gun dealer or manufacturer.

(2) The name of the manufacturer and an individual serial number are conspicuously placed on the unfinished firearm frame or receiver in accordance with the procedures for the serialization of a firearm in 18 U.S.C. § 923(i).

(3) The person maintains records for the unfinished firearm frame or receiver in accordance with the requirements for maintenance of records in 18 U.S.C. § 923(g).

(b) No person shall knowingly possess an unfinished firearm frame or receiver that does not have the name of the manufacturer and individual serial number conspicuously placed on it or on a major component of the firearm into which the unfinished firearm frame or receiver will be housed.

(c) Subsection (b) of this section does not apply to a federally-licensed gun manufacturer during the manufacturing process of a firearm frame or receiver.

(d) Possession of an unfinished firearm frame or receiver with no serial number is a class D felony.

(83 Del. Laws, c. 246, § 2.)

§ 1460. Possession of firearm or projectile weapon while under the influence.

(a) A person is guilty of possession of a firearm or projectile weapon while under the influence of alcohol or drugs when the person possesses a firearm or projectile weapon in a public place while under the influence of alcohol or drugs. It shall be an affirmative defense to prosecution under this section that, the firearm or projectile weapon was not readily operable, or that the person was not in possession of ammunition for the firearm or projectile weapon. The Superior Court shall have original and exclusive jurisdiction over a violation of this section.

(b) For purposes of this section, the following definitions shall apply:

(1) "Not readily operable" means that the firearm or projectile weapon is disassembled, broken down, or stored in a manner to prevent its immediate use.

(2) "Possess," "possession" or "possesses" means that the person has the item under the person's dominion and authority, and that said item is at the relevant time physically available and accessible to the person.

(3) "Public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement, parks, playgrounds, restaurants, bars, taverns, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

(4) "Under the influence of alcohol or drugs" means:

a. Having an amount of alcohol in a sample of the person's blood equivalent to .08 or more grams of alcohol per hundred milliliters of blood, or an amount of alcohol in a sample of breath equivalent to .08 or more grams per 210 liters of breath. A person shall be guilty, without regard to the person's alcohol concentration at the time of possession of a firearm or projectile weapon in violation thereof, if such person's alcohol concentration is .08 or more within 4 hours after the person was found to be in possession of a firearm or projectile weapon, and that alcohol concentration is the result of an amount of alcohol present in, or consumed by such person when that person was in possession of a firearm or projectile weapon; or

b. Being manifestly under the influence of alcohol or any illicit or recreational drug, as defined in § 4177(c) of Title 21, or any other drug not administered or prescribed to be taken by a physician, to the degree that the person may be in danger or endanger other persons or property, or annoy persons in the vicinity, provided that no person shall be "under the influence of alcohol or drugs" for purposes of this section when the person has not used or consumed an illicit or recreational drug prior to or during an alleged violation, but has only used or consumed such drug after the person has allegedly violated this section and only such use or consumption after such alleged violation caused the person's blood to contain an amount of alcohol or drug or an amount of a substance or compound that is the result of the use or consumption of the drug within 4 hours after the time of the alleged violation thereof.

(c) A law-enforcement officer who has probable cause to believe that a person has violated this section may, with or without the consent of the person, take reasonable steps to conduct chemical testing to determine the person's alcohol concentration or the presence of illicit or recreational drugs. A person's refusal to submit to chemical testing shall be admissible in any trial arising from a violation of this section.

(d) (1) Except as provided in paragraph (d)(2) of this section, possession of a firearm or projectile weapon while under the influence is a class A misdemeanor.

(2) Possession of a firearm or projectile weapon while under the influence is a class G felony if the conviction is for an offense that was committed after a previous conviction for possession of a firearm or projectile weapon while under the influence.

(78 Del. Laws, c. 136, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 396, § 2; 84 Del. Laws, c. 525, § 19.)

§ 1460A. Discharging a firearm towards a dwelling, place of worship, vehicle, place of business, school, or institution of higher education; class E felony.

(a) It is unlawful to knowingly or intentionally discharge a firearm towards any of the following:

(1) A dwelling.

(2) A place of worship.

(3) A vehicle.

(4) A place of business.

(5) A school.

(6) An institution of higher education.

(b) For purposes of this section:

(1) "Dwelling" means as defined in § 829 of this title.

(2) "Place of business" means a permanent physical structure that is marked with signage and within which a commercial, service, or other legal enterprise is operated. "Place of business" does not include a shooting range or other business the purpose of which is to provide a venue for lawful firearm practice or other lawful firearm uses.

(c) A violation of this section is a class E felony.

(d) A person may not be convicted of both a violation of this section and reckless endangering in the first degree, or both a violation of this section and reckless endangering in the second degree, with regard to the same conduct.

(85 Del. Laws, c. 154, § 1.)

§ 1461. Report of loss, theft of firearm or projectile weapon.

(a) Any owner of a firearm or projectile weapon shall report the loss or theft of the firearm or projectile weapon within 7 days after the discovery of the loss or theft to either:

(1) The law-enforcement agency having jurisdiction over the location where the loss or theft of the firearm or projectile weapon occurred; or

(2) Any state police troop.

(b) Whoever is convicted of a violation of this section shall:

(1) For the first offense, be guilty of a violation and be subject to a civil penalty of not less than $75 nor more than $100.

(2) For a second offense committed at any time after the sentencing or adjudication of a first offense, be guilty of a violation and be subject to a civil penalty of not less than $100 nor more than $250.

(3) For a third or subsequent offense committed at any time after the sentencing or adjudication of a second offense, be guilty of a class G felony.

(79 Del. Laws, c. 41, § 1; 84 Del. Laws, c. 525, § 20.)

§ 1462. Covert or undetectable firearms; class E or D felony.

(a) A person is guilty of possession of a covert or undetectable firearm when the person knowingly possesses a covert or undetectable firearm.

(b) A person is guilty of manufacturing a covert or undetectable firearm when the person manufactures, causes to be manufactured, transports, or sells a covert or undetectable firearm.

(c) Possession of a covert or undetectable firearm is a class E felony.

(d) Manufacturing a covert or undetectable firearm is a class D felony.

(83 Del. Laws, c. 246, § 2.)

§ 1463. Untraceable firearms; class E or D felony.

(a) A person is guilty of possessing an untraceable firearm when then person knowingly possesses an untraceable firearm.

(b) A person is guilty of manufacturing an untraceable firearm when the person knowingly manufactures, assembles, causes to be manufactured or assembled, sells, or transfers an untraceable firearm.

(c) A person is guilty of manufacturing or distributing a firearm using a 3-dimensional printer when the person does any 1 of the following:

(1) Uses a 3-dimensional printer or similar device to manufacture or produce a firearm, firearm receiver, or major firearm component when not licensed as a manufacturer.

(2) Distributes by any means, including the internet, to a person who is not licensed as a manufacturer, instructions in the form of computer-aided design files or other code or instructions stored and displayed in electronic format as a digital model that may be used to program a 3-dimensional printer to manufacture or produce a firearm, firearm receiver or major component of a firearm.

(d) Possession of an untraceable firearm is a class E felony.

(e) Manufacturing an untraceable firearm or manufacturing or distributing a firearm using a 3-dimensional printer is a class D felony.

(83 Del. Laws, c. 246, § 2.)

§ 1464. Legislative findings.

The General Assembly hereby finds and declares that the proliferation and use of assault weapons poses a threat to the health, safety, and security of all citizens of this State. The General Assembly has restricted the assault weapons specified in § 1465 of this title based upon finding that each firearm has such a high rate of fire and capacity for firepower that its potential function as a sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings. It is the intent of the General Assembly in enacting this chapter to place restrictions on the possession and use of assault weapons. It is not, however, the intent of the General Assembly by this chapter to place restrictions on the use of those weapons which are primarily designed and intended for hunting, target practice, or other legitimate sports or recreational activities.

(83 Del. Laws, c. 328, § 1.)

§ 1465. Definitions related to assault weapons.

For purposes of this section and § 1466 and § 1467 of this title:

(1) “Ammunition feeding device” means any magazine, belt, drum, feed strip, or similar device that holds ammunition for a firearm.

(2) “Assault long gun” means any of the following or a copy, regardless of the producer or manufacturer:

a. American Arms Spectre da Semiautomatic carbine.

b. Avtomat Kalashnikov semiautomatic rifle in any format, including the AK-47 in all forms.

c. Algimec AGM-1 type semi-auto.

d. AR 100 type semi-auto.

e. AR 180 type semi-auto.

f. Argentine L.S.R. semi-auto.

g. Australian Automatic Arms SAR type semi-auto.

h. Auto-Ordnance Thompson M1 and 1927 semi-automatics.

i. Barrett light .50 cal. semi-auto.

j. Beretta AR70 type semi-auto.

k. Bushmaster semi-auto rifle.

l. Calico models M-100 and M-900.

m. CIS SR 88 type semi-auto.

n. Claridge HI TEC C-9 carbines.

o. Colt AR-15, CAR-15, and all imitations except Colt AR-15 Sporter H-BAR rifle.

p. Daewoo MAX 1 and MAX 2, aka AR 100, 110C, K-1, and K-2.
q. Dragunov Chinese made semi-auto.
r. Famas semi-auto (.223 caliber).
s. Feather AT-9 semi-auto.
t. FN LAR and FN FAL assault rifle.
u. FNC semi-auto type carbine.
v. F.I.E./Franchi LAW 12 and SPAS 12 assault shotgun.
w. Steyr-AUG-SA semi-auto.
x. Galil models AR and ARM semi-auto.
y. Heckler and Koch HK-91 A3, HK-93 A2, HK-94 A2 and A3.
z. Holmes model 88 shotgun.
aa. Manchester Arms “Commando” MK-45, MK-9.
bb. Mandell TAC-1 semi-auto carbine.
cc. Mossberg model 500 Bullpup assault shotgun.
dd. Sterling Mark 6.
ee. P.A.W.S. carbine.
ff. Ruger mini-14 folding stock model (.223 caliber).
gg. SIG 550/551 assault rifle (.223 caliber).
hh. SKS with detachable magazine.
ii. AP-74 Commando type semi-auto.
jj. Springfield Armory BM-59, SAR-48, G3, SAR-3, M-21 sniper rifle, and M1A, excluding the M1 Garand.
kk. Street sweeper assault type shotgun.
ll. Striker 12 assault shotgun in all formats.
mm. Unique F11 semi-auto type.
nn. Daewoo USAS 12 semi-auto shotgun.
oo. UZI 9mm carbine or rifle.
pp. Valmet M-76 and M-78 semi-auto.
qq. Weaver Arms “Nighthawk” semi-auto carbine.
rr. Wilkinson Arms 9mm semi-auto “Terry”.

(3) “Assault pistol” means any of the following or a copy, regardless of the producer or manufacturer:
a. AA Arms AP-9 pistol.
b. Beretta 93R pistol.
c. Bushmaster pistol.
d. Claridge HI-TEC pistol.
e. D Max Industries pistol.
f. EKO Cobra pistol.
g. Encom MK-IV, MP-9, or MP-45 pistol.
h. Heckler and Koch MP5K, MP7, SP-89, or VP70 pistol.
i. Holmes MP-83 pistol.
j. Ingram MAC 10/11 pistol and variations, including the Partisan Avenger and the SWD Cobray.
k. Intratec TEC-9/DC-9 pistol in any centerfire variation.
l. P.A.W.S. type pistol.
m. Skorpion pistol.
n. Spectre double action pistol (Sile, F.I.E., Mitchell).
o. Stechkin automatic pistol.
p. Steyer tactical pistol.
q. UZI pistol.
r. Weaver Arms Nighthawk pistol.
s. Wilkinson “Linda” pistol.

(4) “Assault weapon” means any of the following:
a. An assault long gun.

b. An assault pistol.

c. A copycat weapon.

(5) “Completed a purchase” means that the purchaser completed an application, passed a background check, and has a receipt or purchase order for the assault weapon, without regard to whether the purchaser has actual physical possession of the assault weapon. If receipt of the assault weapon will not occur until July 1, 2023, it is not a completed purchase.

(6) “Copycat weapon” means any of the following:

a. A semiautomatic, centerfire rifle that can accept a detachable magazine and has at least 1 of the following:

1. A folding or telescoping stock.

2. Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing.

3. A forward pistol grip.

4. A flash suppressor.

5. A grenade launcher or flare launcher.

b. A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

c. A semiautomatic pistol that can accept a detachable magazine and has at least 1 of the following:

1. Except as otherwise provided under paragraph (6)c.1.A. of this section, an ability to accept a detachable ammunition magazine that attaches at some location outside of the pistol grip.

A. Subject to paragraph (6)c.1.B. of this section, the characteristic detailed under this paragraph (6)c.1. does not apply when the characteristic is utilized in conjunction with a rimfire pistol that is used solely for the purposes of competitive shooting events or practice shooting in preparation for competitive shooting events.

B. Paragraph (6)c.1.A of this section applies only to competitive shooting events operated by state or nationally recognized competitive shooting organizations.

2. A threaded barrel capable of accepting a flash suppressor, forward pistol grip or silencer.

3. A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to fire the firearm without being burned, except a slide that encloses the barrel.

4. A second hand grip.

d. A semiautomatic shotgun that has both of the following:

1. A folding or telescoping stock.

2. Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing.

e. A semiautomatic shotgun that has the ability to accept a detachable magazine.

f. A shotgun with a revolving cylinder.

g. A semiautomatic pistol with a fixed magazine that can accept more than 17 rounds.

h. A semiautomatic, centerfire rifle that has a fixed magazine that can accept more than 17 rounds.

(7) “Detachable magazine” means an ammunition feeding device that can be removed readily from a firearm without requiring disassembly of the firearm action or without the use of a tool, including a bullet or cartridge.

(8) “Family” means as defined in § 901 of Title 10.

(9) “Flash suppressor” means a device that functions, or is intended to function, to perceptibly reduce or redirect muzzle flash from the shooter’s field of vision.

(10) “Grenade launcher” means a device designed to fire, launch, or propel a grenade.

(11) “Qualified retired law-enforcement officer” means as defined in § 1441B(c) of this title.

(12) “Secure storage” means a firearm that is stored in a locked container or equipped with a tamper-resistant mechanical lock or other safety device that is properly engaged so as to render the firearm inoperable by a person other than the owner or other lawfully-authorized user.

(13) “Shooting range” means any land or structure used and operated in accordance with all applicable laws and ordinances for the shooting of targets for training, education, practice, recreation, or competition.

(83 Del. Laws, c. 328, § 1; 84 Del. Laws, c. 312, § 1.)

§ 1466. Manufacture, sale, transport, transfer, purchase, receipt, and possession of assault weapons; class E or F felony.

(a) Prohibitions. —

Except as provided in subsection (b) or (c) of this section, it is unlawful for a person to do any of the following:

(1) Transport an assault weapon into this State.

(2) Manufacture, sell, offer to sell, transfer, purchase, receive, or possess an assault weapon.

(b) Applicability. —

This section does not apply to any of the following:

(1) The following individuals, if acting within the scope of official business:

a. Personnel of the United States government or a unit of that government.

b. Members of the armed forces of the United States or of the National Guard.

c. A law-enforcement officer.

(2) An assault weapon modified to render it permanently inoperative.

(3) Possession, importation, manufacture, receipt for manufacture, shipment for manufacture, storage, purchases, sales, and transport to or by a licensed firearms dealer or manufacturer who does any of the following:

a. Provides or services an assault weapon for a law-enforcement agency of this State or for personnel exempted under paragraph (b)(1) of this section.

b. Acts to sell or transfer an assault weapon to a licensed firearm dealer in another state or to an individual purchaser in another state through a licensed firearms dealer.

c. Acts to return to a customer in another state an assault weapon transferred to the licensed firearms dealer or manufacturer under the terms of a warranty or for repair.

(4) Organizations that are required or authorized by federal law governing their specific business or activity to maintain assault weapons.

(5) The receipt of an assault weapon by inheritance, and possession of the inherited assault weapon, if the decedent lawfully possessed the assault weapon and the person inheriting the assault weapon is not otherwise a person prohibited under § 1448 of this title.

(6) The receipt of an assault weapon by a personal representative of an estate for purposes of exercising the powers and duties of a personal representative of an estate, including transferring the assault weapon according to will or probate proceedings.

(7) Possession by a qualified retired law-enforcement officer who is not otherwise prohibited from receiving an assault weapon if either of the following applies:

a. The assault weapon is sold or transferred to the qualified retired law-enforcement officer by the law-enforcement agency on retirement.

b. The assault weapon was purchased or obtained by the qualified retired law-enforcement officer for official use with the law-enforcement agency before retirement.

(8) Possession or transport by an "armored car guard," as defined in § 1302 of Title 24, if the armored car agency is acting within the scope of employment with an "armored car agency," as defined under § 1302 of Title 24, and is licensed under Chapter 13 of Title 24.

(9) Possession, receipt, and testing by, or shipping to or from any of the following:

a. An ISO 17025 accredited, National Institute of Justice-approved ballistics testing laboratory.

b. A facility or entity that manufactures or provides research and development testing, analysis, or engineering for personal protective equipment or vehicle protection systems.

(c) Exceptions. —

(1) A licensed firearms dealer may continue to do all of the following with an assault weapon that the licensed firearms dealer lawfully possessed on or before June 30, 2022:

a. Possess the assault weapon.

b. Sell the assault weapon or offer the assault weapon for sale. But, the licensed firearms dealer may only sell the assault weapon or offer the assault weapon for sale as permitted under paragraph (b)(3)b. of this section.

c. Transfer the assault weapon. But, the licensed firearms dealer may only transfer the assault weapon as permitted by paragraph (b)(3)b. or (b)(3)c. of this section.

(2) a. A licensed firearms dealer may take possession of an assault weapon from a person who lawfully possessed the assault weapon before June 30, 2022, for the purposes of servicing or repairing the assault weapon.

b. A licensed firearms dealer may transfer possession of an assault weapon received under paragraph (c)(2)a. of this section for purposes of accomplishing service or repair of the assault weapon.

(3) A person who lawfully possessed, or completed a purchase of an assault weapon prior to June 30, 2022, may possess and transport the assault weapon on or after June 30, 2022, only under the following circumstances:

a. At that person's residence, place of business, or other property owned by that person, or on property owned by another person with the owner's express permission.

b. While on the premises of a shooting range.

c. While attending any exhibition, display, or educational project that is about firearms and that is sponsored by, conducted under the auspices of, or approved by a law-enforcement agency or a nationally or state-recognized entity that fosters proficiency in, or promotes education about, firearms.

d. While transporting the assault weapon between any of the places set forth in this this paragraph (c)(3) of this section, or to any licensed firearms dealer for servicing or repair under paragraph (c)(2) of this section, if the person places the assault weapon in secure storage.

(4) A person may transport an assault weapon to or from any of the following if the person places the assault weapon in secure storage:

a. An ISO 17025 accredited, National Institute of Justice-approved ballistics testing laboratory.

b. A facility or entity that manufactures or provides research and development testing, analysis, or engineering for personal protective equipment or vehicle protection systems.

(5) Ownership of an assault weapon may be transferred from the person owning the assault weapon to a member of that person's family, and it is lawful for the family member to possess the transferred assault weapon under paragraph (c)(3) of this section, if the transferor lawfully possessed the assault weapon and the family member to whom the assault weapon is transferred is otherwise lawfully permitted to possess it.

(d) Penalty. —

A violation of this section is a class D felony.

(e) Disposal. —

A law-enforcement agency in possession of a person's assault weapon as a result of an arrest under this section shall dispose of the assault weapon under the process established for deadly weapons and ammunition under § 2311 of this title following the person's adjudication of delinquency or conviction under this section or by the person's agreement to forfeit the assault weapon under an agreement to plead delinquent or guilty to another offense.

(83 Del. Laws, c. 328, § 1.)

§ 1467. Voluntary certificate of possession.

(a) A person who is exempt from § 1466(a) of this title under § 1466(c)(3) of this title may, no later than June 30, 2023, apply to the Secretary of the Department of Safety and Homeland Security for a certificate of possession.

(b) In a prosecution under § 1466 of this title, it is an affirmative defense that the defendant was lawfully in possession or had completed a purchase of the assault weapon prior to June 30, 2022. A certificate of possession is conclusive evidence that a person lawfully possessed or had completed a purchase of an assault weapon before June 30, 2022, and is entitled to continue to possess and transport the assault weapon on or after June 30, 2022, under § 1466(c)(3) of this title.

(c) The Secretary of the Department of Safety and Homeland Security shall establish procedures with respect to the application for and issuance of certificates of possession for assault weapons that are lawfully owned and possessed before June 30, 2022. Rules and procedures under this subsection must include all of the following:

(1) That the application contain proof that the person lawfully possessed or had completed a purchase of an assault weapon before June 30, 2022.

(2) That the certificate of possession must contain a description of the assault weapon, including the make, model, and serial number. For an assault weapon manufactured before 1968, identifying marks may be substituted for the serial number.

(3) That the certificate of possession must contain the full name, address, date of birth, and thumbprint of the person who owns the assault weapon, and any other information the Secretary deems appropriate.

(4) That the Department will not retain copies of the certificate or other identifying information relating to any individual who applies for a voluntary certificate of possession.

(d) A person who inherits or receives a weapon from a family member that is lawfully possessed under § 1466(c)(3) of this title and lawfully transferred may apply for a certificate of possession within 60 days of taking possession of the weapon. To receive a certificate, the person must show that the transferor was lawfully in possession and that the person is the lawful recipient of the transfer.

(83 Del. Laws, c. 328, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1.)

§ 1468. Definitions related to large-capacity magazines.

For purposes of this section and §§ 1469 and 1469A of this title:

(1) "Ammunition feeding device" means any magazine, belt, drum, feed strip, or similar device that holds ammunition for a firearm.

(2) a. "Large-capacity magazine" means any ammunition feeding device capable of accepting, or that can readily be converted to hold, more than 17 rounds of ammunition.

b. "Large-capacity magazine" does not include an attached tubular device designed to accept, and only capable of operating with, .22 caliber rimfire ammunition.

c. For purposes of this subsection, the presence of a removable floor plate in an ammunition feeding device that is not capable of accepting more than 17 rounds of ammunition shall not, without more, be sufficient evidence that the ammunition feeding device can readily be converted to hold more than 17 rounds of ammunition.

(3) "Licensed firearms dealer" means a person licensed under Chapter 9 of Title 24 or 18 U.S.C. § 921 et seq.

(4) "Qualified retired law-enforcement officer" means as defined under § 1441B(c) of this title.

(83 Del. Laws, c. 331, § 1.)

§ 1469. Large-capacity magazines prohibited; class E felony; class B misdemeanor; or civil violation.

(a) Except as otherwise provided in subsections (c) through (e) of this section, it is unlawful for a person to manufacture, sell, offer for sale, purchase, receive, transfer, or possess a large-capacity magazine.

(b) (1) A violation of this section which is a first offense which only involves possession of a large capacity magazine is a civil penalty of $100.

(2) A second violation of this section which only involves possession of a large capacity magazine is a class B misdemeanor.

(3) All other violations of this section, including a subsequent offense involving only possession of a large capacity magazine are a class E felony.

(4) A large-capacity magazine is subject to forfeiture for a violation of this section.

(5) The Superior Court has exclusive jurisdiction over violations under subsections (b)(2) and (b)(3) of this section.

(c) This section does not apply to any of the following:

(1) Personnel of the United States government or a unit of that government who are acting within the scope of official business.

(2) Members of the armed forces of the United States or of the National Guard who are acting within the scope of official business.

(3) A law-enforcement officer.

(4) A qualified retired law-enforcement officer.

(5) An individual who holds a valid concealed carry permit issued by the Superior Court under § 1441 of this title.

(6) A licensed firearms dealer that sells a large-capacity magazine to another licensed firearms dealer or to an individual exempt under paragraphs (c)(1) through (5) of this section.

(7) A large-capacity magazine that a person has rendered permanently inoperable or has permanently modified to accept 17 rounds of ammunition or less.

(d) [Repealed.]

(e) This section does not apply to any of the following:

(1) A person who manufactures a large-capacity magazine, if the person manufactures the large-capacity magazine with the intent to sell the large-capacity magazine, or offer the large-capacity magazine for sale, to a person outside of this State.

(2) A person who ships or transports a large-capacity magazine for a person under paragraph (e)(1) of this section.

(83 Del. Laws, c. 331, § 1; 83 Del. Laws, c. 331, § 6; 83 Del. Laws, c. 348, § 1.)

§ 1469A. Possession of a large-capacity magazine during the commission of a felony; class B felony.

(a) It is unlawful for a person to possess a large-capacity magazine during the commission of a felony.

(b) Possession of a large-capacity magazine during the commission of a felony is a class B felony.

(c) A person may be found guilty of violating this section notwithstanding that the felony for which the person is convicted and during which the person possessed the large-capacity magazine is a lesser included felony of the 1 originally charged.

(83 Del. Laws, c. 331, § 1.)

F Offenses Involving Video Lottery Machines

§ 1470. Definitions.

(a) "Cheat" means to alter the element of chance, method of selection, or criteria which determines:

(1) The result of the game;

(2) The amount or frequency of payment in a game, including intentionally taking advantage of a malfunctioning machine;

(3) The value of a wagering instrument; or

(4) The value of a wagering credit.

(b) "Cheating device" means any physical, mechanical, electromechanical, electronic, photographic, or computerized device used in such a manner as to cheat, deceive or defraud a video lottery machine or a table game. This includes, but is not limited to, slugs, plastic, tape, string or dental floss which is placed inside a coin or bill acceptor or any other opening in a video lottery machine in a manner to simulate coin or currency acceptance, and is thereafter withdrawn, or forged or stolen keys used to gain access to a machine to remove its contents, or game cards or dice that have been marked, loaded or tampered with.

(c) “Paraphernalia for the manufacturing of cheating devices” means the equipment, products or materials that are intended for use or designed for use in manufacturing, producing, fabricating, preparing, testing, analyzing, packaging, storing or concealing a counterfeit facsimile of the chips, tokens, debit instruments or other wagering devices approved by the State Lottery Office or lawful coin or currency of the United States of America. This term includes, but is not limited to, lead or lead alloy molds, forms, or similar equipment capable of producing a likeness of a gaming token or United States coin or currency; melting pots or other receptacles; torches; tongs, trimming tools or other similar equipment; and equipment that can be used to manufacture facsimiles of debit instruments or wagering instruments approved by the State Lottery Office.

(d) “Table game” shall mean any game played with cards, dice or any mechanical, electromechanical or electronic device or machine (excluding video lottery machines) for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, twenty-one, poker, craps, roulette, keno, bingo, wheel of fortune or any variation of these games, whether or not similar in design or operation.

(e) “Video lottery machine” shall mean any machine in which bills, coins or tokens are deposited in order to play in a game of chance in which the results, including options to the player, are randomly and immediately determined by the machine. A machine may use spinning reels or video displays or both, and may or may not dispense coins or tokens directly to winning players. A machine shall be considered a video lottery machine notwithstanding the use of an electronic credit system making the deposit of bills, coins or tokens unnecessary.

(73 Del. Laws, c. 232, § 1; 77 Del. Laws, c. 221, §§ 1, 2.)

§ 1471. Prohibited acts.

(a) It shall be unlawful for any person to use a cheating device in a video lottery machine or at a table game or to have possession of such a device in a video lottery facility, including its parking areas and/or adjacent facilities.

(b) It shall be unlawful for any person to possess, use or have paraphernalia for manufacturing cheating devices.

(c) It shall be unlawful for any person to cheat in order to collect or take or attempt to cheat in order to collect or take money or anything of value, for themselves or for another, in or from a video lottery machine or a table game in a video lottery facility, including its parking areas and/or adjacent facilities.

(d) It shall be unlawful for any person to manipulate or alter, with the intent to cheat, any physical, mechanical, electromechanical, electronic, or computerized component of a video lottery machine or of a table game, contrary to the designed and normal operational purpose for the component, including, but not limited to, varying the pull of the handle of a video lottery machine, knowing that the manipulation can or could affect the outcome of the game.

(e) It shall be unlawful for any person to use, sell or possess counterfeit slugs, counterfeit tokens, counterfeit gaming chips, counterfeit debit instruments or other counterfeit wagering instruments or any other counterfeit device resembling tokens, gaming chips, debit or other wagering instruments approved by the State Lottery Office for use in a video lottery machine or at a table game in a video lottery facility, including its parking areas and/or adjacent facilities.

(f) It shall be unlawful for any person to place, increase or decrease a wager or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of a table game or any event that affects the outcome of the game or which is the subject of the wager or to aid anyone in acquiring such knowledge for the purpose of placing, increasing or decreasing a wager or determining the course of play contingent upon that event or outcome.

(g) It shall be unlawful for any person to claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a video lottery machine or a table game, with intent to defraud, without having made a wager contingent thereon, or to claim, collect or take an amount greater than the amount won.

(h) It shall be unlawful for any employee or agent of a video lottery facility to knowingly fail to collect a losing wager or pay an amount greater on any wager than required under the rules of a table game.

(i) It shall be unlawful for any person to place or increase a wager or attempt to place or increase a wager after acquiring knowledge of the outcome of the table game or other event which is the subject of the wager.

(j) It shall be unlawful for any person to reduce the amount wagered or remove or cancel the wager or to attempt to reduce the amount wagered or remove or cancel the wager after acquiring knowledge of the outcome of the table game or other event which is the subject of the wager.

(k) It shall be unlawful for any person to directly or indirectly offer, confer or agree to confer to another, or solicit, accept or agree to accept from another, anything of value to anyone, for the purpose of influencing the outcome of a race, sporting event, contest or table game upon which a wager may be made, or to place, increase or decrease a wager after acquiring knowledge, not available to the general public, that anyone has been offered, promised or given anything of value for the purpose of influencing the outcome of the race, sporting event, contest or game upon which the wager is placed, increased or decreased.

(l) It shall be unlawful for any person at a video lottery facility, including its parking areas and/or adjacent facilities, without the written consent of the Delaware Lottery Director to use, or possess with the intent to use, any electronic, electrical or mechanical device that is designed, constructed or programmed to assist the user or another person:

(1) In projecting the outcome of a table game or video lottery machine;

(2) In keeping track of the cards played;

(3) In analyzing the probability of the occurrence of an event relating to the game; or

(4) In analyzing the strategy for playing or wagering to be used in the game.

(73 Del. Laws, c. 232, § 1; 77 Del. Laws, c. 221, § 3.)

§ 1472. Penalties.

(a) Any person convicted of conduct constituting a violation of § 1471(a), (b), (d), (e) or (l) of this title shall be guilty of a class A misdemeanor for a first offense and a class G felony for a second or subsequent conviction in this State or a state with a comparable criminal code section within 3 years of a first offense.

(b) Any person convicted of conduct constituting a violation of § 1471(c), (f), (g), (h), (i), or (j) of this title shall be guilty of:

(1) A class A misdemeanor if the amount involved is less than $1,500 or;

(2) A class G felony if the amount involved is $1,500 or more but not greater than $50,000;

(3) A class E felony if the amount involved is more than $50,000 but less than $100,000;

(4) A class C felony if the amount involved is $100,000 or more.

(c) Any person convicted of conduct constituting a violation of § 1471(k) of this title shall be guilty of a class G felony.

(d) Amounts involved pursuant to 1 scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the crime.

(e) Upon conviction, the sentencing judge shall require full restitution to the victim for any monetary losses suffered and shall consider the imposition of community service and/or an appropriate curfew for a minor.

(f) Any cheating devices, slugs, paraphernalia for the manufacturing of cheating devices or related materials used by the person shall be forfeited to the Delaware State Police, including vehicles used to store such devices or paraphernalia. The Courts of the Justices of the Peace shall have concurrent jurisdiction with the Court of Common Pleas for misdemeanor offenses under this subpart and the Superior Court shall have exclusive jurisdiction for felony offenses under this subchapter.

(73 Del. Laws, c. 232, § 1; 77 Del. Laws, c. 221, § 4.)

§ 1473. Preclusions.

Nothing in this subchapter shall be construed as to prohibit the prosecution for an offense in this subchapter and any other provision of Delaware law.

(73 Del. Laws, c. 232, § 1.)

§ 1474. Detention and questioning of person suspected of violating § 1471 of this title; limitations on liability; posting of notice.

(a) Any video lottery agent, licensee, or that video lottery agent's or licensee's officers, employees or agents may question any person at the video lottery agent's or licensee's video lottery facility suspected of violating any of the provisions of § 1471 of this title. No video lottery agent or any of that video lottery agent's officers, employees or agents is criminally or civilly liable:

(1) On account of any such questioning; or

(2) For reporting to the Delaware Lottery, Division of Gaming Enforcement or appropriate law-enforcement authorities the person suspected of the violation.

(b) Any video lottery agent or any of its officers, employees or agents who has probable cause for believing that there has been a violation of § 1471 of this title in a video lottery facility, including its parking areas and/or adjacent facilities, by any person may take that person into custody and detain that person in the video lottery facility in a reasonable manner and for a reasonable length of time while awaiting the arrival of law-enforcement officials, who shall be summoned without delay. Such a taking into custody and detention does not render the video lottery agent or that video lottery agent's officers, employees or agents criminally or civilly liable unless it is established by clear and convincing evidence that the taking into custody and detention are unreasonable under all the circumstances.

(c) No video lottery agent or its officers, employees or agents is entitled to the immunity from liability provided for in subsection (b) of this section unless there is displayed in a conspicuous place in the video lottery facility a notice in boldface type clearly legible and in substantially this form:

"Any video lottery agent, or any of that video lottery agent's officers, employees or agents who has probable cause for believing that any person has violated any provision of § 1471 of Title 11 may detain that person in this facility."

(77 Del. Laws, c. 221, § 5; 70 Del. Laws, c. 186, § 1.)

Part I
Delaware Criminal Code
Chapter 15
Organized Crime and Racketeering

§ 1501. Statement of purpose.

The purpose of this chapter is to guard against and prevent the infiltration and illegal acquisition of legitimate economic enterprises by racketeering practices, and the use and exploitation of both legal and illegal enterprises to further criminal activities. This chapter is intended to apply to conduct beyond what is traditionally regarded as "organized crime" or "racketeering."

(65 Del. Laws, c. 493, § 1.)

§ 1502. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) a. "Beneficial interest" shall include any of the following:

1. The interests of a person as a beneficiary under any trust arrangement under which a trustee holds legal or record title to personal or real property; or

2. The interests of a person, under any other form of express fiduciary arrangement, pursuant to which any other person holds legal or record title to personal or real property for the benefit of such person.

b. The term "beneficial interest" shall not include the interest of a stockholder in a corporation, or the interest of a partner in either a general partnership or a limited partnership.

(2) "Documentary materials" shall mean any book, paper, document, writing, drawing, graph, chart, photograph, phonorecord, magnetic tape, computer printout, and any data compilation from which information can be obtained or from which information can be translated into useable form, or other tangible item.

(3) "Enterprise" shall include any individual, sole proprietorship, partnership, corporation, trust or other legal entity; and any union, association or group of persons associated in fact, although not a legal entity. The word "enterprise" shall include illicit as well as licit enterprises, and governmental as well as other entities.

(4) "Foreign corporation" shall have the same definition as is set forth in § 371 of Title 8.

(5) "Pattern of racketeering activity" shall mean 2 or more incidents of conduct:

a. That:

1. Constitute racketeering activity;

2. Are related to the affairs of the enterprise;

3. Are not so closely related to each other and connected in point of time and place that they constitute a single event; and

b. Where:

1. At least 1 of the incidents of conduct occurred after July 9, 1986;

2. The last incident of conduct occurred within 10 years after a prior occasion of conduct; and

3. As to criminal charges, but not as to civil proceedings, at least 1 of the incidents of conduct constituted a felony under the Delaware Criminal Code, or if committed subject to the jurisdiction of the United States or any state of the United States, would constitute a felony under the Delaware Criminal Code if committed in the State.

(6) "Pecuniary value" shall mean:

a. Anything of value in the form of money, a negotiable instrument, a commercial interest or anything else which constitutes an economic advantage; or

b. Any other property or service that has a value in excess of $100.

(7) "Personal property" shall include any personal property or any interest in such personal property, or any right, including bank accounts, debts, corporate stocks, patents or copyrights. An item of personal property or a beneficial interest in personal property shall be deemed to be located where the trustee is, where the personal property is or where the instrument evidencing the right is.

(8) "Principal" shall mean a person who engages in conduct constituting a violation, or one who is legally accountable for the unlawful conduct of another person or entity.

(9) "Racketeering" shall mean to engage in, to attempt to engage in, to conspire to engage in or to solicit, coerce or intimidate another person to engage in any of the following:

a. Any activity defined as "racketeering activity" under 18 U.S.C. § 1961(1)(A), (1)(B), (1)(C) or (1)(D).

b. Any activity constituting any felony which is chargeable under the Delaware Code or any activity constituting a misdemeanor under any of the following provisions of the Delaware Code:

1. Chapter 53 of Title 30 relating to evasion of payment of cigarette taxes.

2. Chapter 73 of Title 6 relating to the sale of securities.
3. Chapter 5 of Title 11 relating to prostitution.
4. Chapter 5 of Title 11 and Title 6 relating to forgery and counterfeiting.
5. Chapter 5 of Title 11 relating to perjury.
6. Chapter 5 of Title 11 and Title 28 relating to bribery and misuse of public office and improper influence.
7. Chapter 5 of Title 11 relating to obscenity.
8. Chapter 5 of Title 11 and Title 28 relating to gambling.
9. Title 11 and Title 16 relating to drug abuse, prevention and control.
10. Chapter 5 of Title 11 relating to tampering with jurors, evidence and witnesses.
11. Chapter 51 of Title 30 relating to motor fuel tax offenses.
12. Chapter 5 of Title 11 relating to human trafficking.
13. Chapter 5 of Title 11 relating to animal fighting and baiting.
14. Chapter 5 of Title 11 relating to hate crimes or civil rights.
15. Chapter 5 of Title 11 relating to obstruction of justice.

(10) "Real property" shall mean any real property situated in this State or any interest in such real property, including, but not limited to, any lease of or mortgage upon such real property.

(11) a. "Trustee" shall include:

1. Any person acting as trustee under a trust in which the trustee holds legal or record title to personal or real property; or
2. Any person who holds legal or record title to personal or real property, for which any other person has a beneficial interest; or
3. Any successor trustee.

b. The term "trustee" shall not include an assignee or trustee for an insolvent debtor, nor an executor, administrator, administrator with will annexed, testamentary trustee, conservator, guardian or committee appointed by, under the control of, or accountable to, a court.

(12) "Unlawful debt" shall mean a debt incurred or contracted in an illegal gambling activity or business; or a debt which is unenforceable under state law, in whole or in part, as to either principal or interest.

(65 Del. Laws, c. 493, § 1; 79 Del. Laws, c. 276, § 8; 80 Del. Laws, c. 263, § 1; 83 Del. Laws, c. 502, § 2; 84 Del. Laws, c. 228, § 2.)

§ 1503. Violations.

(a) It shall be unlawful for any person employed by, or associated with, any enterprise to conduct or participate in the conduct of the affairs of the enterprise through a pattern of racketeering activity or collection of an unlawful debt.

(b) It is unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property or personal property, of any nature, including money.

(c) It is unlawful for any person who has received any proceeds derived, directly or indirectly, from a pattern of racketeering activity in which such person has participated, to use or invest, directly or indirectly, any part of such proceeds or any proceeds derived from the investment or use thereof, in the acquisition of any interest in, or the establishment or operation of, any enterprise or real property.

(d) It is unlawful for any person to conspire or attempt to violate any of the provisions of subsection (a), (b) or (c) of this section.

(65 Del. Laws, c. 493, § 1.)

§ 1504. Criminal penalties.

(a) Any person convicted of conduct constituting a violation of any of the provisions of this chapter shall be guilty of a class B felony, and shall be punished by imprisonment and pay a fine of not less than $25,000.

(b) Any person convicted of conduct constituting a violation of any of the provisions of § 1503 of this title shall criminally to forfeit, to the State any real or personal property used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of § 1503 of this title including any property constituting an interest in or means of control or influence over the enterprise involved in the conduct in violation of § 1503 of this title or any property constituting proceeds derived from the conduct in violation of § 1503 of this title including:

(1) Any position, office, appointment, tenure, commission or employment contract of any kind that the person acquired or maintained in violation of § 1503 of this title or through which the person conducted or participated in the conduct of the affairs of any enterprise in violation of § 1503 of this title or that afforded the person a source of influence or control over the affairs of an enterprise that the person exercised in violation of § 1503 of this title;

(2) Any compensation, right or benefit derived from a position, office, appointment, tenure, commission or employment contract described in § 1503 of this title that accrued to the person during the period of conduct in violation of § 1503 of this title;

(3) Any interest in, security of, claim against, or property or contractual right affording the person a source or influence or control over the affairs of an enterprise that the person exercised in violation of § 1503 of this title; or

(4) Any amount payable or paid under any contract for goods or services that was awarded or performed in violation of § 1503 of this title.

(c) In lieu of any fine otherwise authorized by law, any person convicted of engaging in racketeering, or any other conduct in violation of § 1503 of this title, through which such person derived pecuniary value, or by which the person caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed 3 times the gross value gained, or 3 times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

(d) Upon conviction of a person under this chapter, the Superior Court shall authorize the Attorney General to seize all property or other interests declared forfeited under this chapter upon such terms and conditions as the Court shall deem proper. The State shall dispose of all property or other interests seized under this chapter as soon as feasible, making due provision for the rights of innocent persons. If a property right or other interest is not exercisable or transferable for value by the State, it shall expire and shall not revert to the convicted person.

(65 Del. Laws, c. 493, § 1; 67 Del. Laws, c. 130, § 8; 67 Del. Laws, c. 350, § 13; 70 Del. Laws, c. 186, § 1.)

§ 1505. Civil remedies.

(a) The Superior Court of this State shall have jurisdiction to prevent and restrain violations of this chapter by issuing appropriate orders, including but not limited to: Ordering any person to divest any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in; or ordering the dissolution or reorganization of any enterprise, making due provision of the rights of innocent persons.

(b) The Attorney General may institute proceedings under § 1503 of this title and in addition for damages, civil forfeiture and a civil penalty of up to $100,000 for each incident of activity constituting a violation of this chapter. In any action brought by the State under § 1503 of this title, the Court shall proceed as soon as practicable to hold a hearing and reach a final determination in the matter. Pending final determination thereof, the Court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of any satisfactory performance bond, as it shall deem proper.

(c) Any person directly or indirectly injured by reason of any conduct constituting a violation of this chapter may sue therefor in any appropriate court, and if successful shall recover 3 times the actual damages sustained and, when appropriate, punitive damages. Damages under this subsection are not limited to competitive or distinct injury. Plaintiffs who substantially prevail shall also recover attorneys' fees in the trial and appellate courts, together with the costs of investigation and litigation, reasonably incurred; provided, however, no action may be had under § 1503 of this title except against a defendant who has been criminally convicted of a racketeering activity which was the source of the injury alleged, and no action may be brought under this provision except within 1 year of such conviction.

(d) Any person who is injured by reason of any violation of this chapter shall have a right or claim to property forfeited under § 1504 of this title, or to the proceeds derived therefrom, which right or claim shall be superior to that of the State (other than for costs) in the same property or proceeds. To enforce such right or claim, the injured person must intervene.

(e) Upon the filing of a civil proceeding or action, the plaintiff shall immediately notify the Attorney General of the filing. The Attorney General may intervene upon certification that in the opinion of the Attorney General the action is of general public interest.

(f) Notwithstanding any other provision of law providing a shorter period of limitations, a civil proceeding or action under this paragraph may be commenced within 5 years after the conduct made unlawful under § 1504 of this title or when the cause of action otherwise accrues or within an longer statutory period that shall be applicable. If a criminal proceeding or civil action or other proceeding is brought or intervened in by the Attorney General to punish, prevent or restrain any activity made unlawful under § 1504 of this title, the running of the period of limitations prescribed by this subsection with respect to any other cause of action of an aggrieved person based in whole or part upon any matter complained of in any such prosecution, action or proceeding, shall be suspended during the pendency of such prosecution, action or proceeding and for 2 years following its termination.

(65 Del. Laws, c. 493, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1506. Forfeiture proceedings.

(a) The Attorney General is authorized to institute and conduct any proceedings under this chapter for the forfeiture of real or personal property to the State. All property of every kind used or intended for use in the course of, derived from, or realized through a pattern of racketeering conduct is subject to forfeiture to the State. Forfeiture shall be by means of a procedure which may be known and referred to as a "R.I.C.O. forfeiture proceeding."

(b) A R.I.C.O. forfeiture proceeding under this chapter may be commenced before or after seizure of the property. If the complaint is filed before seizure, it shall state what property is sought to be forfeited; that the property is within the jurisdiction of the Court; the grounds for forfeiture; and the name of each person known to have or claim an interest in the property.

(c) To the extent that property which has been forfeited under this chapter cannot be located; has been transferred, sold or deposited with third parties; or has been placed beyond the jurisdiction of the State, the Attorney General may institute and conduct any proceedings to retrieve such property as are necessary and appropriate, including forfeiture of any other property of the defendant up to the value of the property that is unreachable.

(d) No person convicted under this chapter nor any person acting in concert with or on behalf of the person shall be eligible to purchase forfeited property from the State. The interests of an innocent party in the property shall not be subject to forfeiture.

(e) The Court may, upon such terms and conditions as it deems appropriate, order that the property be sold by an innocent party who holds a lien on, or security interest in, the property at any time during the proceedings. Any proceeds from such sale, over and upon the amount necessary to satisfy the lien or security interest, shall be paid into the court pending final judgment in the forfeiture proceeding. No such sale shall be ordered, however, unless the obligation upon which the lien or security interest is based is in default.

(f) The proceeds of any sale or other disposition of forfeited property imposed under this chapter, whether by final judgment, settlement or otherwise, shall be applied in the following order:

(1) To the fees and costs of the forfeiture and sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs;

(2) If any funds remain, then to all costs and expenses of investigation and prosecution, including costs of resources and personnel incurred in investigation and prosecution;

(3) If any funds remain, then the remainder or $1,000, whichever is less, to the Crime Victim Compensation Fund;

(4) If any funds remain, to the Special Law Enforcement Assistance Fund, or its successor; or if no such fund is in existence, to the fund which is dedicated entirely to law enforcement.

(65 Del. Laws, c. 493, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1507. Racketeering lien notice; lis pendens; construction of section.

(a) Upon the institution of any criminal or civil proceeding under this chapter, the State, then or at any time during the pendency of the proceedings, may file in the official records of any 1 or more counties of this State, a racketeering (or "R.I.C.O.") lien notice. Such notice shall create, and be equivalent to, a lien. No filing fee or other charge shall be required as a condition for filing such lien notice, and the Prothonotary shall, upon the presentation of the lien notice, immediately record it in the official records.

(b) The racketeering (R.I.C.O.) lien notice shall be signed by the Attorney General, the Chief Deputy Attorney General or the State Prosecutor. The notice shall be in such form as the Attorney General shall prescribe and shall set forth the following information:

(1) The name of the person against whom the civil proceeding has been brought. The notice may, but is not required to, list any other aliases, names or fictitious titles under which the person may be known. In its discretion the State may also list any corporation, partnership or other entity which is owned or controlled by such person;

(2) If known to the Attorney General, the present residence and business address of the person named in the racketeering lien notice, and addresses for other names set forth in such lien notice;

(3) A reference to the criminal or civil proceeding, stating that a proceeding under this chapter has been brought against the person named in the racketeering lien notice, and including the name of the county or counties where the proceeding has been initiated;

(4) A statement that the notice is being filed pursuant to this chapter;

(5) The name and address of the agency within the State Department of Justice that can answer any further questions; and

(6) Such other information as the Attorney General shall deem appropriate.

(c) The Attorney General or a Deputy Attorney General may amend any lien filed under this section at any time, by filing an amended racketeering lien in the same manner as a R.I.C.O. lien. An amended racketeering lien shall identify, with reasonable certainty, the lien which is being amended.

(d) The Attorney General or a Deputy Attorney General shall, as soon as practicable after filing the racketeering lien notice, furnish to any person named in the lien a notice of the filing of such lien. The notice may be mailed by certified mail, return receipt requested. Failure to notify the person named in the lien in accordance with this subsection shall not invalidate nor otherwise affect any racketeering lien notice filed in accordance with this section.

(e) A racketeering lien is perfected against interests in personal property by filing the lien notice with the Secretary of State, except that in the case of a titled motor vehicle it shall be filed with the Division of Motor Vehicles. A racketeering lien is perfected against interests in real property by filing the lien notice with the Prothonotary in the county in which the real property is located. The State may give such additional notice of the lien as it deems appropriate.

(f) The filing of a notice of lien in accordance with this section creates a lien in favor of the State in:

(1) Any interest of the defendant in real property situated in the county in which the lien notice is filed, then maintained or thereafter acquired in the name of the defendant identified in the notice;

(2) Any interest of the defendant in personal property situated in this State, then maintained or thereafter acquired in the name of the defendant identified in the lien notice; and

(3) Any property identified in the lien notice to the extent of the defendant's interest therein.

(g) The filing of a racketeering lien notice under this section is notice to all persons dealing with the person or property identified in the lien of the State's claim. The lien created in favor of the State in accordance with this section is superior to and prior to the claims and interests of any other person, except a person possessing:

(1) A valid lien perfected prior to the filing of the racketeering lien notice;

(2) In the case of real property, an interest acquired and recorded prior to the filing of the racketeering lien notice; or

(3) In the case of personal property, an interest acquired prior to the filing of the racketeering lien notice.

(h) Where a trustee conveys title to real property against which a R.I.C.O. lien notice has been filed; and the lien notice has been filed in the county in which the property is located and names a person who, to the actual knowledge of the trustee, holds a beneficial interest in the trust, the trustee shall be liable to the State for the greater of:

(1) The amount of proceeds received directly by the person named in the R.I.C.O. lien notice, as a result of the conveyance;

(2) The amount of proceeds received by the trustee as a result of the conveyance, and distributed to any person named in the lien notice; or

(3) The fair market value of the interest of the person named in the lien notice in the real property so conveyed; provided, however, that if the trustee conveys the real property, and holds proceeds that would otherwise be paid or distributed to the beneficiary (or at the direction of the beneficiary or the beneficiary's designee), the trustee's liability shall not exceed the amount of the proceeds so held for so long as the proceeds are held by the trustee.

(i) Upon entry of judgment in favor of the State, the State may proceed to execute thereon as in the case of any other judgment, except that in order to preserve the State's lien priority, as provided in this section, the State shall (in addition to such other notice as is required by law) give at least 30 days' notice of such execution to any person, possessing at the time such notice is given, an interest recorded subsequent to the date the State's lien was perfected.

(j) Upon the entry of a final judgment in favor of the State, or an order providing for forfeiture of property to the State, the title of the State to the property:

(1) In the case of real property, or a beneficial interest in real property, relates back to the date of filing the racketeering lien notice; or if no racketeering lien notice was filed, then to the date of recording of the final judgment, or an abstract thereof, in the county where the real property is located.

(2) In the case of personal property or a beneficial interest in personal property, relates back to the date the personal property was seized by the State, or the date of filing of a racketeering lien notice in accordance with this section, whichever is earlier; but if the property was not seized, and no racketeering lien was filed, then to the date the final judgment was filed with the Secretary of State, or in the case of a titled motor vehicle, with the Division of Motor Vehicles.

(k) This section shall not limit any right of the State to obtain any order or injunction, receivership, writ, attachment, garnishment or other remedy; nor limit any right of action which is appropriate to protect the interests of the State, or which is available under other applicable law.

(l) In the event the Attorney General determines that the provisions of this section are unclear or insufficient the Attorney General may petition the Superior Court for the promulgation of rules to further clarify, or more effectively accomplish, the intent of this chapter and of this section. Where any rule promulgated by the Court conflicts with any provision of this section, this section shall be paramount.

(65 Del. Laws, c. 493, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1508. Term of lien notice.

(a) The term of a racketeering lien notice shall be for a period of 6 years from the date of filing, unless a renewal lien notice has been filed; and, in such case, the term of the renewal lien notice shall be for a period of 6 years from the date of its filing. The State shall be entitled to only 1 renewal of a specific racketeering lien notice.

(b) The Attorney General may release, in whole or in part, any racketeering lien notice or may release any specific real property or beneficial interest from a lien notice upon such terms and conditions as the Attorney General, or the Court, may determine. Any release of a racketeering lien notice executed by the Attorney General may be filed in the official records of any county. No charge or fee shall be imposed for the filing of any release of a racketeering lien notice.

(c) If no civil proceeding has been instituted by the Attorney General, seeking a forfeiture of any property owned by the person named in the racketeering lien notice, the acquittal in the criminal proceeding of such person named in the lien notice or the dismissal of the criminal proceeding, shall terminate the lien notice; and, in such case, the filing of the racketeering lien notice shall have no effect. Where a civil proceeding has been instituted, and the criminal proceeding has been dismissed, or the person named in the racketeering lien notice has been acquitted in the criminal proceeding, the lien notice shall continue for the duration of the civil proceeding.

(d) If no civil proceeding is then pending against the person named in a R.I.C.O. lien notice, any person named in the lien notice may institute a civil action against the State, seeking a release or extinguishment of the State's lien. Notice of such civil action shall be filed in the county where the lien notice was filed.

(65 Del. Laws, c. 493, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1509. Investigative powers of Attorney General.

(a) Whenever the Attorney General has reasonable cause to believe that any person or enterprise may have knowledge of, has been engaged in or is engaging in any conduct in violation of this chapter, the Attorney General may, in the Attorney General's discretion,

conduct an investigation of such conduct. The Attorney General is authorized before the commencement of any civil or criminal proceeding under this chapter to subpoena witnesses. The Attorney General may issue in writing and cause to be served on any person an investigative demand to compel the attendance of witnesses, examine witnesses under oath, require the production of evidence or documentary materials, and require answers to written interrogatories to be furnished under oath.

(b) The production of documentary material in response to an investigative demand served under this section shall be made pursuant to a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by an individual having knowledge of the facts and circumstances relating to the production of materials, which certificate shall affirm that all of the documentary material required by the investigative demand and in the possession, custody or control of the person to whom the demand is directed has been produced and made available to the custodian.

(c) The Attorney General may, in the Attorney General's discretion, require the production under this section of documentary materials prior to the taking of any testimony of the person subpoenaed. The required documentary materials shall be made available for inspection or copying during normal business hours at the principal place of business of the person served, or at such other time and place as may be agreed upon between the person served and the Attorney General.

(d) The examination of all persons pursuant to this section shall be conducted by the Attorney General or by a person designated in writing to be the Attorney General's representative, before an officer chosen by the Attorney General who is authorized to administer oaths in this State. The statements made shall be taken down stenographically, or by a sound-recording device, and shall be transcribed.

(e) No person shall, with intent to avoid, evade, prevent or obstruct compliance in whole or in part by any person with any duly served investigative demand of the Attorney General under this section, knowingly remove to any place, conceal, withhold, destroy, mutilate, alter or by any other means falsify any documentary material or materials that are the subject of the demand. A violation of this subsection is a class E felony. The Attorney General shall investigate suspected violations of this section.

(f) In the event a witness subpoenaed under this section fails or refuses to appear, or to produce documentary materials as provided herein, or to give testimony relevant or material to an investigation, the Attorney General may petition the Superior Court in the county where the witness resides for an order requiring the witness to attend and testify, or to produce the documentary materials. Any failure or refusal by the witness to obey an order of the Court may be punishable by the Court as contempt.

(65 Del. Laws, c. 493, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1510. Registration of foreign corporations.

(a) Each foreign corporation desiring to acquire of record any real property shall have, prior to acquisition, and shall continuously maintain in this State during any year thereafter in which such real property is owned by the corporation:

(1) A registered office; and

(2) A registered agent, which agent may be either:

a. An individual resident in this State, whose business office is identical with such registered office; or

b. Another corporation authorized to transact business in this State, having a business office identical with such registered office.

A foreign corporation that, prior to acquisition of any real property in this State, complies with the requirements of § 371 of Title 8 and thereafter continuously maintains a registered agent in this State for the purposes of that section shall be deemed to have complied with the requirements of this subsection.

(b) Each foreign corporation shall file with the Secretary of State on or before June 30 of each year, a sworn report on such forms as the Secretary of State shall prescribe, setting forth:

(1) The name of such corporation;

(2) The street address and the principal office of such corporation;

(3) The name and street address of the registered agent and registered office of such corporation; and

(4) The signature of the corporate president, vice-president, secretary, assistant secretary or treasurer attesting to the accuracy of the report as of the date immediately preceding filing of the report.

A foreign corporation that complies with § 374 of Title 8 by filing the annual report as required by that section shall be deemed to have complied with this subsection.

(c) Each foreign corporation which fails to comply with subsections (a) and (b) of this section shall not be entitled to sue or to defend in the courts of the State, until such corporation has a registered agent and registered office pursuant to subsection (a) of this section (or until such corporation registers with the Secretary of State pursuant to § 371 of Title 8) and complies with subsection (b) of this section by filing a report pursuant to such subsection (or pursuant to § 374 of Title 8).

(d) The filing of a report by a corporation as required by this section shall be solely for the purposes of this chapter and, notwithstanding any other act, shall not be used as a determination of whether the corporation is doing business in this State; provided, however, that this subsection shall not apply to a foreign corporation which satisfies the requirements of subsection (b) of this section by filing an annual report under § 374 of Title 8.

(e) This section shall not apply to any foreign financial, banking, insurance or lending organization whose lending activities are regulated by any other state or the United States of America.

(f) The Secretary of State may establish fees for any filings required by this section, which fees shall not exceed those prescribed for similar filings as stated in § 391 of Title 8.

(65 Del. Laws, c. 493, § 1; 71 Del. Laws, c. 171, § 2.)

§ 1511. Use of property and funds for law-enforcement purposes.

(a) All cash, bonds and other funds forfeited to the State in accordance with this chapter which remain after distribution pursuant to § 1506(f) of this title shall be deposited into the Special Law Enforcement Assistance Fund [§ 4110 et seq. of this title].

(b) Personalty forfeited to the State which is not cash or currency shall not be sold or otherwise converted until the Attorney General determines, in writing, that such personalty cannot be used for law-enforcement related purposes. If the Attorney General determines that there is a law-enforcement use for such personalty, the personalty shall become state property and the Department of Justice shall have the right of first refusal.

(65 Del. Laws, c. 493, § 1; 73 Del. Laws, c. 94, § 21.)

Part II
Criminal Procedure Generally

Chapter 17
General Provisions

§ 1701. Benefit of clergy.

The benefit of clergy shall not exist within this State.

(Code 1852, § 2956; Code 1915, § 4824; Code 1935, § 5313; 11 Del. C. 1953, § 1701.)

§ 1702. Information against organization; process.

Whenever an organization is informed against in a criminal proceeding, process shall be issued against such organization in the usual form and shall be served upon such organization in the same manner as process is served upon organizations in civil cases. An organization so served with process shall appear by an attorney in the court out of which such process has been issued by the time of the return of such writ, or upon motion of the Attorney General, final judgment shall be given against it upon the information.

(Code 1915, § 4818A; 28 Del. Laws, c. 247; Code 1935, § 5319; 11 Del. C. 1953, § 1702; 74 Del. Laws, c. 71, §§ 1, 2.)

§ 1703. Definitions

For purposes of this part:

(1) “Deoxyribonucleic acid” or “DNA” means as defined in § 4701A of Title 29.

(2) “DNA profile” means as defined in § 4701A of Title 29.

(3) “Firearm” means as defined in § 222 of this title.

(4) “Projectile weapon” means as defined in § 222 of this title.

(84 Del. Laws, c. 525, § 21; 85 Del. Laws, c. 143, § 7.)

Part II
Criminal Procedure Generally

Chapter 19
Arrest and Commitment; Fresh Pursuit

Subchapter I
Arrest and Commitment

§ 1901. Definitions.

As used in this subchapter:

(1) "Arrest" is the taking of a person into custody in order that the person may be forthcoming to answer for the commission of a crime.

(2) "Peace officer" is any public officer authorized by law to make arrests in a criminal case. Sheriffs and sheriff deputies are not authorized by law to make arrests in criminal cases.

(Code 1935, § 5343-A; 48 Del. Laws, c. 304; 11 Del. C. 1953, § 1901; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 266, § 2.)

§ 1902. Questioning and detaining suspects.

(a) A peace officer may stop any person abroad, or in a public place, who the officer has reasonable ground to suspect is committing, has committed or is about to commit a crime, and may demand the person's name, address, business abroad and destination.

(b) Any person so questioned who fails to give identification or explain the person's actions to the satisfaction of the officer may be detained and further questioned and investigated.

(c) The total period of detention provided for by this section shall not exceed 2 hours. The detention is not an arrest and shall not be recorded as an arrest in any official record. At the end of the detention the person so detained shall be released or be arrested and charged with a crime.

(Code 1935, § 5343-B; 48 Del. Laws, c. 304; 11 Del. C. 1953, § 1902; 56 Del. Laws, c. 152, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1903. Searching questioned person for weapon.

A peace officer may search for a dangerous weapon any person whom the officer has stopped or detained to question as provided in § 1902 of this title, whenever the officer has reasonable ground to believe that the officer is in danger if the person possesses a dangerous weapon. If the officer finds a weapon, the officer may take and keep it until the completion of the questioning, when the officer shall either return it or arrest the person. The arrest may be for the illegal possession of the weapon.

(Code 1935, § 5343C; 48 Del. Laws, c. 304; 11 Del. C. 1953, § 1903; 70 Del. Laws, c. 186, § 1.)

§ 1904. Arrest without warrant.

(a) An arrest by a peace officer without a warrant for a misdemeanor is lawful whenever the officer has reasonable ground to believe that the person to be arrested has committed a misdemeanor:

(1) In the officer's presence;

(2) Out of the officer's presence and without the State, and if law-enforcement officers of the state where the misdemeanor was committed request an arrest and the accused will not be apprehended unless immediately arrested;

(3) Out of the officer's presence and within the State for the crime of shoplifting and the arrest is based upon personal investigation at the scene of arrest and where a store employee is present who has observed the activity of the person to be arrested and that person is still present;

(4) Out of the officer's presence and within the State for any misdemeanor involving physical injury or the threat thereof or any misdemeanor involving illegal sexual contact or attempted sexual contact;

(5) Out of the officer's presence and within the State for a violation of a protective order issued by: Family Court; a court of any state, territory, or Indian nation in the United States; or a court of Canada;

(6) Out of the officer's presence and within the State for any misdemeanor occurring on school property; or

(7) Out of the officer's presence and within the State for the crime of underage gambling, § 4810(a) of Title 29, and all of the following apply:

a. The arrest is based upon the officer's personal investigation at the scene of arrest.

b. A gaming employee, as defined in § 4803 of Title 29, is present who has observed the activity of the person to be arrested.

c. The person to be arrested is still present.

(b) An arrest by a peace officer without a warrant for a felony, whether committed within or without the State, is lawful whenever:

(1) The officer has reasonable ground to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed; or

(2) A felony has been committed by the person to be arrested although before making the arrest the officer had no reasonable ground to believe the person committed it.

(c) Notwithstanding any other provision of law to the contrary, an arrest by a peace officer without a warrant for violation of probation is lawful whenever the peace officer has a reasonable ground to believe that the person to be arrested has committed a new offense within or without the State during a period of probation and has thereby violated a condition of said probation imposed upon the person by a court of this State. A reasonable ground to believe that a person has committed a new offense may be based upon, but is not limited to, a finding of probable cause to issue a warrant for the new offense made by a neutral magistrate, an indictment returned by a grand jury for the new offense or an information for the new offense filed in any court.

Any person arrested pursuant to the provisions of this subsection shall be processed in accordance with the provisions of § 1909 of this title, at which time bail shall be set on both the new offense and the violation of probation.

(Code 1935, § 5343-F; 48 Del. Laws, c. 304; 11 Del. C. 1953, § 1906; 58 Del. Laws, c. 448; 64 Del. Laws, c. 362, § 1; 69 Del. Laws, c. 160, § 5; 70 Del. Laws, c. 58, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 437, § 1; 72 Del. Laws, c. 63, § 2; 80 Del. Laws, c. 373, § 3; 81 Del. Laws, c. 250, § 4.)

§ 1905. Validity of arrest on improper grounds.

If a lawful cause of arrest exists, the arrest is lawful even though the officer charges the wrong offense or gives a reason that does not justify the arrest.

(Code 1935, § 5343-G; 48 Del. Laws, c. 304; 11 Del. C. 1953, § 1907.)

§ 1906. Possession and display of warrant.

An arrest by a peace officer acting under a warrant is lawful even though the officer does not have the warrant in possession at the time of the arrest, but, if the person arrested so requests, the warrant shall be shown to the person as soon as practicable.

(Code 1935, § 5343-H; 48 Del. Laws, c. 304; 11 Del. C. 1953, § 1908; 70 Del. Laws, c. 186, § 1.)

§ 1907. Summons instead of arrest; form; penalty for nonappearance.

(a) In any case in which it is lawful for a peace officer to arrest without a warrant a person for a misdemeanor, the officer may, but need not, give the person a written summons in substantially the following form:

Violator's Last Name	First	Middle	O.C.P. No.	Birth Date	Sex M F
No. and Street	City	State	Color W B O	Occupation	
Owner's Name	First	Middle		State Tag No.	
		Address			
Specific Offense			Sec. No.	DateTime M.	Acc.Yes No
Hundred	County S K NC	Route No.		Exact Location	
Magistrate		Arresting Officer		Date of Trial	
			Troop	Time	
		Address			

You are hereby directed to appear at the time and place designated above to stand trial for the offense indicated. A failure to obey this summons may result in fine or imprisonment, or both.

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(b) If the person fails to appear in answer to the summons, or if there is reasonable cause to believe that the person will not appear, a warrant for the person's arrest may issue.

(c) Whoever wilfully fails to appear in answer to the summons may be fined not more than $100 or imprisoned for not more than 30 days, or both.

(Code 1935, § 5343-I; 48 Del. Laws, c. 304; 11 Del. C. 1953, § 1909; 70 Del. Laws, c. 186, § 1.)

§ 1908. Release of person arrested without warrant.

(a) Any officer in charge of a police department or any officer delegated by the officer may release, instead of taking before a magistrate, any person who has been arrested without a warrant by an officer of that department whenever:

(1) The officer is satisfied either that there is no ground for making a criminal complaint against the person and no further proceedings are desirable; or

(2) The person was arrested for a misdemeanor and has signed an agreement to appear in court at a time designated, if the officer is satisfied that the person is a resident of the State and will appear in court at the time designated.

(b) A person released as provided in this section shall have no right to sue on the ground that the person was released without being brought before a magistrate.

(Code 1935, § 5343-J; 48 Del. Laws, c. 304; 11 Del. C. 1953, § 1910; 57 Del. Laws, c. 694, § 2; 70 Del. Laws, c. 186, § 1.)

§ 1909. Hearing without delay; permissible delay.

(a) If not otherwise released, every person arrested shall be brought before a magistrate without unreasonable delay, and in any event the person shall, subject to the limitations contained in subsection (b) of this section below, be so brought within 24 hours of arrest, unless the court, for good cause shown, orders that person be held for a further period not to exceed 48 hours.

(b) Persons unable to knowingly and intelligently participate in the presentment proceedings because of incapacitation as a result of the consumption of alcohol or the use of drugs may, until such time as they are able to meaningfully participate in those proceedings, be held in police custody or be temporarily committed with bail and conditions of release to the custody of the Department of Correction on order of and following a determination of incapacitation by a magistrate. This temporary holding or commitment should not exceed 12 hours from the time of commitment until presentment, unless the court, for good cause shown, orders that person be held for a further period not to exceed 24 additional hours.

(Code 1935, § 5343-K; 48 Del. Laws, c. 304; 11 Del. C. 1953, § 1911; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 257, § 1.)

§ 1910. Identification of witness.

Whenever a peace officer has reasonable ground to believe that a crime has been committed, the officer may stop any person who the officer has reasonable ground to believe was present thereat and may demand the person's name and address. If the person fails to give identification to the satisfaction of the officer, the officer may take the person forthwith before a magistrate. If the person fails to give identification to the satisfaction of the magistrate, the latter may require the person to furnish bond or may commit the person to jail until the person so gives identification.

(Code 1935, § 5343-L; 48 Del. Laws, c. 304; 11 Del. C. 1953, § 1912; 70 Del. Laws, c. 186, § 1.)

§ 1911. Police officers; statewide authority.

(a) For purposes of this section "police officer" means any police officer holding current certification by the Police Officer Standards and Training Commission as provided by Chapter 84 of this title and who is:

(1) A member of the Delaware State Police;

(2) A member of the New Castle County Police;

(3) A member of the police department, bureau or force of any incorporated city or town;

(4) A member of the Delaware River and Bay Authority Police;

(5) A member of the Capitol Police;

(6) A member of the University of Delaware Police;

(7) A law-enforcement officer of the Department of Natural Resources and Environmental Control;

(8) An agent of the State Division of Alcohol and Tobacco Enforcement;

(9) An officer or agent of the State Police Drug Diversion Unit;

(10) A state detective or special investigator of the Department of Justice;

(11) Delaware State University Police; or

(12) A member of the Office of the State Fire Marshal.

(b) A police officer may arrest without a warrant at any location within the State any person the officer has reasonable grounds to believe is committing or attempting to commit a felony in the officer's presence.

(c) An on-duty police officer may arrest upon view and without a warrant at any location within the State any person when probable cause exists to believe that the person is committing or attempting to commit any crime which creates a substantial risk of death or serious physical injury to another person or which constitutes a violation of § 4177 of Title 21.

(d) An "on-duty" police officer may arrest at any location in the State any person for any offense committed within the jurisdiction of the officer's employing agency and for whose arrest a warrant has been issued. The "on-duty" police officer shall, where acting outside of the officer's jurisdiction, take reasonable measures to notify the primary jurisdictional police agency of the intended time and place of the execution of the arrest warrant.

(e) A police officer may render assistance to another police officer at any location within the State when the officer reasonably believes that the police officer to be assisted is lawfully performing that officer's duty and that death or injury will occur to that police officer if assistance is not provided.

(f) When police officers who are certified by the Police Officer Standards and Training Commission are dispatched by a Public Safety Answering Point outside of their respective jurisdiction as conservators of the peace, those officers shall be considered to be acting as officers of the dispatching agency and have the powers of arrest thereof.

(g) A police officer acting under the authority of this section shall be considered to be acting within the scope of employment.

(h) This section shall not serve to limit the authority of members of the Delaware State Police or other police officers as provided for elsewhere in this title or by other authority.

(i) "Police officer" as used in this code shall not include sheriffs and sheriff deputies.

(64 Del. Laws, c. 101, § 1; 65 Del. Laws, c. 207, § 1; 66 Del. Laws, c. 305, § 1; 67 Del. Laws, c. 220, § 1; 68 Del. Laws, c. 313, § 1; 70 Del. Laws, c. 105, § 13; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 465, § 1; 72 Del. Laws, c. 379, § 2; 73 Del. Laws, c. 195, § 1; 74 Del. Laws, c. 250, § 2; 76 Del. Laws, c. 43, § 1; 76 Del. Laws, c. 160, § 1; 76 Del. Laws, c. 332, § 1; 78 Del. Laws, c. 155, § 3; 78 Del. Laws, c. 266, § 3; 78 Del. Laws, c. 377, § 1; 84 Del. Laws, c. 149, § 5.)

§ 1912. Federal law-enforcement officers; authority; immunity.

A sworn federal law-enforcement officer, who in an official capacity is authorized by law to make arrests, shall have the same legal status and immunity from suit in this State as a member of the Delaware State Police when making an arrest in this State concerning a nonfederal crime, only if:

(1) The federal officer reasonably believes that the person arrested has committed or is committing a felony in the officer's presence; or

(2) The federal officer is rendering assistance to a peace officer of this State in an emergency or at the request of the peace officer.

(64 Del. Laws, c. 354, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1913. Release and publication of the name and photograph of a juvenile.

(a) As used in this section:

(1) "Juvenile" means a child 17 years of age or younger.

(2) "Law-enforcement officer" means as defined in § 222 of this title.

(3) "Law-enforcement agency" means any agency employing law-enforcement officers.

(4) "Mugshot" means a photograph of a suspect's face or profile.

(5) "Name of juvenile" means the name of a juvenile who has been arrested or suspected of committing a crime.

(6) "Photograph of a juvenile" means any image depicting a juvenile who has been arrested or suspected of committing a crime. "Photograph of a juvenile" includes a mugshot.

(7) "Publish" means to disseminate to the public or produce or release for distribution. "Publish" includes to display on any publicly-maintained social media page or website.

(8) "Release" means to make available or accessible to the public.

(9) "Violent felony" means as defined in § 4201 of this title.

(b) No law-enforcement agency shall release or publish or cause to be released or published the name of a juvenile or a photograph of a juvenile unless all of the following apply:

(1) The juvenile is charged with a violent felony.

(2) Release or publication of the photograph or name of the juvenile is necessary to protect the public's safety.

(83 Del. Laws, c. 262, § 1.)

§ 1914. Arrest or detention by private person prohibited.

(a) Except as set forth under subsection (b) of this section, arrest or detention by any person who is not specifically authorized by statute to effect an arrest or detention is prohibited.

(b) If a peace officer is attempting to effect an arrest or detention, a private citizen may assist upon request of a peace officer or if the peace officer is incapacitated.

(85 Del. Laws, c. 74, § 1.)

Subchapter II

Fresh Pursuit

§ 1931. Definitions.

As used in this subchapter:

"Fresh pursuit" includes fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or a misdemeanor or a violation of the Motor Vehicle Code of this State or who is reasonably suspected of having committed a felony or a misdemeanor or a violation of the Motor Vehicle Code of this State, and also includes the pursuit of a person suspected of having committed a supposed felony or misdemeanor or violation of the Motor Vehicle Code of the State though no violation of the law has actually been committed, if there is reasonable grounds for believing that a violation of the law has been committed; however, fresh pursuit as used in this subchapter does not necessarily imply instant pursuit, but pursuit without unreasonable delay.

(41 Del. Laws, c. 216, § 5; 11 Del. C. 1953, § 1931; 56 Del. Laws, c. 154, § 1.)

§ 1932. Arrest by out-of-state police.

(a) Any member of a duly organized state, county or municipal peace unit of another state of the United States who enters this State in fresh pursuit, and continues within this State in such fresh pursuit, of a person in order to arrest the person on the ground that the person is believed to have committed a felony, a misdemeanor or a violation of the motor vehicle code in such other state, shall have the same authority to arrest and hold such person in custody, as has any member of any duly organized state, county or municipal peace unit of this State, to arrest and hold in custody a person on the ground that the person is believed to have committed a felony, a misdemeanor or a violation of the Motor Vehicle Code in this State.

(b) This section shall not be construed so as to make unlawful any arrest in this State which would otherwise be lawful.

(41 Del. Laws, c. 216, §§ 1, 3; 11 Del. C. 1953, § 1932; 56 Del. Laws, c. 154, § 2; 70 Del. Laws, c. 186, § 1.)

§ 1933. Hearing before justice of the peace; waiver of extradition.

If an arrest is made in this State by an officer of another state in accordance with § 1932 of this title, the officer shall without unnecessary delay take the person arrested before a justice of the peace of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the justice of the peace determines that the arrest was lawful the justice of the peace shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the Governor of this State, or admit the person to bail for such purpose. If the justice of the peace determines that the arrest was unlawful the justice of the peace shall discharge the person arrested.

If the person so arrested waives extradition in the manner provided by law, upon the filing of the waiver at the central office or headquarters of any local, county or state police, or at the local office of the Attorney General, the officer having the arrested person in charge may forthwith take the person from this State to the state where the arrested person is wanted for having committed the felony.

(41 Del. Laws, c. 216, § 2; 11 Del. C. 1953, § 1933; 70 Del. Laws, c. 186, § 1.)

§ 1934. Short title.

This subchapter may be cited as the “Uniform Law on Fresh Pursuit.”

(41 Del. Laws, c. 216, § 8; 11 Del. C. 1953, § 1934.)

§ 1935. Fresh pursuit by county, municipal, town and other peace units.

Any peace officer of a duly organized county, municipal, town, interstate bridge or university peace unit or a law-enforcement officer of the Department of Natural Resources and Environmental Control, but not county sheriffs or their deputies, may carry out fresh pursuit of any person anywhere within this State, regardless of the original territorial jurisdiction of such officer, in order to arrest such person pursued, when there is reasonable grounds to suspect that a felony, misdemeanor, or violation of the Motor Vehicle Code has been committed in this State by such person.

(11 Del. C. 1953, § 1935; 56 Del. Laws, c. 154, § 3; 66 Del. Laws, c. 304, § 1; 70 Del. Laws, c. 105, § 14; 78 Del. Laws, c. 266, § 4.)

Subchapter III

Police Mutual Aid Agreements

§ 1941. Short title.

This subchapter may be cited as the “Police Mutual Assistance Act.”

(11 Del. C. 1953, § 1941; 57 Del. Laws, c. 433; 75 Del. Laws, c. 36, § 1.)

§ 1942. Definitions.

As used in this subchapter:

(1) “Emergency” means any such circumstance which, in the judgment of the principal law-enforcement officer of the requesting jurisdiction, requires additional police assistance, and shall include such planned or anticipated or scheduled events that, in the judgment of the principal law-enforcement officer of the requesting jurisdiction, will require additional police resources beyond the reasonable capacity of the requesting jurisdiction. The governing body of a jurisdiction may determine the circumstances under which police officers of its jurisdiction, together with all necessary equipment, may lawfully go or be sent beyond the territorial limits of its jurisdiction to any point within or without the State.

(2) “Jurisdiction” means a recognized geographic area such as a county, incorporated municipality or the legislatively defined area of responsibility of the Delaware River and Bay Authority or the Department of Safety and Homeland Security or the Department of Natural Resources and Environmental Control and/or the University of Delaware and/or Delaware State University in which the governing body and its police have the authority, capacity, power and right to enforce laws.

(3) “Mutual assistance” means the provisions under this subchapter enabling the police of one jurisdiction to enter into another jurisdiction for purpose of rendering assistance upon the request of the other jurisdiction.

(4) “Police” includes all authorized law-enforcement personnel of a jurisdiction.

(11 Del. C. 1953, § 1942; 57 Del. Laws, c. 433; 66 Del. Laws, c. 110, § 1; 66 Del. Laws, c. 306, §§ 1, 2; 70 Del. Laws, c. 105, §§ 15, 16; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 138, §§ 2, 3; 72 Del. Laws, c. 367, § 1; 74 Del. Laws, c. 110, § 138; 75 Del. Laws, c. 36, § 1.)

§ 1943. Use of police from other jurisdictions in emergencies.

Whenever the necessity arises during an emergency, upon request, the police of one jurisdiction may, pursuant to this subchapter, lawfully enter into another jurisdiction for the purpose of assisting in meeting such emergency.

(11 Del. C. 1953, § 1943; 57 Del. Laws, c. 433; 75 Del. Laws, c. 36, § 1.)

§ 1944. Mutual assistance.

(a) The police agency of a jurisdiction may in its discretion enter into agreements to provide mutual assistance for such periods as it deems advisable with any other jurisdiction within or without the State, including the District of Columbia. Such agreements must set forth the rights and obligations of the parties with respect to the mutual assistance contemplated under the agreement.

(b) [Repealed.]

(11 Del. C. 1953, § 1944; 57 Del. Laws, c. 433; 66 Del. Laws, c. 110, § 2; 72 Del. Laws, c. 130, § 1; 75 Del. Laws, c. 36, § 1; 82 Del. Laws, c. 207, § 1.)

§ 1945. Liability insurance.

The governing body of any jurisdiction in this State is authorized to procure or extend the necessary public liability insurance to cover claims arising out of mutual assistance to other jurisdictions.

(11 Del. C. 1953, § 1945; 57 Del. Laws, c. 433; 66 Del. Laws, c. 110, § 3; 75 Del. Laws, c. 36, § 1.)

§ 1946. Direction and authorization of activities.

(a) The principal law-enforcement officer on duty of a jurisdiction shall be responsible for directing the activities of all police coming into that officer’s jurisdiction pursuant to this subchapter.

(b) The principal law-enforcement officer shall be empowered to authorize all police from a foreign jurisdiction to the same extent as if they were duly authorized law-enforcement officers of the jurisdiction.

(11 Del. C. 1953, § 1946; 57 Del. Laws, c. 433; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 36, § 1.)

§ 1947. Immunities; benefits.

Police, when acting outside their respective jurisdictions pursuant to mutual assistance, shall have all the immunities from liability and exemptions from law, ordinances and regulations and shall have all the pension, relief, disability workers’ compensation and other benefits enjoyed by them while performing their respective duties within their own jurisdiction. Nothing in this subchapter shall be construed as in any way limiting the provisions of § 1911 of this title.

(11 Del. C. 1953, § 1947; 57 Del. Laws, c. 433; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 36, § 1.)

Part II
Criminal Procedure Generally

Chapter 20
Custodial Interrogations

(83 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 447, § 1.)

Subchapter I
Uniform Electronic Recordation of Custodial Interrogations Act

(83 Del. Laws, c. 447, § 1.)

§ 2001. Short title.

This subchapter may be cited as the "Uniform Electronic Recordation of Custodial Interrogations Act."

(83 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 447, § 1.)

§ 2002. Definitions.

For purposes of this subchapter:

(1) "Body-worn camera" means an electronic device that is worn by a law-enforcement officer and records audio and video data on the device itself or transmits audio and video data to another location for recording.

(2) "Crime" means defined as § 233 of this title.

(3) "Custodial interrogation" means questioning or other conduct by a law-enforcement officer which is reasonably likely to elicit an incriminating response from an individual and occurs when reasonable individuals in the same circumstances would consider themselves in custody.

(4) "Delinquent act" means an act committed by a child that, if committed by an adult, would constitute a crime.

(5) "Electronic recording" means an audio recording or an audio and video recording that accurately records a custodial interrogation. "Record electronically" and "recorded electronically" have a corresponding meaning.

(6) "Law-enforcement agency" means a governmental entity or individual authorized by a governmental entity or state law to enforce criminal laws or investigate suspected criminal activity. "Law-enforcement agency" does not include a law-enforcement officer.

(7) "Law-enforcement officer" means either of the following:

a. An individual employed by a law-enforcement agency whose responsibilities include enforcing criminal laws or investigating suspected criminal activity.

b. An individual acting at the request or direction of an individual described in paragraph (7)a. of this section.

(8) a. "Place of detention" means a fixed location under the control of a law-enforcement agency where individuals are questioned about alleged crimes or delinquent acts.

b. "Place of detention" includes a jail, police station, holding cell, correctional or detention facility, police vehicle, and, for a child, school.

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(10) "Statement" means communication whether oral, written, electronic, or nonverbal.

(83 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 447, § 1.)

§ 2003. Electronic recording requirement.

(a) Except as otherwise provided by §§ 2005 through 2009 of this title, a custodial interrogation at a place of detention, including the giving of any required warning, advice of the rights of the individual being questioned, and the waiver of any rights by the individual, must be recorded electronically in its entirety if the interrogation relates to a crime or delinquent act. A custodial interrogation must be recorded as follows:

(1) If the custodial detention occurs at a jail, police station, or holding cell by audio and video means.

(2) If the custodial detention occurs in a police vehicle, at a school for a child, in a correctional or detention facility, or at any other place of detention other than a place of detention under paragraph (a)(1) of this section, by audio means or by the use of a body-worn camera at a minimum.

(b) If a law-enforcement officer conducts a custodial interrogation to which subsection (a) of this section applies without electronically recording it in its entirety, the officer shall prepare a written or electronic report explaining the reason for not complying with this section and summarizing the custodial interrogation process and the individual's statements.

(c) A law-enforcement officer shall prepare the report required by subsection (b) of this section as soon as practicable after completing the interrogation.

(d) As soon as practicable, a law-enforcement officer conducting a custodial interrogation outside a place of detention shall prepare a written or electronic report explaining the decision to interrogate outside a place of detention and summarizing the custodial interrogation process and the individual's statements outside a place of detention.

(e) This section does not apply to a spontaneous statement made outside the course of a custodial interrogation or a statement made in response to a question asked routinely during the processing of the arrest of an individual.

(83 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 447, § 1.)

§ 2004. Notice and consent not required.

Notwithstanding Chapter 24 of this title, a law-enforcement officer conducting a custodial interrogation is not required to obtain consent to electronic recording from the individual being interrogated or to inform the individual that an electronic recording is being made of the interrogation. This subchapter does not permit a law-enforcement officer or a law-enforcement agency to record a private communication between an individual and the individual's lawyer or a child and the child's parent or guardian.

(83 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 447, § 1.)

§ 2005. Exception for exigent circumstances.

A custodial interrogation to which § 2003 of this title otherwise applies need not be recorded electronically if recording is not feasible because of exigent circumstances. The law-enforcement officer conducting the interrogation shall record electronically an explanation of the exigent circumstances before conducting the interrogation, if feasible, or as soon as practicable after the interrogation is completed.

(83 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 447, § 1.)

§ 2006. Exception for individual's refusal to be recorded electronically.

(a) A custodial interrogation to which § 2003 of this title otherwise applies need not be recorded electronically if the individual to be interrogated indicates that the individual will not participate in the interrogation if it is recorded electronically. The individual's agreement to participate without recording must be recorded in a written document that is signed by the individual.

(b) If, during a custodial interrogation to which § 2003 of this title otherwise applies, the individual being interrogated indicates that the individual will not participate in further interrogation unless electronic recording ceases, the remainder of the custodial interrogation need not be recorded electronically. The individual's agreement to participate without recording must be recorded electronically.

(c) A law-enforcement officer, with intent to avoid the requirement of electronic recording in § 2003 of this title, may not encourage an individual to request that a recording not be made.

(83 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 447, § 1.)

§ 2007. Exception for interrogation conducted by other jurisdiction.

If a custodial interrogation occurs in another state in compliance with that state's law or is conducted by a federal law-enforcement agency in compliance with federal law, the interrogation need not be recorded electronically unless the interrogation is conducted with intent to avoid the requirement of electronic recording in § 2003 of this title.

(83 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 447, § 1.)

§ 2008. Exception for safety of individual or protection of identity.

A custodial interrogation to which § 2003 of this title otherwise applies need not be recorded electronically if a law-enforcement officer conducting the interrogation or the officer's superior reasonably believes that electronic recording would disclose the identity of a confidential informant or jeopardize the safety of an officer, the individual being interrogated, or another individual. If feasible and consistent with the safety of a confidential informant, an explanation of the basis for the belief that electronic recording would disclose the informant's identity must be in writing at the time of the interrogation. If contemporaneous memorialization of the basis for the belief is not feasible, the memorialization must be made as soon as practicable after the interrogation is completed.

(83 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 447, § 1.)

§ 2009. Exception for equipment malfunction.

(a) All or part of a custodial interrogation to which § 2003 of this title otherwise applies need not be recorded electronically to the extent that recording is not feasible because the available electronic recording equipment fails, despite reasonable maintenance of the equipment, and timely repair or replacement is not feasible.

(b) If both audio and video recording of a custodial interrogation are otherwise required by § 2003 of this title, recording may be by audio alone or by the use of a body-worn camera if a technical problem in the video recording equipment prevents video recording, despite reasonable maintenance of the equipment, and timely repair or replacement is not feasible.

(c) If both audio and video recording of a custodial interrogation are otherwise required by § 2003 of this title, recording may be by video alone or by the use of a body-worn camera if a technical problem in the audio recording equipment prevents audio recording, despite reasonable maintenance of the equipment, and timely repair or replacement is not feasible.

(d) If a law-enforcement officer conducts a custodial interrogation under this section, the law-enforcement officer shall prepare a written or electronic report explaining the reasoning for the malfunction, to the best of the officer's knowledge, and summarizing the custodial interrogation process and the individual's statements. The law-enforcement officer shall prepare the report as soon as practicable after completing the interrogation.

(83 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 447, § 1.)

§ 2010. Burden of persuasion.

If the prosecution relies on an exception in §§ 2005 through 2009 of this title to justify a failure to record electronically a custodial interrogation, the prosecution must prove by a preponderance of the evidence that the exception applies.

(83 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 447, § 1.)

§ 2011. Notice of intent to introduce unrecorded statement.

If the prosecution intends to introduce in its case in chief a statement made by an individual during a custodial interrogation to which § 2003 of this title applies which was not recorded electronically, the prosecution shall serve the individual with written notice of that intent and of any exception on which the prosecution intends to rely. The prosecution must serve the notice no later than when the statement is provided to the individual as part of discovery.

(83 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 447, § 1.)

§ 2012. Procedural remedies.

(a) Unless the court finds that an exception in §§ 2005 through 2009 of this title applies, the court shall consider the failure to record electronically all or part of a custodial interrogation to which § 2003 of this title applies in determining whether a statement made during the interrogation is admissible, including whether it was voluntarily made.

(b) If the court admits into evidence a statement made by an individual during a custodial interrogation that was not recorded electronically in compliance with § 2003 of this title, the court shall afford the individual the opportunity to present to the jury the fact that the statement was not recorded electronically in compliance with § 2003 of this title.

(83 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 447, § 1.)

§ 2013. Handling and preserving an electronic recording.

Each law-enforcement agency in this State shall establish and enforce procedures to ensure that the electronic recording of all or part of a custodial interrogation and a report or other document required to be prepared under this subchapter is identified, accessible, and preserved consistent with the law of this State governing the preservation of evidence in criminal and delinquency cases.

(83 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 447, § 1.)

§ 2014. Rules relating to electronic recording.

(a) The Police Officer Standards and Training Commission shall adopt rules to implement this subchapter, which each law-enforcement agency that is a governmental entity of this State shall enforce.

(b) The rules adopted under subsection (a) of this section must address all of the following topics:

(1) How an electronic recording of a custodial interrogation must be made.

(2) The collection and review of electronic recordings, or the absence thereof, by supervisors in each law-enforcement agency.

(3) The assignment of supervisory responsibilities and a chain of command to promote internal accountability.

(4) A process for explaining noncompliance with procedures and imposing administrative sanctions for a failure to comply that is not justified.

(5) A supervisory system expressly imposing on individuals in specific positions a duty to ensure adequate staffing, education, training, and material resources to implement this subchapter.

(6) A process for monitoring the chain of custody of an electronic recording.

(c) The rules adopted under paragraph (b)(1) of this section for video recording must contain standards for the angle, focus, and field of vision of a recording device, other than a body-worn camera, which reasonably promote accurate recording of a custodial interrogation at a place of detention and reliable assessment of its accuracy and completeness. In a place of detention, the recording device must be simultaneously focused on both the law-enforcement officer and the individual subject to the custodial interrogation.

(83 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 447, § 1; 84 Del. Laws, c. 149, § 13.)

§ 2015. Limitation of liability.

(a) A law-enforcement agency that is a governmental entity in this State which has implemented procedures to enforce the rules adopted under § 2014 of this title and ensure compliance with this subchapter is not subject to civil liability for damages arising from a violation of this subchapter.

(b) This subchapter does not create a right of action against a law-enforcement officer.

(83 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 447, § 1.)

§ 2016. No right to electronic recording or transcript.

(a) This subchapter does not create a right of an individual to require a custodial interrogation to be recorded electronically.

(b) This subchapter does not require preparation of a transcript of an electronic recording of a custodial interrogation.

(83 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 447, § 1.)

§ 2017. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(83 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 447, § 1.)

Subchapter II

Deceptive Tactics in Interrogations of Persons Under 18 Years of Age

(83 Del. Laws, c. 447, § 1.)

§ 2021. Definitions.

As used in this subchapter:

(1) “Custodial interrogation” means as defined in § 2002 of this title.

(2) “Deceptive tactics” means stating evidence presently exists, knowing that it does not, or communicating promises of leniency in sentencing, charging, or pretrial release in order to induce a confession or other incriminating evidence.

(3) “Law-enforcement officer” means as defined in § 2002 of this title.

(83 Del. Laws, c. 447, § 1.)

§ 2022. Deceptive tactics prohibited.

(a) Deceptive tactics in a custodial interrogation of a person under 18 years of age are prohibited.

(b) (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, a statement of a person, who at the time of the interrogation was under 18 years of age, is inadmissible in any criminal or delinquency court proceeding if it was made during a custodial interrogation in which deceptive tactics were used. An inadmissible statement under this subsection shall have no effect on the admissibility of evidence obtained as a result of the statement if the evidence would have been discovered through independent lawful means or if knowledge of the evidence was acquired through an independent source.

(2) A statement that is otherwise inadmissible under paragraph (b)(1) of this section may be admitted if the State proves by a preponderance of the evidence that the statement is reliable and was not induced by the use of deceptive tactics.

(3) A statement that is otherwise inadmissible under this section may be admitted to impeach the defendant, if the State proves by a preponderance of the evidence that the statement is reliable and not induced by the use of deceptive tactics.

(83 Del. Laws, c. 447, § 1.)

Part II
Criminal Procedure Generally
Chapter 21
Release of Persons Accused of Crimes

§ 2101. Purposes of this chapter [Effective until July 1, 2026].

It is the purpose of this chapter to reform the system governing the release of defendants pending a final determination of guilt of such persons. The various courts of this State are empowered and encouraged to make individualized decisions about terms and conditions of pretrial release. Each court shall utilize a system of pretrial release imposing reasonable nonmonetary conditions of release when those conditions adequately provide a reasonable assurance of the appearance of the defendant at court proceedings, the protection of the community, victims, witnesses and any other person, and to maintain the integrity of the judicial process.

(11 Del. C. 1953, § 2101; 56 Del. Laws, c. 231, § 1; 81 Del. Laws, c. 200, § 1.)

§ 2101. Purposes of this chapter [Effective July 1, 2026].

It is the purpose of this chapter to reform the system governing the release of defendants pending a final determination of guilt of such persons. The various courts of this State shall make individualized decisions about terms and conditions of pretrial release or the need for preventive detention. Each court shall utilize a system of pretrial release aimed at imposing the least restrictive conditions of release so as to account for each defendant's fundamental right to pretrial liberty while also reasonably assuring the appearance of the defendant at court proceedings, reasonably assuring the protection of the community, victims, witnesses, and any other person, and reasonably maintaining the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice.

(11 Del. C. 1953, § 2101; 56 Del. Laws, c. 231, § 1; 81 Del. Laws, c. 200, § 1; 84 Del. Laws, c. 473, § 1; 85 Del. Laws, c. 61, § 1; 85 Del. Laws, c. 62, § 106.)

§ 2102. Definitions [Effective until July 1, 2026].

For purposes of this chapter the following definitions shall apply:

(1) "Attorney General" includes any Deputy Attorney General or any other prosecutor of the State, county or municipality.

(2) "Bail" means the pretrial release of a defendant from custody upon the terms and conditions specified by an order of the court with jurisdiction. Bail may be any of the following:

a. A conditions of release bond.

b. A conditions of release bond not guaranteed by financial terms.

c. A conditions of release bond guaranteed by financial terms.

d. A conditions of release bond guaranteed by financial terms secured by cash only.

(3) "Bailable offense" is any offense not punishable by death.

(4) "Capital crime" means any crime for which the punishment shall be death.

(5) "Conditions of release bond" means a commitment by the defendant promising appearance in court and compliance with all conditions ordered by the court and mandated by statute.

(6) "Conditions of release bond guaranteed by financial terms" means a commitment by the defendant promising appearance in court and compliance with all conditions ordered by the court and mandated by statute guaranteed by a surety, property, cash or other assets.

(7) "Conditions of release bond guaranteed by financial terms secured by cash" means a commitment by the defendant promising appearance in court and compliance with all conditions ordered by the court and mandated by statute guaranteed by cash only.

(8) "Conditions of release bond not guaranteed by financial terms" means a commitment by the defendant promising appearance in court and compliance with all conditions ordered by the court and mandated by statute, whereupon failure to appear or comply with conditions, the defendant may be liable for the amount of the bond, but the bond is not guaranteed by any surety or specific pledge of property or other assets.

(9) "Court" means Superior Court, Court of Common Pleas, Family Court, and Justice of the Peace Court.

(10) "Crime" means any offense which is punishable by a fine or imprisonment.

(11) "Pretrial success" means a defendant's compliance with orders to appear in court as directed and not commit any new criminal offense between the initial arrest and adjudication of the pending criminal charges.

(12) "Record finding" is a memorandum, notation, opinion, order or other writing in the file of the case of the accused reflecting the decision made by the court.

(13) "Violent felonies" or "violent felony" shall consist of all felonies designated as violent felonies in § 4201(c) of this title.

(11 Del. C. 1953, § 2102; 56 Del. Laws, c. 231, § 1; 66 Del. Laws, c. 300, § 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 176, § 14; 79 Del. Laws, c. 36, § 1; 81 Del. Laws, c. 200, § 1.)

§ 2102. Definitions [Effective July 1, 2026].

For purposes of this chapter:

(1) “Attorney General” includes any Deputy Attorney General or any other prosecutor of the State, county or municipality.

(2) “Bail” means the pretrial release of a defendant from custody upon the terms and conditions specified by an order of the court with jurisdiction. Bail may be any of the following:

a. A conditions of release bond.

b. A conditions of release bond not guaranteed by financial terms.

c. A conditions of release bond guaranteed by financial terms.

d. A conditions of release bond guaranteed by financial terms secured by cash only.

(3) “Capital crime” means any crime for which the punishment shall be death.

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(6) “Conditions of release bond guaranteed by financial terms secured by cash” means a commitment by the defendant promising appearance in court and compliance with all conditions ordered by the court and mandated by statute guaranteed by cash only.

(7) “Conditions of release bond not guaranteed by financial terms” means a commitment by the defendant promising appearance in court and compliance with all conditions ordered by the court and mandated by statute, whereupon failure to appear or comply with conditions, the defendant may be liable for the amount of the bond, but the bond is not guaranteed by any surety or specific pledge of property or other assets.

(8) “Court” means any of the following, as the context requires: the Superior Court, Court of Common Pleas, Family Court, Justice of the Peace Court, and alderman’s court.

(9) “Crime” means any offense which is punishable by a fine or imprisonment.

(10) “Detention-eligible defendant” means any person charged with an offense under § 2116(b) of this title for which an order of preventive detention may be entered.

(11) “Pretrial success” means a defendant’s compliance with orders to appear in court as directed and not commit any new criminal offense between the initial arrest and adjudication of the pending criminal charges.

(12) “Record finding” is a memorandum, notation, opinion, order or other writing in the file of the case of the accused reflecting the decision made by the court.

(13) “Violent felonies” or “violent felony” shall consist of all felonies designated as violent felonies in § 4201(c) of this title.

(11 Del. C. 1953, § 2102; 56 Del. Laws, c. 231, § 1; 66 Del. Laws, c. 300, § 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 176, § 14; 79 Del. Laws, c. 36, § 1; 81 Del. Laws, c. 200, § 1; 84 Del. Laws, c. 473, § 2; 85 Del. Laws, c. 61, § 1; 85 Del. Laws, c. 62, § 106.)

§ 2103. Persons charged with a capital crime [Effective until July 1, 2026].

(a) A capital crime shall not be bailable, and a person so charged shall be held in custody without bail until the charge be withdrawn, reduced or dismissed or until the court shall otherwise order after a trial which results in less than a conviction of a capital crime or except as provided in subsection (b) of this section.

(b) The Superior Court may admit to bail a person charged with a capital crime if, after full inquiry, the Superior Court shall determine that there is good ground to doubt the truth of the accusation, and the burden of demonstrating such doubt shall be on the accused.

(11 Del. C. 1953, § 2103; 56 Del. Laws, c. 231, § 1.)

§ 2103. Persons charged with a capital crime [Effective July 1, 2026].

(a) A capital crime shall not be bailable, and a person so charged shall be held in custody without bail until the charge be withdrawn, reduced or dismissed or until the court shall otherwise order after a trial which results in less than a conviction of a capital crime or except as provided in subsection (b) of this section.

(b) The Superior Court shall admit to bail a person charged with a capital crime unless, after full inquiry, the Superior Court determines that the proof is positive or the presumption great.

(11 Del. C. 1953, § 2103; 56 Del. Laws, c. 231, § 1; 84 Del. Laws, c. 473, § 3; 85 Del. Laws, c. 61, § 1; 85 Del. Laws, c. 62, § 106.)

§ 2103A. Detention of youth charged with Superior Court offenses [Repealed].

(69 Del. Laws, c. 354, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 597, § 2; 71 Del. Laws, c. 5, § 1; 72 Del. Laws, c. 149, § 1; repealed by 81 Del. Laws, c. 307, § 1, effective July 11, 2018.)

§ 2104. Release of defendants charged with any other crime [Effective until July 1, 2026].

(a) Any person who is arrested and charged with any crime other than a capital crime shall be released upon execution of 1 of the following:

(1) A conditions of release bond.

(2) A conditions of release bond not guaranteed by financial terms in an amount specified by the court.

(3) A conditions of release bond guaranteed by financial terms, the amount of the bond and the nature of the surety to be determined by the court.

(4) A conditions of release bond guaranteed by financial terms secured by cash only, the amount of the bond to be determined by the court.

(b) The court shall impose the following conditions of release for any defendant released on bail:

(1) Require the defendant to return to the court at any time upon notice and submit to the orders and processes of the court.

(2) Prohibit the defendant from committing any criminal offense.

(c) The court may also impose 1 or more of the conditions of release set forth in § 2108 of this title when such conditions are necessary to provide a reasonable assurance of the appearance of the defendant at court proceedings, the protection of the community, victims, witnesses, or any other person, and to maintain the integrity of the judicial process.

(d) The court shall memorialize pretrial release decisions by written order specifying conditions of release and informing the defendant of the possible consequences for violating the conditions of release.

(e) (1) The determination of whether the defendant shall be released under paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section and the conditions (other than the mandatory conditions in paragraph (b) of this section above) of the release shall be in the discretion of the court subject to this chapter. When making a release determination, or imposing conditions set forth in § 2108 of this title, the court shall use an empirically developed risk assessment instrument, if available, designed to improve pretrial release decisions by assessing defendant's likelihood of pretrial success. In circumstances involving suspected domestic or intimate partner violence, the judicial officer shall also consider the results, if available, of an instrument designed to assess the likelihood or predicted severity of future violence against the alleged victim. Any such risk assessment tools are not binding on the court. They are factors to be considered in the totality of the circumstances in determining the conditions of release imposed upon the defendant. The judicial officer may consider any other facts and circumstances regarding a defendant's likelihood of pretrial success and the protection of the victim, witnesses, and any other person.

(2) The Statistical Analysis Center shall provide the court with a report of rates of re-arrest and failure to appear as required by defendants released by the court.

(f) Any defendant released from custody pursuant to this chapter who later:

(1) Tenders to the Superior Court a plea of guilty or nolo contendere to any felony for which a mandatory, minimum, minimum mandatory or mandatory minimum period of incarceration is required; or

(2) Is convicted upon a verdict of guilty of any felony for which a mandatory, minimum, minimum mandatory or mandatory minimum period of incarceration is required,

shall immediately be remanded to the custody of the Department of Correction, and shall be incarcerated until the sentence for that felony is imposed. The provisions of this subsection shall not apply to pleas or convictions for any felony set forth in Title 21.

(11 Del. C. 1953, § 2104; 56 Del. Laws, c. 231, § 1; 66 Del. Laws, c. 300, § 4; 69 Del. Laws, c. 252, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 98, §§ 2-4; 78 Del. Laws, c. 392, § 1; 79 Del. Laws, c. 36, § 1; 79 Del. Laws, c. 244, § 2; 81 Del. Laws, c. 200, § 1.)

§ 2104. Release of defendants charged with a noncapital crime [Effective July 1, 2026].

(a) Any person who is arrested and charged with any crime other than a capital crime shall be released upon execution of 1 of the following:

(1) A conditions of release bond.

(2) A conditions of release bond not guaranteed by financial terms in an amount specified by the court.

(3) A conditions of release bond guaranteed by financial terms, the amount of the bond and the nature of the surety to be determined by the court.

(4) A conditions of release bond guaranteed by financial terms secured by cash only, the amount of the bond to be determined by the court.

(b) The court shall impose the following conditions of release for any defendant released on bail:

(1) Require the defendant to return to the court at any time upon notice and submit to the orders and processes of the court.

(2) Prohibit the defendant from committing any criminal offense.

(c) The court may impose 1 or more of the conditions of release under § 2108 of this title when the conditions are necessary to do any of the following:

(1) Reasonably assure the appearance of the defendant at court proceedings.

(2) Reasonably assure the protection of the community, victims, witnesses, or any other person.

(3) Reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice.

(d) The court shall memorialize pretrial release decisions by written order specifying conditions of release and informing the defendant of the possible consequences for violating the conditions of release.

(e) (1) Subject to this chapter, the determination of whether the defendant is to be released under paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section and the conditions of the defendant's release, other than the mandatory conditions under subsection (b) of this section, are in the discretion of the court.

a. When making a release determination, or imposing conditions set forth in § 2108 of this title, the court shall use, if available, an empirically developed risk assessment instrument designed to improve pretrial release decisions by assessing defendant's likelihood of pretrial success.

b. In circumstances involving suspected domestic or intimate partner violence, the court shall also consider the results of an instrument designed to assess the likelihood or predicted severity of future violence against the alleged victim, if available.

c. The risk assessment tools under paragraphs (e)(1)a. and (e)(1)b. of this section are not binding on the court. The risk assessment tools are factors to be considered in the totality of the circumstances in determining the conditions of release imposed upon the defendant.

d. The court may consider any other facts and circumstances regarding a defendant's likelihood of pretrial success and the protection of the victim, witnesses, and any other person.

(2) [Repealed.]

(f) (1) Any defendant released from custody under this chapter to whom any of the following applies must immediately be remanded to the custody of the Department of Correction, and must be incarcerated until the sentence for that felony is imposed:

a. Has tendered to the Superior Court a plea of guilty or nolo contendere to any felony for which a mandatory, minimum, minimum mandatory or mandatory minimum period of incarceration is required.

b. Is convicted upon a verdict of guilty of any felony for which a mandatory, minimum, minimum mandatory or mandatory minimum period of incarceration is required.

(2) This subsection does not apply to pleas or convictions for any felony set forth in Title 21.

(11 Del. C. 1953, § 2104; 56 Del. Laws, c. 231, § 1; 66 Del. Laws, c. 300, § 4; 69 Del. Laws, c. 252, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 98, §§ 2-4; 78 Del. Laws, c. 392, § 1; 79 Del. Laws, c. 36, § 1; 79 Del. Laws, c. 244, § 2; 81 Del. Laws, c. 200, § 1; 84 Del. Laws, c. 473, § 4; 85 Del. Laws, c. 61, § 1; 85 Del. Laws, c. 62, § 106.)

§ 2105. Release pursuant to a conditions of release bond or conditions of release bond not guaranteed by financial terms [Effective until July 1, 2026].

(a) The court shall release a defendant accused of a bailable crime on a conditions of release bond or a conditions of release bond not guaranteed by financial terms in an amount to be determined by the court when the court is satisfied from all the circumstances and the criteria set forth in subsection (b) of this section that it is reasonably likely that the defendant will appear as required before or after conviction of the crime charged and that there is no substantial risk to the safety of the community in permitting such unsecured release.

(b) In determining whether the defendant is likely to appear as required and that there will be no substantial risk to the safety of the community the court shall, on the basis of available information, take into consideration the nature and circumstances of the crime charged, whether a firearm or projectile weapon was used or possessed, the possibility of statutory mandatory imprisonment, whether the crime was committed against a victim with intent to hinder prosecution, the family ties of the defendant, the defendant's employment, financial resources, character and mental condition, the length of residence in the community, record of convictions, habitual offender eligibility, custody status at time of offense, history of amenability to lesser sanctions, history of breach of release, record of appearances at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

(c) If the court has determined that the defendant shall not be released in accordance with this section, it shall make a record finding of the reason or reasons for such action and shall permit the release of the defendant upon the furnishing of surety satisfactory to the court in an amount to be determined by the court.

(11 Del. C. 1953, §§ 2105, 2106; 56 Del. Laws, c. 231, § 1; 63 Del. Laws, c. 215, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 36, § 1; 81 Del. Laws, c. 200, § 1; 84 Del. Laws, c. 525, § 22; 85 Del. Laws, c. 68, § 17.)

§ 2105. Release under a conditions of release bond or conditions of release bond not guaranteed by financial terms [Effective July 1, 2026].

(a) Consistent with § 2101 of this title, the court shall impose the least restrictive conditions of release possible that reasonably assure the defendant's appearance at court proceedings; reasonably assure the protection of the community, victims, witnesses, or any other person; and reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice. Subject to paragraphs (a)(1) through (a)(5) of this section and § 2116 of this title, there is a presumption in favor of release with nonmonetary conditions. The court shall consider conditions of release as follows:

(1) A court shall release a defendant on a conditions of release bond, or on the execution of a conditions of release bond not guaranteed by financial terms, if the release will reasonably assure the defendant's appearance at court proceedings; reasonably assure the protection of the community, victims, witnesses, or any other person; and reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice.

(2) If the court finds that greater nonmonetary restrictions are required to reasonably assure the defendant's appearance at court proceedings; reasonably assure the protection of the community, victims, witnesses, or any other person; and reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice, the court shall order the pretrial release of the defendant, but subject to appropriate additional nonmonetary conditions of release listed under § 2108 of this title.

(3) If the court finds that nonmonetary restrictions are not sufficient to reasonably assure the defendant's appearance at court proceedings, the court may order the pretrial release of the defendant but may include a conditions of release bond guaranteed by financial terms or a conditions of release bond guaranteed by financial terms secured by cash. When conditions of release secured by financial terms are imposed, the court shall set the lowest amount the court deems reasonably necessary. In determining whether to impose financial conditions of release and the amount, if any, the court shall consider the defendant's financial resources and ability to pay.

(4) The primary purpose of the use of monetary bail is to secure a defendant's appearance in court. In determining whether the defendant is likely to appear as required, the court shall, on the basis of available information, consider all of the following:

a. The nature and circumstances of the offense with which the defendant is charged.

b. The defendant's possibility of statutory mandatory imprisonment or habitual criminal offender eligibility.

c. The defendant's family ties.

d. The defendant's employment or enrollment in educational studies.

e. The defendant's character, physical and mental condition, including engagement in medical, mental health, or substance abuse treatment, and the effect detention would have on any current treatment.

f. The defendant's length of residence in the community.

g. The defendant's custody status at the time of the offense.

h. The defendant's history of amenability to community supervision.

i. The defendant's history of breach of release.

j. The defendant's record of appearances at court proceedings, flight to avoid prosecution, and failure to appear at court proceedings.

(5) A court may impose monetary bail when necessary to reasonably assure the protection of the community, victims, witnesses, or any other person and to reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice, only in exceptional circumstances set forth on the record that indicate that the defendant is not otherwise eligible for preventive detention but presents a substantial public safety risk that requires addressing by other means. In determining whether the defendant's release presents a substantial risk to the safety of the community, the court shall, to the extent the information is available, consider all of the following:

a. The nature and circumstances of the offense with which the defendant is charged.

b. Whether a weapon was used or possessed.

c. Whether the offense was committed against a victim with the intent to hinder prosecution.

d. The defendant's character, physical and mental condition, including engagement in medical, mental health, or substance abuse treatment, and the effect detention would have on any current treatment.

e. The defendant's record of convictions.

f. The defendant's possibility of statutory mandatory imprisonment or habitual criminal offender eligibility.

g. The defendant's custody status at the time of the offense.

(6) If a court imposes monetary bail for any reason, the court shall set forth on the record:

a. The monetary amounts set.

b. The reason for the use of monetary bail.

c. Any consideration the court gave to the defendant's means to meet the monetary condition.

d. The reasons that no condition or combination of nonmonetary conditions of release would reasonably assure the defendant's appearance at court proceedings, reasonably assure the protection of the community, victims, witnesses, or any other person, and reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice.

(7) A defendant who cannot post monetary bail is eligible for review of the defendant's conditions of release under § 2110(a) of this title.

(b) In a pretrial release order, the court shall include a written statement that does all of the following:

(1) Sets forth all of the conditions to which the release is subject in a manner sufficiently clear and specific to serve as a guide for the defendant's conduct.

(2) Advises the defendant of the potential consequences of violating a condition of release, including the possible issuance of a warrant for the defendant's arrest and any applicable criminal penalties.

(3) Advises the defendant that the defendant would be eligible for temporary preventive detention pending a pretrial hearing if the defendant is arrested while pending trial on the current offense.

(c) An order setting conditions of release is reviewable in accordance with the rules of the court then exercising jurisdiction in the matter.

(11 Del. C. 1953, §§ 2105, 2106; 56 Del. Laws, c. 231, § 1; 63 Del. Laws, c. 215, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 36, § 1; 81 Del. Laws, c. 200, § 1; 84 Del. Laws, c. 525, § 22; 85 Del. Laws, c. 68, § 17; 84 Del. Laws, c. 473, § 5; 85 Del. Laws, c. 61, § 1; 85 Del. Laws, c. 62, § 106.)

§ 2106. Posting of operator's license as security for court appearance [Repealed].

(63 Del. Laws, c. 215, § 2; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 4; repealed by 79 Del. Laws, c. 36, § 1, eff. June 4, 2013.)

§ 2107. Determining the amount of bail [Effective until July 1, 2026].

(a) In determining the amount of bail to be required to be posted as surety under § 2105 of this title or to be required for a conditions of release bond not guaranteed by financial terms, the court shall not require oppressive bail but shall require such bail as reasonably will assure the reappearance of the defendant, compliance with the conditions set forth in the bond, and the safety of the community. In fixing the amount, the court shall also take into consideration the criteria set forth in § 2105(b) of this title.

(b) In any event, if a defendant is charged with an offense punishable by fine only, the amount of the bail shall not exceed double the amount of the maximum fine for each charge. When a defendant has been convicted of an offense and only a fine has been imposed as the sentence of the court, the amount of bail shall not exceed double the amount of the fine.

(c) Notwithstanding any provision of this title to the contrary, for a defendant charged with committing:

(1) Any Title 11 class A felony.

(2) Abuse of a pregnant female in the first degree, in violation of § 606 of this title.

(3) Strangulation, in violation of § 607 of this title.

(4) Assault in the second degree, in violation of § 612 of this title.

(5) Assault in the first degree, in violation of § 613 of this title.

(6) Manslaughter, in violation of § 632 of this title.

(7) Murder of a child by abuse or neglect in the second degree, in violation of § 633 of this title.

(8) Rape in the fourth degree, in violation of § 770(a)(1) or (a)(3) of this title.

(9) Rape in the third degree, in violation of § 771 of this title.

(10) Rape in the second degree, in violation of § 772 of this title.

(11) Continuous sexual abuse of a child, in violation of § 776 of this title.

(12) Sex offender unlawful sexual conduct against a child, in violation of § 777A of this title.

(13) Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree, in violation of § 778 of this title.

(14) Kidnapping in the first degree, in violation of § 783A of this title.

(15) Trafficking an individual; forced labor; sexual servitude, in violation of § 787(b)(1)-(3) of this title.

(16) Sexual servitude (victim is a minor), in violation of § 787(b)(3) of this title.

(17) Arson in the first degree, in violation of § 803 of this title.

(18) Burglary first degree, in violation of § 826 of this title.

(19) Robbery in the first degree, in violation of § 832 of this title.

(20) Child abuse in the second degree, in violation of § 1103B of this title.

(21) Child torture, in violation of § 1103D of this title.

(22) Sexual exploitation of a child, in violation of § 1108 of this title.

(23) Unlawful dealing in child pornography, in violation of § 1109 of this title.

(24) Sexual solicitation of a child, in violation of § 1112A(h) of this title.

(25) Promoting sexual solicitation of a child, in violation of § 1112B(g) of this title.

(26) Escape after conviction in violation of § 1253 of this title.

(27) Stalking, in violation of § 1312 of this title.

(28) Possession of a deadly weapon during commission of a felony, in violation of § 1447 of this title.

(29) Possession of a firearm or projectile weapon during commission of a felony, in violation of § 1447A of this title.

(30) Possession of a firearm or projectile weapon by persons prohibited, in violation of § 1448(a)(1), (a)(4), (a)(6), or (a)(7) of this title.

(31) Racketeering, in violation of § 1503 of this title.

(32) Aggravated act of intimidation, in violation of § 3533 of this title.

(33) Any violent felony as defined by § 4201(c) of this title, allegedly committed while defendant is pending adjudication on a previously charged violent felony.

(34) Any violent felony as defined by § 4201(c) of this title, allegedly committed against a petitioner with an active protection from abuse order against the defendant.

(35) Any violent felony as defined by § 4201(c) of this title, allegedly committed against a victim while the defendant is pending adjudication on a previously charged domestic violence offense as defined by § 1041(2) of Title 10, allegedly committed against the same victim.

(36) Any domestic violence offense as defined by § 1041(2) of Title 10, allegedly committed while defendant is pending adjudication on a previously charged violent felony as defined by § 4201(c) of this title, allegedly committed against the same victim.

(37) Felony noncompliance with bond, in violation of § 2109(c)(1) or 2113(c)(1) of this title and involving a violent felony offense as defined by § 4201(c) of this title.

(38) Felony domestic violence offenses as defined by § 1041(2) of Title 10 and causing physical injury as defined by § 222 of this title or serious physical injury as defined by § 222 of this title.

(39) Drug dealing (Tier 3), in violation of § 4752 of Title 16.

the presumption is that the court will set conditions of release bond guaranteed by financial terms in an amount within or above the guidelines published by the Delaware Sentencing Accountability Commission (SENTAC) for that offense and secured by cash only.

(d) In any case where a court sets bail pursuant to the presumption within subsection (c) of this section, a court of competent jurisdiction may, consistent with Chapter 21 of this title and court rules, review bail to consider whether bail in a different amount or with a different security is appropriate to reasonably ensure the reappearance of the defendant, compliance with the conditions set forth in the bond, and the safety of the community. The court may modify the defendant's bail in accordance with its findings and determinations at the hearing.

(e) The court shall document the reason(s) for setting bail at a particular amount and level, whether cash, secured, or unsecured, or for modifying bail under subsection (d) of this section.

(f) In any case where a court sets bail for an offense listed in subsection (c) of this section, the court shall require the defendant to relinquish any firearms or projectile weapons in the defendant's possession.

(g) In addition to the information required in the annual report established in § 2114(i) of this title, the Criminal Justice Council shall include information of the following in the aggregate and disaggregated by race, gender, and zip code of:

(1) Rates of defendants' eligibility under subsection (c) of this section.

(2) Rates of initial detention.

(3) Rates of detention throughout the pretrial period.

(4) Average length of stay from arrest to adjudication.

(11 Del. C. 1953, § 2107; 56 Del. Laws, c. 231, § 1; 79 Del. Laws, c. 36, § 1; 81 Del. Laws, c. 200, § 1; 83 Del. Laws, c. 72, § 1; 84 Del. Laws, c. 126, § 8; 84 Del. Laws, c. 215, § 1; 84 Del. Laws, c. 525, §§ 23, 24; 85 Del. Laws, c. 68, § 18.)

§ 2107. Determining the amount of bail [Effective July 1, 2026].

(a) In determining the amount of bail to be required to be posted as surety under § 2105 of this title or to be required for a conditions of release bond not guaranteed by financial terms, the court may not require oppressive bail but shall require such bail as will reasonably assure the defendant's appearance at court proceedings; reasonably assure the protection of the community, victims, witnesses, or any other person; and reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice. In determining the conditions of bail, the court shall take into consideration the criteria set forth in § 2105(a) of this title.

(b) Notwithstanding subsection (a) of this section, if a defendant is charged with an offense punishable by fine only, the amount of the bail may not exceed double the amount of the maximum fine for each charge.

(c) Notwithstanding any provision of this title to the contrary, a defendant charged with committing any offense listed in § 2116(b) of this title may be subject to preventive detention without bail.

(d) If a court enters an order of preventive detention or the defendant is otherwise detained on bail, a court of competent jurisdiction may, consistent with this chapter and court rules, review the preventive detention order or bail to consider whether conditions of release order or bail in a different amount or with a different security is appropriate to reasonably assure the reappearance of the defendant, compliance with the conditions set forth in the bond, and the safety of the community. The court may modify the defendant's preventive detention order or bail in accordance with its findings and determinations at the hearing.

(e) The court shall document the reason for ordering preventive detention or setting bail at a particular amount and level, whether cash, secured, or unsecured, or for modifying a preventive detention order or bail under subsection (d) of this section.

(f), (g) [Repealed.]

(11 Del. C. 1953, § 2107; 56 Del. Laws, c. 231, § 1; 79 Del. Laws, c. 36, § 1; 81 Del. Laws, c. 200, § 1; 83 Del. Laws, c. 72, § 1; 84 Del. Laws, c. 126, § 8; 84 Del. Laws, c. 215, § 1; 84 Del. Laws, c. 525, §§ 23, 24; 85 Del. Laws, c. 68, § 18; 84 Del. Laws, c. 473, § 6; 85 Del. Laws, c. 61, § 1; 85 Del. Laws, c. 62, § 106.)

§ 2108. Conditions for release [Effective until July 1, 2026].

(a) In addition to the mandatory conditions set forth in § 2104(b) of this title, in connection with any form of bail for a defendant the court may also impose 1 or more of the following conditions:

(1) Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(2) Place the defendant under the supervision of a presentence or probation officer;

(3) Place restrictions on the travel, associations, activities, consumption of alcoholic beverages, drugs or barbiturates, or place of abode of the defendant during the period of release;

(4) Require the defendant to have no contact or restricted contact with the victim, the victim's family, victim's residence, place of employment, school or location of offense;

(5) Require periodic reports from the defendant to an appropriate agent or officer of the court including the attorney for the defendant;

(6) Require psychiatric or medical treatment of the defendant;

(7) Require the defendant to provide suitable support for the defendant's family under supervision of an officer of the court or the Family Court, with the consent of the Family Court;

(8) Require a defendant who has been convicted to duly prosecute any post-conviction remedies or appeals; and if the case is affirmed or reversed and remanded, such defendant shall forthwith surrender to the Court;

(9) Impose any other condition deemed reasonably necessary to assure appearance as required and to carry out the purpose of this chapter.

(b) In connection with any form of bail for a defendant charged with any crime involving child sexual abuse or exploitation, the court shall also impose a condition that the defendant have no contact with children, except upon good cause shown, and as otherwise provided by the court, and that such condition remain in full force and effect until a nolle prosequi is filed, the case is dismissed or an adjudication of not guilty is returned, whichever shall first occur, or if the defendant is adjudicated guilty by way of a plea of guilty or a conviction by court or jury, at the time of sentencing, unless further made a condition of probation by the sentencing judge.

(c) In connection with any form of bail for a defendant charged with a violation of § 4177 of Title 21 which is alleged to be punishable as a felony pursuant to that section, the court shall impose a condition that the defendant not drive a vehicle, as defined by that section, until a nolle prosequi is filed, the case is dismissed or an adjudication of not guilty is returned, whichever shall first occur, or if the defendant is adjudicated guilty by way of plea of guilty or a conviction by court or jury, at the time of sentencing, unless further made a condition of probation by the sentencing judge.

(11 Del. C. 1953, § 2108; 56 Del. Laws, c. 231, § 1; 66 Del. Laws, c. 300, §§ 5, 6; 68 Del. Laws, c. 367, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 152, § 1; 79 Del. Laws, c. 36, § 1; 81 Del. Laws, c. 200, § 1.)

§ 2108. Conditions for release [Effective July 1, 2026].

(a) In addition to the mandatory conditions set forth in § 2104(b) of this title, in connection with any form of bail for a defendant the court may also impose 1 or more of the following conditions:

(1) Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(2) Place the defendant under the supervision of a presentence or probation officer;

(3) Place restrictions on the travel, associations, activities, consumption of alcoholic beverages, drugs or barbiturates, or place of abode of the defendant during the period of release;

(4) Require the defendant to have no contact or restricted contact with the victim, the victim's family, victim's residence, place of employment, school or location of offense;

(5) Require periodic reports from the defendant to an appropriate agent or officer of the court including the attorney for the defendant;

(6) Require psychiatric or medical treatment of the defendant;

(7) Require the defendant to provide suitable support for the defendant's family under supervision of an officer of the court or the Family Court, with the consent of the Family Court;

(8) Require a defendant who has been convicted to duly prosecute any post-conviction remedies or appeals; and if the case is affirmed or reversed and remanded, such defendant shall forthwith surrender to the Court;

(9) Impose any other condition deemed reasonably necessary to assure appearance as required and to carry out the purpose of this chapter.

(b) In connection with any form of bail for a defendant charged with any crime involving child sexual abuse or exploitation, the court shall also impose a condition that the defendant have no contact with children, except upon good cause shown, and as otherwise provided by the court, and that such condition remain in full force and effect until a nolle prosequi is filed, the case is dismissed or an adjudication of not guilty is returned, whichever shall first occur, or if thedefendant is adjudicated guilty by way of a plea of guilty or a conviction by court or jury, at the time of sentencing, unless further made a condition of probation by the sentencing judge.

(c) In connection with any form of bail for a defendant charged with a violation of § 4177 of Title 21 which is alleged to be punishable as a felony pursuant to that section, the court shall impose a condition that the defendant not drive a vehicle, as defined by that section, until a nolle prosequi is filed, the case is dismissed or an adjudication of not guilty is returned, whichever shall first occur, or if the defendant is adjudicated guilty by way of plea of guilty or a conviction by court or jury, at the time of sentencing, unless further made a condition of probation by the sentencing judge.

(d) (1) In connection with any form of bail for a defendant charged with an offense listed in § 2116(b) of this title, the court shall impose a condition that the defendant relinquish any firearm in the defendant's possession and that the defendant not possess or control any firearm.

(2) Unless the condition imposed under paragraph (d)(1) of this section is further required by law or is made a condition of the defendant's sentence by the sentencing judge, the court shall state that the condition imposed under paragraph (d)(1) of this section only remains in effect until 1 of the following:

a. A nolle prosequi is filed, the case is dismissed, or an adjudication of not guilty is returned, whichever first occurs.

b. If the defendant is adjudicated guilty by way of a plea of guilty or a conviction by court or jury, at the time of sentencing.

(11 Del. C. 1953, § 2108; 56 Del. Laws, c. 231, § 1; 66 Del. Laws, c. 300, §§ 5, 6; 68 Del. Laws, c. 367, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 152, § 1; 79 Del. Laws, c. 36, § 1; 81 Del. Laws, c. 200, § 1; 84 Del. Laws, c. 473, § 7; 85 Del. Laws, c. 61, § 1; 85 Del. Laws, c. 62, § 106.)

§ 2109. Failure to provide a conditions of release bond, whether guaranteed by financial terms or not, or consent to conditions; contact with victim or victim's family [Effective until July 1, 2026].

(a) If the defendant does not provide the form of conditions of release bond required by the court, or if the defendant does not agree to meet the conditions for release, the defendant shall be held in the custody of the Department of Correction until the defendant cures such failure or until the court otherwise orders.

(b) If the defendant is committed in lieu of bail, the court may require such defendant, while in custody, to have no contact with the victim or the victim's family.

(c) If the defendant is committed in lieu of bail, and knowingly breaches any conditions imposed in connection with that bail, each such failure or breach shall be a separate crime, and upon conviction thereof shall be punished as follows:

(1) If the defendant was held in connection with 1 or more charges of a felony prior to trial, or while awaiting sentence or pending appeal or certiorari after conviction of 1 or more felonies or misdemeanors, the defendant shall be guilty of a felony and punished by imprisonment not to exceed 5 years, or a fine of $5,000, or both;

(2) If the defendant was held in connection with 1 or more charges of misdemeanor prior to trial, the defendant shall be fined not more than $500, or imprisoned not more than 1 year, or both.

(11 Del. C. 1953, § 2109; 56 Del. Laws, c. 231, § 1; 66 Del. Laws, c. 300, § 7; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 143; 80 Del. Laws, c. 51, § 1; 81 Del. Laws, c. 200, § 1.)

§ 2109. Failure to provide a conditions of release bond, whether guaranteed by financial terms or not, or consent to conditions; contact with victim or victim's family [Effective July 1, 2026].

(a) If the defendant does not provide the form of conditions of release bond required by the court, or if the defendant does not agree to meet the conditions for release, the defendant shall be held in the custody of the Department of Correction until the defendant cures such failure or until the court otherwise orders.

(b) If the defendant is committed in lieu of bail, the court may require such defendant, while in custody, to have no contact with the victim or the victim's family.

(c) If the defendant is committed in lieu of bail, and knowingly breaches any conditions imposed in connection with that bail, each breach is a separate crime and, on conviction for the breach, is punished as follows:

(1) If the defendant was held in connection with 1 or more charges of a felony before trial, or while awaiting sentence or pending appeal or certiorari after conviction of 1 or more felonies or misdemeanors, the defendant is guilty of a class E felony.

(2) If the defendant was held in connection with 1 or more charges of misdemeanor before trial, the defendant is guilty of a class A misdemeanor.

(11 Del. C. 1953, § 2109; 56 Del. Laws, c. 231, § 1; 66 Del. Laws, c. 300, § 7; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 143; 80 Del. Laws, c. 51, § 1; 81 Del. Laws, c. 200, § 1; 84 Del. Laws, c. 473, § 8; 85 Del. Laws, c. 61, § 1; 85 Del. Laws, c. 62, § 106.)

§ 2110. Modification of bail, security or conditions of release and sanctions for violation [Effective until July 1, 2026].

(a) Unless reviewed earlier, a court with jurisdiction over the defendant shall review conditions of pretrial release for a defendant who remains detained after 72 hours from the defendant's initial presentment as a result of the inability to meet conditions of pretrial release. This review shall occur within 10 days from the date of detention. Each court shall establish its procedure for timely review.

(b) A defendant, regardless of custody status, or the Attorney General, the Attorney General's designee, a third-party private or commercial surety, the Department of Correction, or any person or nongovernmental organization to whom a defendant has been released for supervision may apply to the court for modification of any condition of pretrial release. The courts shall establish rules governing the procedure for motions to modify conditions of pretrial release. Motions to modify conditions of pretrial release shall be filed in and decided by the court that has jurisdiction over the defendant at the time the motion is made. The defendant, the Attorney General, or the Attorney General's designee may make an oral application at any proceeding at which the parties are both present. Once a movant's application is ruled upon, the movant may initiate subsequent review of conditions of pretrial release only upon a material change in circumstance.

(c) Following a hearing alleging pretrial noncompliance and upon a finding that the defendant violated 1 or more material conditions of pretrial release, the court with jurisdiction over the defendant, may continue the current conditions, remove or impose different or additional conditions upon the defendant's release, or revoke the defendant's bail and reset pretrial conditions of release, including any financial conditions. Upon a finding that defendant violated a condition of appearance in court, any amount of surety posted to meet a financial term of release may be forfeited.

(d) The court may impose different or additional conditions of pretrial release or may remove conditions of pretrial release only when the facts of the individual case or the defendant's circumstances demonstrate that modification of conditions is necessary to reasonably ensure the defendant's appearance at court proceedings, to protect the community, victims, witnesses, or any other person, and to maintain the integrity of the judicial process.

(e) Upon disposition of the request to modify conditions of pretrial release, the court shall set forth on the record the reasons for amendment of or continuation of the conditions imposed.

(f) If the court modifies conditions of release, the court may impose any conditions as are set forth in § 2108 of this title, when such conditions are necessary to provide a reasonable assurance of the appearance of the defendant at court proceedings, the protection of the community, victims, or any other person, and to maintain the integrity of the judicial process. The court shall review the modified conditions with the defendant.

(11 Del. C. 1953, § 2110; 56 Del. Laws, c. 231, § 1; 66 Del. Laws, c. 300, § 8; 81 Del. Laws, c. 200, § 1.)

§ 2110. Modification of bail, security or conditions of release and sanctions for violation [Effective July 1, 2026].

(a) Unless reviewed earlier, a court with jurisdiction over the defendant shall review conditions of pretrial release for a defendant who remains detained after 72 hours from the defendant's initial presentment as a result of the inability to meet conditions of pretrial release. This review shall occur within 10 days from the date of detention. Each court shall establish its procedure for timely review.

(b) A defendant, regardless of custody status, or the Attorney General, the Attorney General's designee, a third-party private or commercial surety, the Department of Correction, or any person or nongovernmental organization to whom a defendant has been released for supervision may apply to the court for modification of any condition of pretrial release. The courts shall establish rules governing the procedure for motions to modify conditions of pretrial release. Motions to modify conditions of pretrial release shall be filed in and decided by the court that has jurisdiction over the defendant at the time the motion is made. The defendant, the Attorney General, or the Attorney General's designee may make an oral application at any proceeding at which the parties are both present. Once a movant's application is ruled upon, the movant may initiate subsequent review of conditions of pretrial release only upon a material change in circumstance.

(c) (1) Following a hearing alleging pretrial noncompliance and on a finding that the defendant violated 1 or more material conditions of pretrial release, the court with jurisdiction over the defendant, may continue the current conditions, remove or impose different or additional conditions on the defendant's release, or revoke the defendant's bail and reset pretrial conditions of release, including any financial conditions. On a finding that defendant violated a condition of appearance in court, any amount of surety posted to meet a financial term of release may be forfeited.

(2) A defendant who is eligible for preventive detention but was previously released pending adjudication and who wilfully violates any material condition of release may be subject to modification of release conditions or revocation of release and an order of preventive detention following a hearing under § 2116 of this title.

(d) The court may impose different or additional conditions of pretrial release or may remove conditions of pretrial release only when the facts of the individual case or the defendant's circumstances demonstrate that the conditions to be removed are unnecessary or that the conditions to be added are necessary to reasonably assure the defendant's appearance at court proceedings, reasonably assure the protection of the community, victims, witnesses, or any other person, and reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice.

(e) Upon disposition of the request to modify conditions of pretrial release, the court shall set forth on the record the reasons for amendment of or continuation of the conditions imposed.

(f) If the court modifies conditions of release, the court may impose any conditions under § 2108 of this title, when the conditions are necessary to reasonably assure the appearance of the defendant at court proceedings, reasonably assure the protection of the community, victims, witnesses, or any other person, and reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct justice or attempt to obstruct justice. The court shall review the modified conditions with the defendant.

(11 Del. C. 1953, § 2110; 56 Del. Laws, c. 231, § 1; 66 Del. Laws, c. 300, § 8; 81 Del. Laws, c. 200, § 1; 84 Del. Laws, c. 473, § 9; 85 Del. Laws, c. 61, § 1; 85 Del. Laws, c. 62, § 106.)

§ 2111. Procedure for pretrial release or implementing this chapter.

Except as provided herein, the procedure for pretrial release or implementing this chapter shall be as provided by the Rules of the Superior Court.

(11 Del. C. 1953, § 2111; 56 Del. Laws, c. 231, § 1; 79 Del. Laws, c. 36, § 1; 81 Del. Laws, c. 200, § 1.)

§ 2112. Bail after transfer to another court or after conviction [Effective until July 1, 2026].

Once bail has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction, the latter court may continue the original bail in that court. After conviction, the court may order that the original bail stand as bail pending appeal or deny, increase or reduce bail, or modify the conditions of release.

(11 Del. C. 1953, § 2112; 56 Del. Laws, c. 231, § 1; 81 Del. Laws, c. 200, § 1.)

§ 2112. Bail after transfer to another court or after conviction [Effective July 1, 2026].

Once bail has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction, the latter court may continue the original bail in that court. After conviction, the court may order that the original bail stand as bail pending imposition of sentence or appeal, modify conditions of release, or issue an order detaining any defendant convicted of any offense.

(11 Del. C. 1953, § 2112; 56 Del. Laws, c. 231, § 1; 81 Del. Laws, c. 200, § 1; 84 Del. Laws, c. 473, § 10; 85 Del. Laws, c. 61, § 1; 85 Del. Laws, c. 62, § 106.)

§ 2113. Penalties for noncompliance with conditions of release bond [Effective until July 1, 2026].

(a) If the defendant shall fail to appear as required by the defendant's bail or shall commit any material breach of the conditions set forth in § 2104(b) or § 2108 of this title, the court shall issue a warrant and cause the arrest of such defendant and the cancellation of any bail and the return to the court for a redetermination of the disposition of the defendant.

(b) Upon the return of the defendant before the court pursuant to subsection (a) of this section or if the defendant shall not be found, the court shall act with respect to the forfeiture of any form of guaranteed or not guaranteed conditions of release bond pursuant to the Rules of the Superior Court and shall redetermine the type and amount of bail, and conditions of the further release of the defendant. Notwithstanding any law to the contrary, no property, cash, surety or other assets shall be forfeited except upon failure of the accused to appear as required by any court.

(c) If the defendant knowingly fails to appear as required or knowingly breaches any condition of release, each such failure or breach shall be a separate crime, and upon conviction thereof shall be punished as follows:

(1) If the defendant was released in connection with 1 or more charges of a felony prior to trial, or while awaiting sentence or pending appeal or certiorari after conviction of 1 or more felonies or misdemeanors, the defendant shall be guilty of a felony and punished by imprisonment not to exceed 5 years, or a fine of $5,000, or both;

(2) If the defendant was released in connection with 1 or more charges of misdemeanor prior to trial, the defendant shall be fined not more than $500, or imprisoned not more than 1 year, or both.

(d) The Justice of the Peace Court shall have jurisdiction over violations of this section if punishable as misdemeanors and if the jurisdiction over the underlying offense remains with the Justice of the Peace Court.

(e) Any defendant released pursuant to this chapter shall notify the court, before which the case is pending, of any changes of address or residence within 5 days of such change. Failure to make such notification will result in constructive receipt of any subpoena issued to the defendant by or on behalf of the court to the last address or residence given to the court by that defendant.

(f) Nothing in this chapter shall interfere with or prevent the exercise by any court of its power to punish for contempt.

(11 Del. C. 1953, § 2113; 56 Del. Laws, c. 231, § 1; 69 Del. Laws, c. 198, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 172, § 1; 74 Del. Laws, c. 322, § 1; 79 Del. Laws, c. 36, § 1; 81 Del. Laws, c. 200, § 1.)

§ 2113. Penalties for noncompliance with conditions of release bond [Effective July 1, 2026].

(a) If the defendant fails to appear as required by the defendant's bail or commits a material breach of the conditions set forth in § 2104(b) or § 2108 of this title, the court shall issue a warrant and cause the arrest of the defendant and the cancellation of any bail and the return of the defendant to the court for a redetermination of the disposition of the defendant.

(b) On the return of the defendant before the court under subsection (a) of this section or if the defendant is not found, the court shall act with respect to the forfeiture of any form of guaranteed or not guaranteed conditions of release bond under the Rules of the Superior Court and shall redetermine the type and amount of bail and conditions of the further release of the defendant. Notwithstanding any law to the contrary, property, cash, surety, or other assets may not be forfeited except on failure of the defendant to appear as required by any court.

(c) If the defendant knowingly fails to appear as required or knowingly breaches any condition of release, each failure or breach is a separate crime and, on conviction for the failure or breach, is punished as follows:

(1) If the defendant was released in connection with 1 or more charges of a felony before trial, or while awaiting sentence or pending appeal or certiorari after conviction of 1 or more felonies or misdemeanors, the defendant is guilty of a class E felony.

(2) If the defendant was released in connection with 1 or more charges of misdemeanor before trial, the defendant is guilty of a class A misdemeanor.

(d) The Justice of the Peace Court shall have jurisdiction over violations of this section if punishable as misdemeanors and if the jurisdiction over the underlying offense remains with the Justice of the Peace Court.

(e) Any defendant released under this chapter shall notify the court, before which the case is pending, of any changes of address or residence within 5 days of the change. A failure by a defendant to make the notification will result in the defendant being deemed in

constructive receipt of any subpoena issued to the defendant by or on behalf of the court to the last address or residence given to the court by the defendant.

(f) Nothing in this chapter shall interfere with or prevent the exercise by any court of its power to punish for contempt.

(11 Del. C. 1953, § 2113; 56 Del. Laws, c. 231, § 1; 69 Del. Laws, c. 198, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 172, § 1; 74 Del. Laws, c. 322, § 1; 79 Del. Laws, c. 36, § 1; 81 Del. Laws, c. 200, § 1; 84 Del. Laws, c. 473, § 11; 85 Del. Laws, c. 61, § 1; 85 Del. Laws, c. 62, § 106.)

§ 2114. Administration of this chapter [Effective until July 1, 2026].

(a) The Department of Correction shall administer the provisions of this chapter that are not exclusively within the jurisdiction of the judiciary.

(b) The Commissioner of the Department of Correction may employ such staff as may be necessary to implement this chapter.

(c) The Department of Correction may investigate the release of persons charged with criminal offenses and otherwise advise and assist the courts in carrying out the purposes of this chapter. The Department of Correction shall provide pretrial supervision to released defendants when ordered by the court and shall report such defendants' compliance or noncompliance with conditions of pretrial release when necessary to carry out the purposes of this chapter. The Department of Correction may request modification of conditions of pretrial release. Each court shall establish rules and procedures for timely disposition of reports of noncompliance with conditions of pretrial release and requests for modification of conditions of pretrial release.

(d) The Department of Correction shall have the power necessary to carry out the purposes of this chapter, including the following:

(1) The Department of Correction may adopt standard conditions for the supervision of defendants ordered to pretrial supervision and may modify conditions of supervision as necessary to address technical or minor violations of conditions of pretrial release. The imposition of standard or modified conditions shall be limited to those conditions necessary to provide a reasonable assurance of the appearance of the defendant at court proceedings, the protection of the community, victims, witnesses or any other person, and to maintain the integrity of the judicial process. These conditions shall apply when not contrary to any other specific conditions imposed by the court.

(2) The Department of Correction may adopt standards concerning pretrial supervision through home confinement. The Department of Correction is authorized to supervise defendants released pretrial on home confinement without the use of any specific electronic equipment, so long as sufficient and reasonable methods for ensuring compliance with the terms of house arrest are employed.

(3) The Department of Correction is authorized to use electronic monitoring systems and any new or emerging monitoring technology that will assist in the supervision of defendants released pretrial.

(e) The court, when notified by the Department of Correction of a violation of pretrial release, may issue a summons or a warrant for the arrest of a defendant for violating any condition of pretrial release.

(f) The Commissioner of the Department of Correction or any probation officer, acting in performance of the Commissioner's or the probation officer's duties, under exigent circumstances may arrest a supervised defendant without a warrant when in the judgment of the Commissioner or probation officer the supervised defendant has violated any material condition of pretrial release. The Commissioner or probation officer may deputize any other officer with power of arrest to do so by giving that officer a written statement setting forth in what manner the supervised defendant has in the judgment of the Commissioner or the probation officer violated a material condition of pretrial release. When an arrest is made by a probation officer or the Commissioner, the officer shall present to the detaining authority a written statement of the circumstances of violation.

(g) Upon arrest and detention, the Commissioner or probation officer shall notify the court of jurisdiction forthwith and shall submit to the court a written report showing in what manner the defendant has violated the conditions of pretrial release.

(h) When the Commissioner or probation officer alleges noncompliance with material conditions of pretrial release, pursuant to subsection (f) of this section, a probation officer shall take the defendant directly before the court of jurisdiction if that court is in session or take the defendant before a magistrate. The hearing may be summary in nature.

(i) The Criminal Justice Council shall submit a report to the General Assembly on an annual basis, beginning January 30, 2019, regarding the modernization of the pretrial system, including a report of data related to pretrial success rates.

(11 Del. C. 1953, § 2114; 56 Del. Laws, c. 231, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 36, § 1; 81 Del. Laws, c. 200, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 255, § 36.)

§ 2114. Administration of this chapter [Effective July 1, 2026].

(a) The Department of Correction shall administer the provisions of this chapter that are not exclusively within the jurisdiction of the courts.

(b) The Commissioner of the Department of Correction may employ such staff as may be necessary to implement this chapter.

(c) The Department of Correction may investigate the release of persons charged with criminal offenses and otherwise advise and assist the courts in carrying out the purposes of this chapter. The Department of Correction shall provide pretrial supervision to released defendants when ordered by the court and shall report such defendants' compliance or noncompliance with conditions of pretrial release when necessary to carry out the purposes of this chapter. The Department of Correction may request modification of conditions of pretrial

release. Each court shall establish rules and procedures for timely disposition of reports of noncompliance with conditions of pretrial release and requests for modification of conditions of pretrial release.

(d) The Department of Correction shall have the power necessary to carry out the purposes of this chapter, including all of the following:

(1) The Department of Correction may adopt standard conditions for the supervision of defendants ordered to pretrial supervision and may modify conditions of supervision as necessary to address technical or minor violations of conditions of pretrial release. The imposition of standard or modified conditions must be limited to those conditions necessary to reasonably assure the appearance of the defendant at court proceedings, reasonably assure the protection of the community, victims, witnesses, or any other person, and reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice. These conditions apply when not contrary to any other specific conditions imposed by the court.

(2) The Department of Correction may adopt standards concerning pretrial supervision through home confinement. The Department of Correction is authorized to supervise defendants released pretrial on home confinement without the use of any specific electronic equipment, so long as sufficient and reasonable methods for ensuring compliance with the terms of house arrest are employed.

(3) The Department of Correction is authorized to use electronic monitoring systems and any new or emerging monitoring technology that will assist in the supervision of defendants released pretrial.

(e) The court, when notified by the Department of Correction of a violation of pretrial release, may issue a summons or a warrant for the arrest of a defendant for violating any condition of pretrial release.

(f) The Commissioner of the Department of Correction or any probation officer, acting in performance of the Commissioner's or the probation officer's duties, under exigent circumstances may arrest a supervised defendant without a warrant when in the judgment of the Commissioner or probation officer the supervised defendant has violated any material condition of pretrial release. The Commissioner or probation officer may deputize any other officer with power of arrest to do so by giving that officer a written statement setting forth in what manner the supervised defendant has in the judgment of the Commissioner or the probation officer violated a material condition of pretrial release. When an arrest is made by a probation officer or the Commissioner, the officer shall present to the detaining authority a written statement of the circumstances of violation.

(g) Upon arrest and detention, the Commissioner or probation officer shall notify the court of jurisdiction forthwith and shall submit to the court a written report showing in what manner the defendant has violated the conditions of pretrial release.

(h) When the Commissioner or probation officer alleges noncompliance with material conditions of pretrial release, pursuant to subsection (f) of this section, a probation officer shall take the defendant directly before the court of jurisdiction if that court is in session or take the defendant before a magistrate. The hearing may be summary in nature.

(i) Beginning on January 30, 2019, the Criminal Justice Council shall submit a report to all of the following on an annual basis regarding the modernization of the pretrial system, including a report of data related to pretrial success rates:

(1) The President Pro Tempore and Secretary of the Senate, for distribution to all Senators.

(2) The Speaker and Chief Clerk of the House of Representatives, for distribution to all Representatives.

(3) The Director and Librarian of the Division of Legislative Services.

(4) The Director of the Delaware Public Archives.

(11 Del. C. 1953, § 2114; 56 Del. Laws, c. 231, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 36, § 1; 81 Del. Laws, c. 200, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 255, § 36; 84 Del. Laws, c. 473, § 12; 85 Del. Laws, c. 61, § 1; 85 Del. Laws, c. 62, § 106.)

§ 2115. Forfeiture and default of bail bonds [Effective until July 1, 2026].

(a) If the defendant shall fail to appear as required or be found in breach of a material condition of release imposed by any court, except the House Sergeant of the Wilmington City Police, while under a bond, and the court pursuant to this chapter or court rule finds the defendant in default and forfeits the bond, the proceeds shall be forwarded to the State Treasurer and deposited in the General Fund.

(b) All funds held by the State in any depository derived from forfeiture or default of bonds from any court, except the House Sergeant of the Wilmington City Police, shall immediately be forwarded to the State Treasurer and deposited in the General Fund.

(c) The proceeds of any bond forfeited for the defendant’s failure to appear in any child support proceeding shall be paid over to the payee of the child support order and applied to the child support account.

(59 Del. Laws, c. 360, § 1; 70 Del. Laws, c. 449, § 3; 71 Del. Laws, c. 176, § 15; 79 Del. Laws, c. 36, § 1; 81 Del. Laws, c. 200, § 1.)

§ 2115. Forfeiture and default of bail bonds [Effective July 1, 2026].

(a) If the defendant fails to appear as required or is found in breach of a material condition of release imposed by any court while under a bond, and the court under this chapter or court rule finds the defendant in default and forfeits the bond, the proceeds must be forwarded to the State Treasurer and deposited in the General Fund.

(b) All funds held by the State in any depository derived from forfeiture or default of bonds from any court, except the House Sergeant of the Wilmington City Police, shall immediately be forwarded to the State Treasurer and deposited in the General Fund.

(c) The proceeds of any bond forfeited for the defendant's failure to appear in any child support proceeding shall be paid over to the payee of the child support order and applied to the child support account.

(59 Del. Laws, c. 360, § 1; 70 Del. Laws, c. 449, § 3; 71 Del. Laws, c. 176, § 15; 79 Del. Laws, c. 36, § 1; 81 Del. Laws, c. 200, § 1; 84 Del. Laws, c. 473, § 13; 85 Del. Laws, c. 61, § 1; 85 Del. Laws, c. 62, § 106.)

§ 2116. Revocation of bail upon subsequent arrest [Effective until July 1, 2026].

(a) For the purposes of this section:

(1) "Original offense" means any violent felony which is alleged to have been committed by a defendant who is thereafter released from custody upon execution of any form of conditions of release bond.

(2) "Subsequent offense" means any violent felony or any similar offense set forth under the laws of another state, the United States or any territory of the United States which is alleged to have been committed by a defendant during the period of that defendant's bail in connection with an original offense.

(b) In connection with any form of bail for a defendant charged with any violent felony, if after release the defendant is charged by arrest, warrant, indictment or information with the commission of a subsequent offense, that defendant shall be brought before the Superior Court. If after a hearing, the Superior Court finds proof positive or presumption great that the defendant has committed a subsequent offense during such period of release, notwithstanding any provision of this chapter or any statute or court rule to the contrary, the Court shall revoke the bail to which the defendant was admitted in connection with the original offense.

(c) Notwithstanding any provision of this chapter or any other statute or court rule to the contrary, whenever the defendant is charged with a subsequent offense, any form of bail relating to the original offense shall be temporarily revoked by any court, including the Justice of the Peace Court, Court of Common Pleas, or Superior Court, before whom the defendant is then appearing, and the defendant shall be held in lieu of bail for the original offense until such time as the Superior Court holds a hearing to determine whether there is proof positive or presumption great that the defendant committed a subsequent offense during the period of release.

(d) Notwithstanding any provision of this chapter or any statute or court rule to the contrary, any defendant whose bail is revoked by the Superior Court pursuant to this section shall be subject to bail on the original offense in an amount at least twice the amount of bail originally set. If the bail on the original offense was not already secured by cash, the amount of bail may be posted only in the form of a conditions of release bond guaranteed by financial terms secured by cash only.

(73 Del. Laws, c. 372, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 36, § 1; 79 Del. Laws, c. 244, § 1; 81 Del. Laws, c. 200, § 1; 83 Del. Laws, c. 283, § 12.)

§ 2116. Preventive detention [Effective July 1, 2026].

(a) *Purpose. —*

The purpose of this section is to provide the court with the authority to make transparent decisions to detain certain detention-eligible defendants pending a final determination as to the guilt of the defendant.

(b) (1) *Eligibility. —*

A detention-eligible defendant is a defendant charged with committing or attempting to commit any of the following:

a. Any Title 11 class A felony.

b. Abuse of a pregnant female in the first degree, in violation of § 606 of this title.

c. Strangulation, in violation of § 607 of this title.

d. Assault in the second degree, in violation of § 612(a)(1) or (a)(2) of this title.

e. Assault in the first degree, in violation of § 613 of this title.

f. Manslaughter, in violation of § 632 of this title.

g. Murder of a child by abuse or neglect in the second degree, in violation of § 633 of this title.

h. Rape in the fourth degree, in violation of § 770(a)(1) or (a)(3) of this title.

i. Rape in the third degree, in violation of § 771 of this title.

j. Rape in the second degree, in violation of § 772 of this title.

k. Continuous sexual abuse of a child, in violation of § 776 of this title.

l. Sex offender unlawful sexual conduct against a child, in violation of § 777A of this title.

m. Sexual abuse of a child by a person in a position of trust, authority, or supervision in the first degree, in violation of § 778 of this title.

n. Kidnapping in the first degree, in violation of § 783A of this title.

o. Trafficking an individual; forced labor; sexual servitude, in violation of § 787(b)(1) through (3) of this title.

p. Arson in the first degree, in violation of § 803 of this title.

q. Burglary in the first degree, in violation of § 826 of this title.

r. Robbery in the first degree, in violation of § 832 of this title.

s. Child abuse in the second degree, in violation of § 1103B of this title.

t. Child torture, in violation of § 1103D of this title.

u. Sexual exploitation of a child, in violation of § 1108 of this title.

v. Unlawful dealing in child pornography, in violation of § 1109 of this title.

w. Sexual solicitation of a child, in violation of § 1112A(h) of this title.

x. Promoting sexual solicitation of a child, in violation of § 1112B(g) of this title.

y. Escape after conviction in violation of § 1253 of this title, when a class C or class B felony.

z. Stalking, in violation of § 1312 of this title.

aa. Possession of a deadly weapon during commission of a felony, in violation of § 1447 of this title.

bb. Possession of a firearm during commission of a felony, in violation of § 1447A of this title.

cc. Possession of a firearm by persons prohibited, in violation of § 1448(a)(1), (a)(4), (a)(6), (a)(7), or (a)(11) of this title.

dd. Racketeering, in violation of § 1503 of this title.

ee. Aggravated act of intimidation, in violation of § 3533 of this title.

ff. Any violent felony as defined by § 4201(c) of this title, allegedly committed while defendant is pending adjudication on a previously charged violent felony.

gg. Any violent felony, as defined by § 4201(c) of this title, allegedly committed against a petitioner with an active protection from abuse order against the defendant.

hh. Any violent felony, as defined by § 4201(c) of this title, allegedly committed against a victim while the defendant is pending adjudication on a previously charged "domestic violence" offense as defined by § 1041 of Title 10, allegedly committed against the same victim.

ii. Any felony offense of "domestic violence," as defined by § 1041 of Title 10, allegedly committed while defendant is pending adjudication on a previously charged violent felony, as defined by § 4201(c) of this title.

jj. Felony noncompliance with bond, in violation of § 2109(c)(1) or § 2113(c)(1) of this title and involving a violent felony offense as defined by § 4201(c) of this title.

kk. Any felony offense of "domestic violence," as defined by § 1041 of Title 10, causing "physical injury," as defined by § 222 of this title, or "serious physical injury," as defined by § 222 of this title.

ll. Drug dealing (Tier 3), in violation of § 4752(a)(1) of Title 16.

(2) An offense may only be added to the list in paragraph (b)(1) of this section by an act that complies with § 12 of Article I of the Delaware Constitution. An amendment to an offense on the list in paragraph (b)(1) of this section is amended for the purposes of paragraph (b)(1) of this section only if it complies with § 12 of Article I of the Delaware Constitution.

(c) *Initial appearance right to counsel. —*

A defendant who is eligible for preventive detention under this section must be afforded representation by the Office of Defense Services or retained counsel at the initial appearance described by § 1909 of this title. A defendant who is unable to afford counsel must have counsel appointed without undue delay and, in any event, within 24 hours of arrest.

(d) *Temporary preventive detention hearing. —*

(1) If a detention-eligible defendant appears before a Justice of the Peace magistrate or a judicial officer of the Superior Court for initial appearance, the magistrate or judicial officer of the Superior Court may issue a temporary order to detain the defendant for a period of time not to exceed 10 days if the court finds all of the following:

a. Probable cause that the defendant committed 1 of the offenses listed in subsection (b) of this section.

b. Clear and convincing evidence that no condition or combination of conditions of release will do all of the following:

1. Reasonably assure the appearance of the defendant at court proceedings.

2. Reasonably assure the protection of the community, victims, witnesses, or any other person.

3. Reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice.

(2) Enumerated factors to consider during a temporary preventive detention hearing. —

During a temporary preventive detention hearing to determine whether no condition or combination of conditions will reasonably assure the defendant's appearance at court proceedings, reasonably assure the protection of the community, victims, witnesses, or any other person, and reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice, the court may consider all of the following:

a. The nature and circumstances of the offense charged.

b. The history and characteristics of the defendant, including any of the following:

1. Whether, at the time of the current arrest, the defendant was on probation, parole, or other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal law or the law of this State or any other state.

2. The defendant's history of community supervision including amenability to pretrial conditions of release, failure to appear, failure to register as sex offender violations, custodial sentences imposed, and prior convictions for felonies, misdemeanors, and violent offenses.

3. The defendant's family ties, including responsibility as a primary caregiver to children or infirm relatives.

4. The defendant's employment or enrollment in educational studies.

5. The defendant's character, physical and mental condition, including engagement in medical, mental health, or substance abuse treatment, and the effect detention would have on any current treatment.

6. The defendant's length of residence in the community.

c. The nature and seriousness of the danger to any other person or the community that would be posed by the defendant's release.

d. The nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process that would be posed by the defendant's release.

e. The recommendation of the Attorney General or any pretrial services agency.

f. The defendant's eligibility to be sentenced under § 4214 of this title.

(3) a. A temporary preventive detention order issued by the Justice of the Peace Court under this subsection may be extended by the Court of Common Pleas or the Superior Court on motion of the State, the defendant, or on the court's own motion when there is a showing of good cause for the extension and consent of the nonmoving parties. In the absence of consent of the nonmoving parties, a temporary preventive detention order may be extended only on a showing that exceptional circumstances exist and that delay is indispensable to the interests of justice.

b. A temporary preventive detention order issued by a judicial officer of the Superior Court under this subsection may be extended by the Superior Court on motion of the State, the defendant, or on the court's own motion when there is a showing of good cause for the extension and consent of the nonmoving parties. In the absence of consent of the nonmoving parties, a temporary preventive detention order may be extended only on a showing that exceptional circumstances exist and that delay is indispensable to the interests of justice.

(4) If a detention-eligible defendant was previously released pending adjudication and is alleged to have wilfully violated any material condition of release or is subsequently charged by arrest, warrant, indictment, or information with the commission of an offense listed in subsection (b) of this section or any violent felony, any form of release relating to the original detention-eligible offense must be temporarily revoked by the court, including the Justice of the Peace Court, Court of Common Pleas, or Superior Court, before which the defendant is then appearing, a temporary preventive detention order must be entered, and the defendant must be held for the original detention-eligible offense until such time as the Superior Court holds a preventive detention hearing under subsection (e) of this section.

(5) a. If the court makes the findings required in paragraph (d)(1) of this section, there is a presumption in favor of the court's entry of a temporary preventive detention order.

b. If the court does not make the findings required in paragraph (d)(1) of this section, the offense with which the defendant is charged is deemed bailable and the court shall determine, in a manner consistent with all applicable provisions of this chapter, the terms of a conditions of release bond to be imposed.

(e) *Preventive detention hearing. —*

(1) a. A temporary preventive detention order issued at an initial appearance under subsection (d) of this section expires after 10 days if not extended by an order granted under paragraph (d)(3) of this section or by an order of the Court of Common Pleas or Superior Court granting preventive detention following a preventive detention hearing with adequate due process protections under subsection (f) of this section.

b. Whether a temporary preventive detention order was issued at an initial appearance or not, on written motion of the State, the Court of Common Pleas or Superior Court may grant an order of preventive detention following a preventive detention hearing with adequate due process protections under subsection (f) of this section.

(2) At a hearing to determine whether the defendant should be subject to preventive detention, the Court of Common Pleas or Superior Court may enter an order of preventive detention if the court finds all of the following:

a. Proof positive or presumption great that the defendant committed 1 of the offenses listed in paragraph (b)(1) of this section.

b. Clear and convincing evidence that no condition or combination of conditions of release will do all of the following:

1. Reasonably assure the appearance of the defendant at court proceedings.

2. Reasonably assure the protection of the community, victims, witnesses, or any other person.

3. Reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice.

(f) *Preventive detention hearing procedures. —*

At a hearing under subsection (e) of this section, all of the following apply:

(1) The defendant has the right to be present and represented by counsel, and, if indigent, to have counsel appointed.

(2) The defendant must be afforded the right to testify, present evidence and call witnesses on the defendant's behalf, and confront and cross-examine witnesses who appear at the hearing. The defendant's testimony at a preventive detention hearing, if any, is not admissible at a subsequent hearing or trial other than for impeachment or prosecution for perjury.

(3) The Attorney General bears the burden of establishing commission of an offense with proof positive or presumption great.

(4) If the Court finds by proof positive or presumption great that an offense was committed and the defendant committed the offense, the Attorney General bears the burden of establishing by clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the defendant's appearance at court proceedings, reasonably assure the protection of the community, victims, witnesses, or any other person, and reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice.

(5) The rules of evidence do not apply in the presentation and consideration of information.

(6) a. Subject to paragraph (f)(6)b. of this section, the Attorney General must disclose to the defendant at or before the preventive detention hearing all evidence within the Attorney General's possession at the time of the preventive detention hearing that is favorable to the defendant in the preventive detention determination in that it negates the defendant's eligibility for an order of preventive detention.

b. The Attorney General is deemed to not be in possession of any evidence in the possession or control of other Delaware state agents that has not yet been provided to the Attorney General.

(7) The hearing must be held within 10 days of arrest if not extended by the Court of Common Pleas or the Superior Court. An extension may be granted on motion of the State, the defendant, or on the court's own motion when there is a showing of good cause for the extension and consent of the nonmoving parties. In the absence of consent of the nonmoving parties, the 10-day period may be extended only on a showing that exceptional circumstances exist and that delay is indispensable to the interests of justice.

(8) The hearing must be recorded.

(9) a. If the Court of Common Pleas or Superior Court makes the findings required in paragraph (e)(2) of this section, there is a presumption in favor of the Court's entry of an order of preventive detention.

b. If the Court of Common Pleas or Superior Court does not make the findings required in paragraph (e)(2) of this section, the offense with which the defendant is charged is deemed bailable and the court shall determine, in a manner consistent with all applicable provisions of this chapter, the terms of a conditions of release bond to be imposed.

(g) *Enumerated factors to consider during a preventive detention hearing. —*

(1) During a preventive detention hearing to determine whether no condition or combination of conditions will reasonably assure the defendant's appearance at court proceedings, reasonably assure the protection of the community, victims, witnesses, or any other person, and reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice, the Court of Common Pleas or Superior Court may consider all of the following:

a. The nature and circumstances of the offense charged.

b. The weight of the evidence against the defendant and likelihood of conviction. In assessing the likelihood of conviction, the court may consider the admissibility of any evidence sought to be excluded.

c. The history and characteristics of the defendant, including all of the following:

1. Whether, at the time of the current arrest, the defendant was on probation, parole, or other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal law or the law of this State or any other state.

2. The defendant's history of community supervision including amenability to pretrial conditions of release, failure to appear, failure to register as sex offender violations, custodial sentences imposed, and prior convictions for felonies, misdemeanors, and violent offenses.

3. The defendant's family ties, including responsibility as a primary caregiver to children or infirm relatives.

4. The defendant's employment or enrollment in educational studies.

5. The defendant's character, physical and mental condition, including engagement in medical, mental health, or substance abuse treatment, and the effect detention would have on any current treatment.

6. The defendant's length of residence in the community.

d. The nature and seriousness of the danger to any other person or the community that would be posed by the defendant's release.

e. The nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process that would be posed by the defendant's release.

f. The recommendation of the pretrial services agency.

g. The defendant's eligibility to be sentenced under § 4214 of this title.

(2) Although the charged offense itself may be a predicate to preventive detention proceedings, the court must exercise care not to give preclusive weight to the nature of the present charged offense when evaluating all relevant factors for the preventive detention decision.

(h) *Contents of preventive detention order. —*

In a preventive detention order issued following a hearing under subsection (e) of this section, the court shall make all of the following findings:

(1) Findings of fact that establish proof positive or presumption great that the defendant committed 1 of the offenses under paragraph (b)(1) of this section.

(2) Findings of fact that establish clear and convincing evidence that no condition or combination of conditions of release will do all of the following:

a. Reasonably assure the appearance of the defendant at court proceedings.

b. Reasonably assure the protection of the community, victims, witnesses, or any other person.

c. Reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice.

(i) *Detention order review. —*

On motion filed by the State or the defendant, an order entered by the Court of Common Pleas or a commissioner of Superior Court granting or denying the detention of a detention-eligible defendant is immediately reviewable by a judge of the Superior Court. The party seeking relief from the order must file a motion in accordance with the rules of the Superior Court.

(j) *Requirement for accelerated trial for detained defendants. —*

All of the following speedy trial protections apply to defendants detained under subsection (d) or (e) of this section:

(1) A defendant may not remain detained under an order issued under subsection (d) or (e) of this section for more than 60 days before the return of an indictment or docketing of a waiver of indictment. If the defendant is not indicted or has not waived indictment within 60 days of entry of a temporary preventive detention order issued under subsection (d) of this section or a preventive detention order issued under subsection (e) of this section, whichever is later, the offense with which the defendant is charged is deemed bailable and the court shall determine, in a manner consistent with all applicable provisions of this chapter, the terms of a conditions of release bond to be imposed.

(2) a. A defendant may not remain detained under an order issued under subsection (e) of this section for more than the following periods on a charged offense after the return or unsealing of the indictment, whichever is later:

1. Three hundred sixty-five days on a charge of murder in the first degree, in violation of § 636 of this title.

2. Two hundred seventy days for a class A felony other than murder in the first degree.

3. One hundred eighty days for all other felony offenses under paragraph (b)(1) of this title other than murder in the first degree or another class A felony.

b. If a defendant's trial does not commence within the applicable period under paragraph (j)(2)a. of this section, the offense with which the defendant is charged is deemed bailable and the court shall determine, in a manner consistent with all applicable provisions of this chapter, the terms of a conditions of release bond to be imposed.

(3) Notwithstanding any other provision of this section, a defendant must be released on a conditions of release bond if, 2 years after the court's issuance of the preventive detention order issued under subsection (e) of this section, the Attorney General is not ready to proceed to voir dire, opening argument, or a hearing of any motions that had been reserved for the time of trial. The terms of any conditions of release bond to be imposed must be determined by the court in a manner consistent with all applicable provisions of this chapter.

(4) If the defendant is charged or indicted on more than 1 matter resulting in the defendant's preventive detention under an order entered under subsection (e) of this section, the time calculations for each matter run independently but not consecutively.

(5) Notwithstanding any other provision of this section, a preventive detention order issued under subsection (e) of this section may be extended by the Superior Court on motion of the State, the defendant, or on the court's own motion when there is a showing of good cause for the extension and consent of the nonmoving parties. In the absence of consent of the nonmoving parties, a preventive detention order issued under subsection (e) of this section may be extended by the Superior Court only on a showing that exceptional circumstances exist and that delay is indispensable to the interests of justice.

(k) In addition to the information required in the annual report established in § 2114(i) of this title, the Criminal Justice Council shall include the following information analyzed by the Statistical Analysis Center based on data recorded, compiled, and provided electronically to the Statistical Analysis Center by the courts:

(1) The number of detention-eligible defendants identified by the courts.

(2) Rates of initial detention for detention-eligible defendants identified by the courts.

(3) Demographic information for defendants identified by the courts as detention-eligible.

(4) Rates of rearrest and failure to appear during the pretrial period among detention-eligible defendants identified by the courts and released with detention-eligible charges pending.

(73 Del. Laws, c. 372, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 36, § 1; 79 Del. Laws, c. 244, § 1; 81 Del. Laws, c. 200, § 1; 83 Del. Laws, c. 283, § 12; 84 Del. Laws, c. 473, § 14; 85 Del. Laws, c. 61, § 1; 85 Del. Laws, c. 62, § 106.)

Part II
Criminal Procedure Generally
Chapter 23
Search and Seizure
Subchapter I
General Provisions

§ 2301. Search to accord with statute or Constitution.

No person shall search any person, house, building, conveyance, place or other thing without the consent of the owner (or occupant, if any) unless such search is authorized by and made pursuant to statute or the Constitution of the United States.

(Code 1935, § 5343-AA; 48 Del. Laws, c. 303; 11 Del. C. 1953, § 2301; 53 Del. Laws, c. 359, § 1; 56 Del. Laws, c. 422, § 1.)

§ 2302. Search without warrant in hot pursuit.

A search of a person, house, building, conveyance, place or other thing may be made without a warrant if the search is made for a person hotly pursued provided the pursuer has probable cause to believe that such person has committed a felony or a misdemeanor.

(Code 1935, § 5343-BB; 48 Del. Laws, c. 303; 11 Del. C. 1953, § 2302; 56 Del. Laws, c. 422, § 2.)

§ 2303. Search without warrant incident to arrest.

A search of a person, house, building, conveyance, place or other thing may be made without a warrant if:

(1) The search is made incidental to and contemporaneous with a lawful arrest;

(2) The search is made in order to find and seize:

a. The fruits of a crime;

b. The means by which the crime was committed;

c. Weapons and other things to effect an escape from arrest or custody; and

d. Evidentiary matter pertaining to the commission of a crime.

(Code 1935, § 5343-CC; 48 Del. Laws, c. 303; 11 Del. C. 1953, § 2303; 56 Del. Laws, c. 422, § 3.)

§ 2304. Persons authorized to issue search warrants.

Any Judge of the Superior Court, the Court of Common Pleas, or any justice of the peace, or any magistrate authorized to issue warrants in criminal cases may, within the limits of their respective territorial jurisdictions, issue a warrant to search any person, house, building, conveyance, place or other thing for each or any of the items specified in § 2305 of this title.

(Code 1935, § 5343-DD; 48 Del. Laws, c. 303; 11 Del. C. 1953, § 2304; 49 Del. Laws, c. 220, § 9; 53 Del. Laws, c. 359, § 1; 56 Del. Laws, c. 422, § 4; 71 Del. Laws, c. 176, § 16.)

§ 2305. Objects of search warrant.

A warrant may authorize the search of any person, house, building, conveyance, place or other things for any of the following:

(1) Papers, articles or things of any kind which were instruments of or were used in a criminal offense, the escape therefrom or the concealment of said offense or offenses;

(2) Property obtained in the commission of a crime, whether the crime was committed by the owner or occupant of the house, building, place or conveyance to be searched or by another;

(3) Papers, articles, or things designed to be used for the commission of a crime and not reasonably calculated to be used for any other purpose;

(4) Papers, articles or things the possession of which is unlawful;

(5) Papers, articles or things which are of an evidentiary nature pertaining to the commission of a crime or crimes;

(6) Persons for whom a warrant of arrest has been issued.

(Code 1935, § 5343-DD; 48 Del. Laws, c. 303; 11 Del. C. 1953, § 2305; 53 Del. Laws, c. 359, § 1; 56 Del. Laws, c. 442, § 5.)

§ 2306. Application or complaint for search warrant.

The application or complaint for a search warrant shall be in writing, signed by the complainant and verified by oath or affirmation. It shall designate the house, place, conveyance or person to be searched and the owner or occupant thereof (if any), and shall describe the things or persons sought as particularly as may be, and shall substantially allege the cause for which the search is made or the offense committed by or in relation to the persons or things searched for, and shall state that the complainant suspects that such persons or things are concealed in the house, place, conveyance or person designated and shall recite the facts upon which such suspicion is founded.

(Code 1935, § 5343-DD; 48 Del. Laws, c. 303; 11 Del. C. 1953, § 2306; 53 Del. Laws, c. 359, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2307. Issuance; contents; execution and return of search warrants.

(a) *Issuance of search warrants; contents.* — If the judge, justice of the peace or other magistrate finds that the facts recited in the complaint constitute probable cause for the search, that person may direct a warrant to any proper officer or to any other person by name for service. The warrant shall designate the house, place, conveyance or person to be searched, and shall describe the things or persons sought as particularly as possible.

(b) *Execution and return with inventory.* — The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made forthwith and shall be accompanied by a written inventory of any property taken. The inventory shall be made and signed by the officer executing the warrant in the presence of the person from whose possession or premises the property was taken, if they are present, or if they are not present, in the presence of at least 1 witness. The judge shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(Code 1935, § 5343-DD; 48 Del. Laws, c. 303; 11 Del. C. 1953, § 2307; 49 Del. Laws, c. 220, § 9; 53 Del. Laws, c. 359, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 314, §§ 1, 2, 3, 4.)

§ 2308. Search at nighttime.

A search warrant shall not authorize the person executing it to search any dwelling house in the nighttime unless the judge, justice of the peace or magistrate is satisfied that it is necessary in order to prevent the escape or removal of the person or thing to be searched for, and then the authority shall be expressly given in the warrant. For purposes of this section the term “nighttime” shall mean the period of time between 10:00 p.m. and 6:00 a.m.

(Code 1935, § 5343-DD; 48 Del. Laws, c. 303; 11 Del. C. 1953, § 2308; 49 Del. Laws, c. 220, § 9; 63 Del. Laws, c. 308, § 1.)

§ 2309. Grounds for seizure of subject matter of search.

(a) Any papers, articles or things which are the subject matter of a search warrant may be seized:

(1) By any peace officer without a search warrant where such paper, article or thing is in plain view without the necessity of a search.

(2) Where such paper, article or thing is discovered pursuant to a valid search, with or without a search warrant, whether or not such paper, article or thing is an object of the search or is described in the search warrant.

(b) The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made forthwith and shall be accompanied by a written inventory of any property taken. The inventory shall be made and signed by the officer executing the warrant in the presence of the person from whose possession or premises the property was taken, if they are present, or, if they are not present, in the presence of at least 1 witness. The judge shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(Code 1935, § 5343-EE; 48 Del. Laws, c. 303; 11 Del. C. 1953, § 2309; 73 Del. Laws, c. 314, § 5.)

§ 2309A. Objects subject to search and seizure.

(a) When used in this subchapter, the terms “property” and “papers, articles or things” shall, in addition to their ordinary meanings, include any funds placed in a bank or other monetary account.

(b) Any papers, articles, things or other property which represent or is traceable to the fruits of a crime or which represent or is traceable to the proceeds obtained, directly or indirectly, as a result of the commission of a crime, shall be subject to search and seizure pursuant to this subchapter.

(75 Del. Laws, c. 106, § 1.)

§ 2310. Short form of affidavit, application and search warrant.

(a) The following shall be sufficient form of affidavit and application for search warrant:

IN THE (NAME OF COURT)

STATE OF DELAWARE
IN THE MATTER OF:

AFF

AND AP-
(NAME OF PERSONS, HOUSE,

PLICATION FOR

PLACE OR THING TO BE SEARCH
SEARCHED)
STATE OF DELAWARE
..... COUNTY SS.

Be it remembered that on this ..... day of ....., A.D. 20 ....., before me (name of judge or justice of peace and designation of court), personally appeared (name and rank of affiant and designation of police department of which affiant is a member), who being by me duly sworn (or affirmed) deposes (or depose) and says (or say):

That the affiant (or affiants) has (or have) reason to believe and does (or do) believe that in the (house, place, conveyance or person known as ..... designate and describe briefly,) the owner(s) (or occupant(s)) is (are) (name and owner or owners, occupant or occupants) there has been and/or there is now located and/or concealed certain property in said house, place, conveyance and/or on the person or persons of the occupants thereof, consisting of property, papers, articles or things which are the instruments of a criminal offense, and/or obtained in the commission of a crime, and/or designated to be used in the commission of a crime, and not reasonably calculated to be used for any other purpose and/or the possession of which is unlawful and, in particular, (describe the property or person expected to be found) which said property, papers, articles or things were, are, or will be possessed and/or used in violation of Title 11, Chapter ....., Section ....., Delaware Code, in that (designate offense by name and brief statement of its commission).

And that the facts tending to establish probable cause for believing that the foregoing grounds for the application exist are as follows: (State briefly only. Also, if authority is sought to search a dwelling house in the nighttime, set forth briefly the facts which show that the nighttime search is necessary to prevent the escape or removal of the person or thing to be searched for.)

(State briefly only. Also, if authority is sought to search a dwelling house in the nighttime, set forth briefly the facts which show that the nighttime search is necessary to prevent the escape or removal of the person or thing to be searched for.)

WHEREFORE, this (these) affiant(s) prays (or pray) that a search warrant may be issued authorizing a search of the aforesaid (house, place, conveyance, person or persons, or occupant or occupants) in the manner provided by law.

..... Affiant
..... Affiant

SWORN to (or affirmed) and subscribed before me this ..... day of ....., A.D. 20.....
..... (Judge or Justice of Peace -
Designate name, title and court)

(b) The following shall be a sufficient form of search warrant where search of a dwelling house in the nighttime is not authorized:

IN THE (NAME OF COURT)

STATE OF DELAWARE
IN THE MATTER OF:
(NAME OF PERSON, HOUSE, SEARCH WARRANT
PLACE OR THING TO BE
SEARCHED)

THE STATE OF DELAWARE TO: (Name and rank of person or persons directed to make search and designation of police department of which such persons are members) with the assistance of any police officer or constable or any other necessary or proper person or persons or assistance.

GREETINGS:

Upon the annexed affidavit and application or complaint for a search warrant, as I am satisfied that there is probable cause to believe that certain property, namely (describe the property) used or intended to be used for

..... ,

is being concealed on the (premises) (person) described in the annexed affidavit and application or complaint;

NOW THEREFORE, YOU ARE HEREBY COMMANDED within 10 days of the date hereof to search the above-named person, persons, house, conveyance or place for the property specified in the annexed affidavit and application, and to search any occupant or occupants found in the house, place, or conveyance above named for such property, serving this warrant and making the search in the daytime, or in the nighttime if the property to be searched is not a dwelling house, and, if the property, papers, articles or things, or

any part thereof, be found there, to seize it, giving to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or leaving the copy and receipt at the place from which the property was taken, and to prepare a signed inventory of the goods seized in the presence of the person from whose possession or premises the property was taken, if they are present, or, if they are not present, in the presence of at least 1 witness, and to return this warrant, accompanied by the written inventory, to me forthwith.

DATED the ..... day of .....,

A.D. 20.....

..... (Judge or Justice of Peace -

Designate name, title and court)

(c) The following shall be sufficient form of search warrant where search of a dwelling house in the nighttime is authorized:

IN THE (NAME OF COURT)

STATE OF DELAWARE

IN THE MATTER OF:

(NAME OF PERSON, HOUSE, PLACE OR THING TO BE SEARCHED) SEARCH WARRANT

THE STATE OF DELAWARE TO: (Name and rank of person or persons directed to make search and designation of police department of which such persons are members) with the assistance of any police officer or constable or any other necessary or proper person or persons or assistance.

GREETINGS:

Upon the annexed affidavit and application or complaint for a search warrant, as I am satisfied that there is probable cause to believe that certain property, namely (describe the property) used or intended to be used for

.....

..... ,

is being concealed on the (premises) (person) described in the annexed affidavit and application or complaint; and that search of the premises in the nighttime is necessary in order to prevent the escape or removal of the person or thing to be searched for;

NOW THEREFORE, YOU ARE HEREBY COMMANDED within 3 days of the date hereof to search the above-named person, persons, house, place or conveyance for the property specified in the annexed affidavit and application, and to search any occupant or occupants found in the house, place or conveyance above named for such property serving this warrant and making the search in the daytime, or in the nighttime and, if the property, papers, articles or things, or any part thereof, be found there, to seize it, giving to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or leaving the copy and receipt at the place from which the property was taken, and to prepare a signed inventory of the goods seized in the presence of the person from whose possession or premises the property was taken, if they are present, or, if they are not present, in the presence of at least 1 witness, and to return this warrant, accompanied by the written inventory, to me forthwith.

DATED the ..... day of .....,

A.D. 20.....

..... (Judge or Justice of Peace -

Designate name, title and court)

(11 Del. C. 1953, § 2310; 53 Del. Laws, c. 359, § 2; 57 Del. Laws, c. 428; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 314, §§ 6, 7.)

§ 2311. Disposition of property validly seized.

(a) The following disposition shall be made of any papers, articles or things validly seized:

(1) If the papers, articles or things were obtained as the result of the commission of a crime, they shall be returned to their lawful owners;

(2) If the papers, articles or things were property which represents or is traceable to the fruits of a crime or which represents or is traceable to the proceeds obtained, directly or indirectly, as a result of the commission of a crime and the person from whom they are seized is duly convicted of the alleged crime, the court may order that the property be disposed of or dispersed in a manner consistent with § 4106 of this title or otherwise disposed of as the court directs;

(3) If the papers, articles or things were allegedly used in the commission of a crime, they shall be returned to the person from whom seized if such person is not thereafter duly convicted of the alleged crime; but if such person is duly convicted of the alleged crime, the papers, articles and things shall be disposed of as the court directs;

(4) If possession of the papers, articles or things seized is unlawful, they shall, upon petition, be disposed of as any Judge of the Superior Court directs.

(b) Any papers, articles or things validly seized may be retained by the police for a reasonable length of time for the purpose of apprehending the offender or using the papers, articles or things so seized as evidence in any criminal trial, or both.

(c) A deadly weapon or ammunition which was validly seized from a person who is prohibited from purchasing, owning, possessing or controlling a deadly weapon as a result of a felony conviction under Delaware law, federal law or the law of any other state, or who is otherwise prohibited under § 1448 of this title may be disposed of by the law-enforcement agency holding the weapon or ammunition, after the exhaustion of any right of direct appeal, and after proper notice of the intent to dispose of such deadly weapon or ammunition 6 months from the date of the notice, unless such deadly weapon or ammunition has been claimed by the owner or a third party. If the deadly weapon or ammunition shall remain unclaimed after 6 months from the date of notice, then no party shall thereafter have the right to assert ownership thereof, and the law-enforcement agency may dispose of such deadly weapon or ammunition following the expiration of the period set forth in subsection (d) of this section. For purposes of this section, "disposition" may include the sale or transfer of the firearms to a federal licensed dealer, defined as a person licensed as a firearms collector, dealer, importer, or manufacturer under the provisions of 18 U.S.C. § 922 et seq., or destruction of the firearms and ammunition.

(1) Any person requesting the return of any deadly weapon or ammunition hereunder shall have the burden to prove that he or she is the owner thereof and is not otherwise prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition.

(2) Any third party requesting the return of any deadly weapon or ammunition hereunder shall also have the burden to prove ownership by devise, gift, sale or other legally-recognized process for conveying ownership.

(d) Any law-enforcement agency denying an owner or a third party the possession of any deadly weapon or ammunition pursuant to this section shall not dispose of such deadly weapon or ammunition until the expiration of 60 calendar days from the date of denial.

(e) Notwithstanding anything in this section to the contrary, any law-enforcement agency holding a deadly weapon or ammunition validly seized from a person who is subject to a Family Court protection from abuse order pursuant to § 1448(a)(6) of this title may dispose of such deadly weapon or ammunition after the expiration or termination of such order and after proper notice is provided to the owner in accordance with subsections (c) and (d) of this section.

(f) For purposes of this section:

(1) "Last-known address" shall mean the last known address of the owner of any deadly weapon or ammunition hereunder as determined through the Delaware Criminal Justice Information System (DELJIS), the Family Court of the State or the address noted on the owner's most recent driver's license, vehicle registration or Division of Motor Vehicle identification card. In accordance with this section, the Family Court is authorized to provide to law-enforcement the most recent address of an owner who was, or is, a party to any Family Court proceeding.

(2) "Proper notice" shall mean notice of a law-enforcement agency's intention to dispose of a deadly weapon or ammunition in accordance with this section by written notice, via certified letter, return receipt requested, to the owner's last known address and by publication in a local or statewide newspaper at least once a week for 2 consecutive weeks. Such notice shall state that the local law-enforcement agency may not dispose of said deadly weapon or ammunition until the expiration of the notice period set forth in this section.

(3) "Third party" shall mean any person requesting the return of any deadly weapon or ammunition hereunder who is not the party to whom notice was sent in accordance with subsection (c) of this section.

(g) If a law-enforcement agency denies any request for the return of a deadly weapon or ammunition hereunder, the person or third party so denied shall have the right to file a petition in any court of competent jurisdiction for the return of the deadly weapon or ammunition, in addition to any other rights such person may have. A law-enforcement agency shall not dispose of a deadly weapon or ammunition subject to such a petition until a final adjudication and the expiration of any appeal period. The petition filed pursuant to this subsection shall include the following:

(1) A complete description of the property including all identification and registration numbers if applicable;

(2) The name and last known address of the owner or owners of the property;

(3) The names and addresses of any persons who claim to or have an interest or lien in the subject property;

(4) A statement of the value of the subject property; and

(5) A statement by the petitioner that he or she requested the return of a deadly weapon or ammunition from a law-enforcement agency, and that such request was denied.

(h) Upon receipt of a petition which is made pursuant to subsection (g) of this section, the court shall send a notice and a copy of the petition to the law-enforcement agency holding the deadly weapon or ammunition and to all other owners and/or lienholders of said property identified in the petition. Such notice shall include:

(1) A statement that a petition has been made with the court;

(2) A statement that the owner or other person has a legal right to a hearing in the courts and that if a hearing is desired then the owner or other person shall file with the court an answer to the petition;

(3) A statement that if an answer is filed a hearing will be promptly scheduled and the owners or other interested persons may appear to contest the claim;

(4) A statement that the court will enter a judgment in favor of the petitioner unless an answer is filed within 20 days after the date on which the notice was mailed;

(5) A statement that the person may be liable for costs if a judgment is entered in favor of the petitioner.

(i) If the court receives an answer described in paragraph (h)(3) of this section, the court shall notify the petitioner and all parties of the hearing date to determine ownership of the deadly weapon or ammunition. If no answer is filed pursuant to paragraph (h)(3) of this section, then the court shall issue an order declaring that the petitioner has full right, title and interest to the said deadly weapon or ammunition.

(Code 1935, § 5343-GG; 48 Del. Laws, c. 303; 11 Del. C. 1953, § 2311; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 106, § 2; 76 Del. Laws, c. 99, § 2; 78 Del. Laws, c. 135, §§ 1-5, 10.)

Subchapter II

Vehicles

§ 2321. Definitions.

As used in this subchapter:

"Vehicle" includes all motor-propelled vehicles, wagons, carts, carriages, bicycles, vessels and aircraft.

(42 Del. Laws, c. 144, § 1; 11 Del. C. 1953, § 2321; 58 Del. Laws, c. 424, § 3.)

§ 2322. Grounds for seizure.

Whenever any vehicle, as defined in this subchapter, has been used in, or in connection with, the commission of any felony or in connection with the flight or escape of any person who has committed any felony or in the transporting of cigarettes in violation of Chapter 53 of Title 30, or in a violation of § 1343 of this title, or in a violation of § 4172 of Title 21 in a manner meeting the criteria set forth in § 4172(g) of Title 21, it shall forthwith be seized and taken into custody by the peace officer or officers having knowledge of the facts of such use.

(42 Del. Laws, c. 144, § 2; 11 Del. C. 1953, § 2322; 55 Del. Laws, c. 277, § 5; 58 Del. Laws, c. 424, § 4; 69 Del. Laws, c. 23, § 3; 83 Del. Laws, c. 294, § 4.)

§ 2323. Transportation of controlled substances as grounds for seizure.

Whenever any vehicle, as defined in this subchapter, is used or intended for use to transport or in any manner to facilitate the transportation of any controlled substance in violation of subchapter IV of Chapter 47 of Title 16, it shall forthwith be seized and taken into custody by the peace officer or officers having knowledge of the facts of such use, and any forfeiture proceeding shall be conducted in accordance with subchapter VI of Chapter 47 of Title 16.

(1)-(4) [Repealed.]

(11 Del. C. 1953, § 2322A; 58 Del. Laws, c. 424, § 2; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 13, § 7; 84 Del. Laws, c. 375, § 2.)

§ 2324. Condemnation proceedings; rule-making power of Superior Court.

The vehicle seized under this subchapter shall be proceeded against by the Attorney General on behalf of this State in accordance with the procedure set forth in subchapter VI of Chapter 47 of Title 16.

(42 Del. Laws, c. 144, § 3; 11 Del. C. 1953, § 2323; 84 Del. Laws, c. 375, § 2.)

§ 2325. Disposition of seized vehicles.

Upon the judgment of the Superior Court, the vehicle so seized and all of the rights, title and interest therein, or any right, title or interest in and to any such motor vehicle, as the Court determines, shall be forfeited to the State and the vehicle shall be committed to the custody of the Department of Safety and Homeland Security, Division of State Police for its use. If the Department of Safety and Homeland Security, Division of State Police determines that such seized vehicle is not suitable for its purposes, custody will be transferred to the State Treasurer, who may allocate the same to and for the use of any other state bureau, department, agency or officer or may sell the same and deposit the proceeds into the Special Law Enforcement Assistance Fund.

(42 Del. Laws, c. 144, § 4; 11 Del. C. 1953, § 2324; 63 Del. Laws, c. 140, § 2; 65 Del. Laws, c. 87, § 172; 74 Del. Laws, c. 110, § 138.)

§ 2326. Application of subchapter.

This subchapter with respect to condemnation and forfeiture does not apply to or against the owner of a vehicle unless the State proves that the owner knowingly used or permitted the vehicle to be used in, or in connection with, the commission of a felony, or knowingly

and voluntarily used or permitted the vehicle to be used in, or in connection with, the flight or escape of any person who has committed any such felony or in the transporting of cigarettes in violation of Chapter 53 of Title 30, or in a violation of § 1343 of this title, or in a violation of § 4172 of Title 21 in a manner meeting the criteria set forth in § 4172(g) of Title 21. Nothing in this subchapter may be construed as authorizing the condemnation and forfeiture of the interest of any bona fide mortgagee or lienholder with respect to the vehicle unless the State proves that the mortgagee or lienholder knew or had cause to know, at the time its interest accrued, of a contemplated unlawful use of the vehicle.

(42 Del. Laws, c. 144, § 5; 11 Del. C. 1953, § 2325; 55 Del. Laws, c. 277, § 6; 58 Del. Laws, c. 424, § 5; 69 Del. Laws, c. 23, § 4; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 294, § 4; 84 Del. Laws, c. 375, § 2.)

Part II
Criminal Procedure Generally

Chapter 24
Wiretapping, Electronic Surveillance and Interception of Communications

Subchapter I
Electronic Surveillance and Interception of Communications

§ 2401. Definitions.

When used in this chapter:

(1) "Aggrieved person" means a person who was a party to any intercepted wire, oral or electronic communication or a person against whom the interception was directed.

(2) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

(3) "Communication common carrier" means any person engaged as a common carrier for hire in the transmission of wire or electronic communications.

(4) "Contents," when used with respect to any wire, oral or electronic communication, includes any information concerning the identity of the parties to the communication or the existence or substance of that communication.

(5) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any electromagnetic, photoelectronic or photooptical system. However, "electronic communication" does not include:

a. Any wire or oral communication;

b. Any communication made through a tone-only paging device; or

c. Any communication from a tracking device.

(6) "Electronic communication service" means any service that provides to users of the service the ability to send or receive wire, oral or electronic communications.

(7) "Electronic communications system" means any wire, oral, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire, oral or electronic communications, and any computer facilities or related electronic equipment for the wire, oral or electronic storage of electronic communications.

(8) "Electronic, mechanical, or other device" means any device or electronic communication instrument other than:

a. Any telephone or telegraph instrument, equipment or other facility for the transmission of electronic communications, or any component thereof, which is furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and is being used by the subscriber or user in the ordinary course of its business or furnished by the subscriber or user for connection to the facilities of the service and used in the ordinary course of its business or which is being used by a communications common carrier in the ordinary course of its business or which is being used by an investigative or law-enforcement officer in the ordinary course of that officer's duties; or,

b. A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(9) "Electronic storage" means any temporary, intermediate storage of a wire, oral or electronic communication incidental to the electronic transmission of the communication. "Electronic storage" includes any storage of a wire, oral or electronic communication by an electronic communication service for purposes of backup protection of the communication.

(10) "Intercept" means the aural or other acquisition of the contents of any wire, oral or electronic communication through the use of any electronic, mechanical or other device.

(11) "Investigative or law-enforcement officer" means any officer of this State or a political subdivision of this State, who is empowered by law to conduct investigations or to make arrests for offenses enumerated in this title, any sworn law-enforcement officer of the federal government or of any other state or a political subdivision of another state working with and under the direction of an investigative or law-enforcement officer of this State or a political subdivision of this State, or any attorney authorized by law to prosecute or participate in the prosecution of such offenses.

(12) "Judge," when referring to a judge authorized to receive applications for and to enter orders authorizing interception of wire, oral or electronic communications, means 1 or more of the several Judges of the Superior Court to be designated from time to time by the President Judge of the Superior Court to receive applications for and to enter orders authorizing interception of wire, oral or electronic communications pursuant to this chapter.

(13) "Oral communication" means any oral communication uttered by a person made while exhibiting an expectation that such communication is not subject to interception and under circumstances justifying such expectation, but such term does not include any electronic communication.

(14) “Pen register” means a device that records and decodes electronic or other impulses that identify the numbers dialed or otherwise transmitted on the telephone line to which the device is attached. “Pen register” does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by the provider or any device used by a provider or customer of a wire communication service for cost accounting or other similar purposes in the ordinary course of its business.

(15) “Person” means any employee or agent of this State or a political subdivision thereof, or any individual, partnership, association, joint stock company, trust or corporation.

(16) “Readily accessible to the general public” means, with respect to a radio communication, that the communication is not:

a. Scrambled or encrypted;

b. Transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of the communication; or

c. Except for tone-only paging device communications, transmitted over frequencies reserved for private use and licensed for private use under federal or State law.

(17) “Remote computing service” means the provision to the public of computer storage or processing services by means of an electronic communications system.

(18) “Trap and trace device” means a device that captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

(19) “User” means any person or entity that uses an electronic communication service and is duly authorized by the provider of the service to engage in that use.

(20) “Wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception (including the use of a connection in a switching station) furnished or operated by any person licensed to engage in providing or operating such facilities for the transmission of communications.

(72 Del. Laws, c. 232, § 1.)

§ 2402. Interception of communications generally; divulging contents of communications, violations of chapter.

(a) *Prohibited acts.* — Except as specifically provided in this chapter or elsewhere in this Code no person shall:

(1) Intentionally intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept any wire, oral or electronic communication;

(2) Intentionally disclose or endeavor to disclose to any other person the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this chapter; or

(3) Intentionally use or endeavor to use the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this chapter.

(b) *Penalties for violation of subsection (a) of this section.* — Any person who violates subsection (a) of this section shall be guilty of a class E felony and be fined not more than $10,000.

(c) *Lawful acts.* — It is lawful:

(1) For an operator of a switchboard or an officer, employee or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of wire or electronic communication to intercept, disclose or use such communication in the normal course of employment while engaged in any activity that is necessarily incident to the rendition of such person’s service or to the protection of the rights or property of the provider of that service, except that a provider of wire communications service to the public may not utilize service observing or random monitoring except for mechanical or service quality control checks.

(2) For a provider of wire or electronic communication service, its officers, employees and agents, landlords, custodians or other persons to provide information, facilities or technical assistance to persons authorized by federal or State law to intercept wire, oral, or electronic communications or to conduct electronic surveillance, if the provider, its officers, employees or agents, landlord, custodian or other specified person has been provided with a court order signed by an authorizing judge directing the provision of information, facilities or technical assistance.

a. An order as prescribed by this paragraph shall set forth the period of time during which the provision of the information, facilities or technical assistance is authorized and specify the information, facilities or technical assistance required.

b. A provider of wire or electronic communication service, its officers, employees or agents, or landlord, custodian or other specified person may not disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished an order under this paragraph, except as may otherwise be required by legal process and then only after prior notification to the judge who granted the order, if appropriate, or the Attorney General of this State or the Attorney General’s designee. Any unauthorized disclosure shall render the person liable for compensatory damages.

c. No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees or agents, or landlord, custodian or other specified person for providing information, facilities, or assistance in accordance with the terms of a court order issued pursuant to this chapter.

(3) For an investigative or law-enforcement officer acting in a criminal investigation or any other person acting at the prior direction and under the supervision of an investigative or law-enforcement officer in such investigation pursuant to a court order issued by the Superior Court pursuant to § 2407 of this title to intercept a wire, oral or electronic communication in order to provide evidence of the commission of the offenses including racketeering, murder, kidnapping, human trafficking, gambling, robbery, bribery, extortion, dealing in narcotic drugs or dangerous drugs, dealing in central nervous system depressant or stimulant drugs, controlled substances or counterfeit controlled substances, prison escape, jury tampering, stalking, any felony involving risk of physical injury to a victim or any conspiracy or solicitation to commit any of the foregoing offenses or which may provide evidence aiding in the apprehension of the perpetrator of any of the foregoing offenses.

(4) For a person to intercept a wire, oral or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitutions or laws of the United States, this State or any other state or any political subdivision of the United States or this or any other state.

(5) For a law-enforcement officer in the course of the officer's regular duty to intercept an oral communication, if:

a. The law-enforcement officer initially detained 1 of the parties and overhears a conversation;

b. The law-enforcement officer is a party to the oral communication;

c. Both parties to the oral communication are present in a law-enforcement facility where there is notice to occupants that such communications are monitored;

d. The law-enforcement officer has been identified as a law-enforcement officer to the other party to the oral communication prior to any interception; or

e. The oral interception is being made as part of a video tape recording.

(6) For an officer, employee or agent of a government emergency communications center to intercept a wire, oral or electronic communication where the officer, agent or employee is a party to a conversation concerning an emergency.

(7) For law-enforcement personnel or those acting under their direction to utilize body wires to intercept oral communications in the course of a criminal investigation when the law-enforcement personnel or a person acting under their direction is a party to the communication. Communications intercepted by such means may be recorded and may be used against the defendant in a criminal proceeding.

(8) For a person:

a. To intercept or access an electronic communication made through an electronic communication system that is configured so that the electronic communication is readily accessible to the general public;

b. To intercept any radio communication that is transmitted:

1. By any station for the use of the general public or that relates to ships, aircraft, vehicles or persons in distress;

2. By any governmental, law enforcement, civil defense, private land mobile or public safety communications system, including police and fire, readily accessible to the general public;

3. By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band or general mobile radio services; or

4. By any marine or aeronautical communications system;

c. To intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment to the extent necessary to identify the source of the interference; or,

d. For other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of the system, if the communication is not scrambled or encrypted.

(9) To use a pen register or trap and trace device.

(10) For a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect the provider or another provider furnishing service toward the completion of the wire or electronic communication or a user of that service, from fraudulent, unlawful or abusive use of the service.

(11) For a person acting under color of law and employed for such purpose by the Department of Correction to intercept an electronic or oral communication of any individual confined to a State correctional facility. At the direction of the Commissioner of Correction or the Commissioner's designee, a person performing an official investigation into suspected criminal activity may monitor and intercept the incoming and outgoing electronic communication of any individual incarcerated in a State correctional facility. The Department may also employ devices to monitor any incarcerated individual's incoming and outgoing electronic communication for words or phrases that would justify further investigation. The Department shall not monitor or intercept any communication between an individual confined in a State correctional facility and that individual's attorney.

(d) *Divulging contents of communications.* — Except as provided in this subsection, a person or entity providing an electronic communication service to the public may not intentionally divulge the contents of any communication (other than one to the person or entity providing the service, or an agent of the person or entity) while in transmission on that service to any person or entity other than an addressee or intended recipient of the communication or an agent of the addressee or intended recipient.

(1) A person or entity providing electronic communication service to the public may divulge the contents of a communication:

a. As otherwise authorized by federal or state law;

b. To a person employed or authorized, or whose facilities are used, to forward the communication to its destination; or

c. That were inadvertently obtained by the service provider and that appear to pertain to the commission of a crime, if the divulgence is made to a law-enforcement agency.

(2) Unless the conduct is for the purpose of direct or indirect commercial advantage or private financial gain, conduct that would otherwise be an offense under this subsection is not an offense if the conduct consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted:

a. To a broadcasting station for purposes of retransmission to the general public; or

b. As an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls.

(e) *Penalties for divulging contents of communications.* — Whoever violates subsection (d) of this section shall:

(1) Except as otherwise provided in this subsection, be guilty of a class F felony and fined not more than $10,000.

(2) For any offense that is a first offense:

a. Which was not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; and

b. Which involved a wire or electronic communication that was a radio communication that was not scrambled or encrypted; and

c. Which involved a communication that was not the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication;

be guilty of a class A misdemeanor.

(3) For any offense that is a first offense:

a. Which was not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; and

b. Which involved a wire or electronic communication that was a radio communication that was not scrambled or encrypted; and

c. Which involved a communication that was the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication;

be guilty of an unclassified misdemeanor.

(f) *Civil liability for violations of § 2402 or § 2403 of this title.* — A person who engages in conduct in violation of § 2402 or § 2403 of this title is subject to suit by the federal government or by the State in a court of competent jurisdiction, if the communication is:

(1) A private satellite video communication that is not scrambled or encrypted and the conduct in violation of § 2402 or § 2403 of this title is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

(2) A radio communication that is transmitted on frequencies allocated under Subpart D of Part 74 [47 C.F.R. § 74.401 et seq.] of the Rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of § 2402 or § 2403 of this title is not for a tortious or illegal purpose or for purpose of direct or indirect commercial advantage or private commercial gain.

(g) *Injunctive relief — Civil penalties.* — The State is entitled to appropriate injunctive relief in an action under this subsection if the violation is the person's first offense under paragraph (e)(1) of this section and the person has not been found liable in a prior civil action under § 2409 of this title. However, in any action under this subsection, if the violation is a second or subsequent offense under paragraph (e)(1) of this section or if the person has been found liable in a prior civil action under § 2409 of this title, the person is subject to a mandatory civil fine of not less than $400. The Court may use any means within its authority to enforce an injunction issued under this subsection and shall impose a civil fine of not less than $500 for each violation of an injunction issued under this subsection.

(72 Del. Laws, c. 232, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 276, § 7.)

§ 2403. Manufacture, possession or sale of intercepting device.

(a) *Prohibited acts.* — Except as otherwise specifically provided by this chapter, any person who manufactures, assembles, possesses or sells any electronic, mechanical or other device knowing or having reason to know that the design of the device is primarily for the purpose of the surreptitious interception of wire, oral or electronic communications, shall be guilty of a Class F felony and be fined not more than $10,000.

(b) *Lawful acts.* — It is lawful under this section for:

(1) A provider of wire or electronic communication service or an officer, agent, employee of, or person under contract with a service provider, in the normal course of the business of providing that wire or electronic communication service, to manufacture, assemble,

possess or sell any electronic, mechanical or other device knowing or having reason to know that the design of the device is primarily for the purpose of the surreptitious interception of wire, oral or electronic communications.

(2) A person under contract with the United States, a state, a political subdivision of a state or the District of Columbia, in the normal course of the duties of the United States, a state, a political subdivision thereof or the District of Columbia to manufacture, assemble, possess or sell any electronic, mechanical or other device knowing or having reason to know that the design of the device is primarily for the purpose of the surreptitious interception of wire, oral or electronic communications.

(3) An officer, agent or employee of the United States in the normal course of that individual's lawful duties to manufacture, assemble, possess or sell any electronic, mechanical or other device knowing or having reason to know that the design of the device is primarily for the purpose of the surreptitious interception of wire, oral or electronic communications. However, any sale made under the authority of this paragraph may only be for the purpose of disposing of obsolete or surplus devices.

(4) An officer, agent or employee of a law-enforcement agency of this State or a political subdivision of this State in the normal course of that individual's lawful duties to manufacture, assemble, possess or sell any electronic, mechanical or other device knowing or having reason to know that the design of the device is primarily for the purpose of the surreptitious interception of wire, oral or electronic communications; provided, however, that the particular officer, agent or employee is specifically authorized by the chief administrator of such law-enforcement agency to manufacture, assemble or possess the device for a particular law-enforcement purpose. However, any sale made under the authority of this paragraph may only be for the purpose of disposing of obsolete or surplus devices.

(72 Del. Laws, c. 232, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2404. Admissibility of evidence.

Whenever any wire or oral communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in any trial, hearing or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee or other authority of this State or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.

(72 Del. Laws, c. 232, § 1.)

§ 2405. Authorities permitted to apply for order authorizing interception.

The Attorney General, Chief Deputy Attorney General, Director of the Division of Civil Rights and Public Trust, Director of the Family Division, Director of the Fraud and Consumer Protection Division, State Prosecutor or chief prosecutor of any county may apply to a judge authorized to receive intercept applications and the judge, in accordance with § 2407 of this title, may grant an order authorizing the interception by investigative or law-enforcement officers of wire, oral, or electronic communications when the interception may provide evidence of any of the following:

(1) Of the commission of the offense of racketeering, murder, kidnapping, human trafficking, gambling, robbery, bribery, extortion, dealing in narcotic drugs or dangerous drugs, dealing in central nervous system depressant or stimulant drugs, dealing in controlled substances or counterfeit controlled substances, prison escape, jury tampering, fraud, official misconduct, deprivation of civil rights, hate crimes, or stalking.

(2) Of the commission of any felony creating a risk of physical injury to a person.

(3) Of any conspiracy or solicitation to commit any of the offenses set forth in paragraph (1) or (2) of this section.

(4) Aiding in the apprehension of the perpetrator of any of the offenses set forth in this section.

No application or order shall be required if the interception is lawful under the provisions of § 2406(c) of this title.

(72 Del. Laws, c. 232, § 1; 79 Del. Laws, c. 276, § 7; 84 Del. Laws, c. 204, § 1.)

§ 2406. Lawful disclosure or use of contents of communication.

(a) *Disclosure by investigative or law-enforcement officer.* — Any investigative or law-enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral or electronic communication or evidence derived therefrom may disclose the contents to another investigative or law-enforcement officer of any state, any political subdivision of a state, the United States or any territory, protectorate or possession of the United States, including the District of Columbia, to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(b) *Use of contents by officer.* — Any investigative or law-enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral or electronic communication or evidence derived therefrom or an investigative or law-enforcement officer of any state or any political subdivision of a state, the United States or any territory, protectorate or possession of the United States, including the District of Columbia, who obtains such knowledge by lawful disclosure may use the contents to the extent that the use is appropriate to the proper performance of the officer's official duties.

(c) *Disclosure while giving testimony.* — Any person who has received, by any means authorized by this chapter, any information concerning a wire, oral or electronic communication, or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of any state or any political subdivision of a state, the United States or any territory, protectorate or possession of the United States, including the District of Columbia.

(d) *Privileged character of communication not lost.* — Any contents of wire, oral or electronic communication intercepted in accordance with or in violation of the provisions of this chapter that would otherwise be considered privileged under the law do not lose their privileged character through such interception.

(e) *Communications relating to offenses not specified in order.* — When an investigative or law-enforcement officer, while engaged in intercepting wire, oral or electronic communications in the manner authorized herein, intercepts wire, oral or electronic communications relating to offenses other than those specified in the order of authorization, the contents thereof and evidence derived therefrom may be disclosed or used consistent with subsection (a), (b) or (c) of this section. The contents and any evidence derived therefrom may be used under subsection (c) of this section when authorized or approved by a judge authorized to receive intercept applications where the judge finds on subsequent application that the contents were otherwise intercepted in accordance with this chapter. Such application should be made forthwith.

(f) *Disclosure by law-enforcement officers of other jurisdictions.* — Any investigative or law-enforcement officer of any state or political subdivision of a state, the United States, or any territory, protectorate or possession of the United States, including the District of Columbia, who has lawfully received any information concerning a wire, oral or electronic communication or evidence lawfully derived therefrom that would have been lawful for a law-enforcement officer of this State to receive pursuant to this chapter may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of this State or any political subdivision of this State.

(72 Del. Laws, c. 232, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2407. Ex parte order authorizing interception.

(a) *Application.* — Any application for an order authorizing the interception of a wire, oral or electronic communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make the application. Each application shall include the following information:

(1) The identity of the investigative or law-enforcement officer making the application and the officer authorizing the application;

(2) A full and complete statement of the facts and circumstances relied upon by the applicant to justify the applicant's belief that an order should be issued, including:

a. Details as to the particular offense that has been, is being, or is about to be committed;

b. A description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

c. A description of the type of communication sought to be intercepted; and

d. The identity of the person, if known, committing the offense and whose communications are to be intercepted;

(3) A full and complete statement as to whether or not other investigative procedures have been tried and failed, why such procedures reasonably appear to be unlikely to succeed if tried, or why such procedures would be too dangerous if tried;

(4) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a description of facts establishing probable cause to believe additional communications of the same type will occur thereafter;

(5) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application that have been made to a judge for authorization to intercept wire, oral or electronic communications involving any of the same persons, facilities or places specified in the application and the action taken on each application; and

(6) When the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain the results.

(b) *Additional evidence in support of applications.* — The judge may require the applicant to furnish additional testimony or documentary evidence in support of an application.

(c) *Issuance of order.* — (1) Upon the application a judge may enter an ex parte order, as requested or as modified, authorizing interception of wire, oral or electronic communications within the territorial jurisdiction permitted under paragraph (c)(2) or (3) of this section, if the judge determines on the basis of the facts submitted by the applicant that:

a. There is probable cause for belief that an individual is committing, has committed, or is about to commit an offense enumerated in § 2405 of this title;

b. There is probable cause for belief that particular communications concerning that offense will be obtained through the interception;

c. Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and

d. There is probable cause for belief that the facilities from which or the place where the wire, oral or electronic communications are to be intercepted are being used or are about to be used in connection with the commission of the offense or are leased to, listed in the name of, or commonly used by an individual engaged in criminal activity described.

(2) Except as provided in paragraph (c)(3) of this section, an ex parte order issued under paragraph (c)(1) of this section may authorize the interception of wire, oral or electronic communications only within the territorial jurisdiction of the court in which the application was filed.

(3) If an application for an ex parte order is made by the Attorney General or other designee, an order issued under paragraph (c) (1) of this section may authorize the interception of communications sent or received by a mobile telephone anywhere within the State so as to permit the interception of the communications regardless of whether the mobile telephone is physically located within the jurisdiction of the court in which the application was filed at the time of the interception; however, the application must allege that the offense being investigated may transpire in the jurisdiction of the court in which the application is filed.

(d) *Contents of order.* — (1) Each order authorizing the interception of any wire, oral or electronic communication shall specify:

a. The identity of the person, if known, whose communications are to be intercepted;

b. The nature and location of the communications facilities as to which or the place where authority to intercept is granted;

c. A description of the type of communication sought to be intercepted and a statement of the offense to which it relates;

d. The identity of the agency authorized to intercept the communications and of the person authorizing the application; and

e. The period of time during which the interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(2) An order authorizing the interception of a wire, oral or electronic communication, upon request of the applicant, shall direct that a provider of wire or electronic communication service, landlord, custodian or other person furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the service provider, landlord, custodian or person ordered by the court accords the person whose communications are to be intercepted. Any provider of wire or electronic communication service, landlord, custodian or other person furnishing the facilities or technical assistance shall be compensated by the applicant for reasonable expenses incurred in providing facilities or assistance.

(e) *Extensions.* — (1) An order entered under this section may not authorize the interception of any wire, oral or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. The 30-day period begins on the earlier of the day on which the investigative or law-enforcement officer first begins to conduct an interception under the order or 10 days after the order is entered.

(2) Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (a) of this section and upon the court making the findings required by subsection (c) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than 30 days.

(3) Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in 30 days.

(4) In the event the intercepted communication is in a code or foreign language and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after the interception. An interception under this chapter may be conducted in whole or in part by federal, State or local government personnel, or by an individual operating under a contract with the State or a political subdivision of the State acting under the supervision of an investigative or law-enforcement officer authorized to conduct the interception.

(5) Notwithstanding any other provision of this chapter, any investigative or law-enforcement officer specially designated by the Attorney General or designee who reasonably determines that:

a. An emergency situation exists that involves:

1. Immediate danger of death or serious physical injury to any person;

2. Activities related to escape or attempted escape from custody;

3. Conspiratorial activities threatening the national security interest; or

4. Conspiratorial activities characteristic of organized crime;

that requires a wire, oral or electronic communication to be intercepted before an order authorizing such interception can, with due diligence, be obtained; and

b. There are grounds upon which an order could be entered under this chapter to authorize such interception;

may intercept such wire, oral or electronic communication if an application for an order approving the interception is made in accordance with this section within 48 hours after the interception has occurred or begins to occur. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event such application for approval is denied, the contents of any wire, oral or electronic communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in subsection (g) of this section on the person named in the application.

(f) *Reports to issuing judge.* — Whenever an order authorizing interception is entered pursuant to this section, the order shall require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. The reports shall be made at the time and place required by the issuing judge.

(g) *Recordings of contents of intercepted communications; sealing applications and orders; notice to parties.* — (1) The contents of any wire, oral or electronic communication intercepted by any means authorized by this section, if possible, shall be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral or electronic communication under this subsection shall

be done in a way as will protect the recording from editing or other alterations as may be practicable. Upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under the judge's directions. Custody of the recordings shall be wherever ordered by the issuing judge. The recordings may not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for 10 years. Duplicate recordings may be made for lawful use or disclosure pursuant to this chapter. The presence of the seal provided by this subsection or a satisfactory explanation for the absence thereof shall be a prerequisite for the use of disclosure of the contents of any wire, oral or electronic communication or evidence derived therefrom under this chapter.

(2) Applications made and orders granted under this subsection shall be sealed by the issuing or denying judge. Custody of the applications and orders shall be as ordered by that judge. The applications and orders shall be disclosed only upon a showing of good cause before that judge and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for 10 years.

(3) Any violation of the provisions of this subsection may be punished as criminal contempt in violation of § 1271 of this title by the issuing or denying judge.

(4) Within a reasonable time but not later than 90 days after the termination of the period of an order or extensions thereof, the issuing judge shall cause to be served, on the persons named in the order and the other parties to intercepted communications as the judge may determine in that judge's discretion that is in the interest of justice, an inventory that shall include notice of:

a. The fact of the entry of the order;

b. The date of the entry of the order and the period of authorized interception; and,

c. The fact that during the period, wire, oral or electronic communications were or were not intercepted.

The judge, upon the filing of a motion, shall make available to the person or the person's counsel for inspection, portions of the intercepted communications, applications and orders pertaining to that person and the alleged crime.

(5) Upon an ex parte motion showing of good cause to the judge, the serving of any inventory required by this section may be delayed. The periods of delay may not be longer than the authorizing judge deems necessary to achieve the purposes for which such delay was granted and in no event for longer than 30 days. No more than 3 periods of delay may be granted. Any order issued extending the time in which the inventory notice is to be served must be under seal of the court and treated in the same manner as the order authorizing interception.

(h) *Prerequisites to use of contents of communication as evidence.* — The contents of any intercepted wire, oral or electronic communication or evidence derived therefrom may not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in the courts of this State unless each party, not less than 10 days before the trial, hearing or proceeding, has been furnished with a copy of the court order and accompanying application under which the interception was authorized. Where no application or order was required for the interception under the provisions of this chapter, each party, not less than 10 days before the trial, hearing or proceeding, shall be furnished with information concerning when, where and how the interception took place and why no application or order was required. This 10-day period may be waived by the judge if that judge finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving the information.

(i) *Suppression of contents of communication; appeal from denial of application for order of approval.* — (1) Any aggrieved person in any trial, hearing or proceeding in or before any court, department, officer, agency, regulatory body or other authority of this State or a political subdivision thereof may move to suppress the contents of any intercepted wire, oral or electronic communication or evidence derived therefrom on the grounds that:

a. The communication was unlawfully intercepted;

b. The order of authorization under which it was intercepted is insufficient under this chapter; or

c. The interception was not made in conformity with the order of authorization granted under this chapter.

(2) This motion shall be made at least 10 days before the trial, hearing or proceeding except upon good cause shown. If the motion is granted, the contents of the intercepted wire, oral or electronic communication or evidence derived therefrom shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of the motion by the aggrieved person, in that judge's discretion may make available to the aggrieved person or such person's counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(3) In addition to any other right to appeal, the State shall have the right to appeal from the denial of an application for an order of approval if the Attorney General or Deputy Attorney General shall certify to the judge denying the application that the appeal is not taken for the purposes of delay. The appeal shall be taken within 30 days after the date the order was entered.

(72 Del. Laws, c. 232, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2408. Reports to President Judge.

(a) *Report by Judge.* — Within 30 days after the expiration of an order or an extension or renewal thereof entered under this chapter or the denial of an order confirming verbal approval of interception, the issuing or denying Judge shall make a report to the President Judge of the Superior Court stating:

(1) That an order, extension or renewal for which application was made;

(2) The type of order for which application was made;

(3) That the order was granted as applied for, was modified or was denied;

(4) The period of the interceptions authorized by the order and the number and duration of any extensions or renewals of the order;

(5) The offense specified in the order or extension or renewal of an order;

(6) The identity of the person authorizing the application and of the investigative or law-enforcement officer and agency for whom it was made; and

(7) The character of the facilities from which or the place where the communications were to be intercepted.

(b) *Reports by Attorney General.* — The Attorney General or Deputy Attorney General specifically designated by the Attorney General shall make and file all reports required by federal law.

(72 Del. Laws, c. 232, § 1.)

§ 2409. Civil liability; defense to civil or criminal action.

(a) *Civil liability.* — Any person whose wire, oral or electronic communication is intercepted, disclosed or used in violation of this chapter shall have a civil cause of action against any person who intercepts, discloses, uses, or procures any other person to intercept, disclose or use the communications and be entitled to recover from any person:

(1) Actual damages, but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher;

(2) Punitive damages; and,

(3) A reasonable attorneys' fee and other litigation costs reasonably incurred.

(b) *Defense.* — A good faith reliance on a court order or legislative authorization shall constitute a complete defense to any civil or criminal action brought under this chapter or under any other law.

(72 Del. Laws, c. 232, § 1.)

§ 2410. Breaking and entering, etc., to place or remove equipment.

Any person who breaks and enters, enters under false pretenses, or trespasses upon any premises with the intent to place, adjust or remove wiretapping or electronic surveillance or eavesdropping equipment without a court order shall be guilty of a class C felony.

(72 Del. Laws, c. 232, § 1.)

§ 2411. Hostage and barricade situations.

(a) The Superintendent of the Delaware State Police or the commander of the law-enforcement agency of any political subdivision of this State may designate 1 or more law-enforcement officers as hostage and barricade communications specialists.

(b) Each communication common carrier providing service to Delaware residents shall designate 1 or more individuals to provide liaison with law-enforcement agencies for the purposes of this section.

(c) The supervising law-enforcement officer, who has jurisdiction in any situation in which there is probable cause to believe that a criminal enterprise involving hostage holding is occurring or that a person has barricaded himself or herself within a structure and poses an immediate threat of physical injury to others, may order a communication common carrier, or a communication common carrier's employee, officer or director, or a hostage and barricade communications specialist to interrupt, reroute, divert or otherwise control any wire, oral or electronic communications service involved in the hostage or barricade situation for the purpose of preventing wire, oral or electronic communication by a hostage holder or barricaded person with any person other than a law-enforcement officer or a person authorized by the officer or for the purpose of otherwise monitoring communications in the hostage or barricade situation.

(d) A hostage and barricade communications specialist shall be ordered to act under subsection (c) of this section only if the communication common carrier providing service in the area has been contacted and requested to act under subsection (c) of this section and:

(1) Declines to respond to the officer's request because of a threat of physical injury to its employees; or

(2) Indicates when contacted that it will be unable to respond appropriately to the officer's request within a reasonable time from the receipt of the request.

(e) The supervising law-enforcement officer may give an order under subsection (c) of this section only after that supervising law-enforcement officer has given written or oral representation of the hostage or barricade situation to the communication common carrier providing service to the area in which it is occurring. If an order is given based on an oral representation, the oral representation shall be followed by a written confirmation of that representation within 48 hours of the order.

(f) Good faith reliance on an order by a supervising law-enforcement officer who has the real or apparent authority to issue an order under this section shall constitute a complete defense to any action against a communication common carrier or a communication common carrier's employee, officer or director that arises out of attempts by the communication common carrier or the employee, officer or director of the communication common carrier to comply with such an order.

(g) For the purposes of this section, "supervising law-enforcement officer" means an officer having a rank equivalent to or greater than a lieutenant of any law-enforcement agency of the State or any political subdivision of the State.

(72 Del. Laws, c. 232, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2412. Obstruction, impediment or prevention of interception.

(a) *Giving notice of interception.* — A person who has knowledge that an investigative or law-enforcement officer has been authorized or has applied for authorization under this chapter to intercept wire, oral or electronic communications may not give notice or attempt to give notice of an authorized interception or pending application for authorization for interception to any other person in order to obstruct, impede or prevent such interception.

(b) *Penalties.* — A person who violates the provisions of subsection (a) of this section shall be guilty of a class F felony and be fined not more than $10,000.

(72 Del. Laws, c. 232, § 1.)

Subchapter II

Stored Wire and Electronic Communications and Transactional Records Access

§ 2421. Obtaining, altering or preventing authorized access.

(a) *General provisions.* — Except as provided in subsection (c) of this section, a person may not obtain, alter or prevent authorized access to a wire or electronic communication while it is in electronic storage in an electronic communications system by:

(1) Intentionally accessing with authorization a facility through which an electronic communication service is provided; or

(2) Intentionally exceeding an authorization to access a facility through which an electronic communication service is provided.

(b) *Penalties.* — A person who violates the provisions of subsection (a) of this section is subject to the following penalties:

(1) If the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain:

a. For a first offense, the person shall be guilty of a class B misdemeanor and be fined not more than $250,000; and

b. For a second or subsequent offense, the person shall be guilty of a Class A misdemeanor and be fined not more than $250,000.

(2) In all other circumstances, the person shall be guilty of a class B misdemeanor and be fined not more than $5,000.

(c) *Applicability of section.* — Subsection (a) of this section does not apply to conduct authorized:

(1) By the person or entity providing a wire or electronic communications service;

(2) By a user of a wire or electronic communications service with respect to a communication of or intended for that user; or

(3) Under the provisions of this chapter.

(72 Del. Laws, c. 232, § 1.)

§ 2422. Divulging contents of communications generally.

(a) *Prohibited acts.* — (1) Except as provided in subsection (b) of this section, a person or entity providing an electronic communications service to the public may not knowingly divulge to any other person or entity the contents of a communication while the communication is in electronic storage by that service.

(2) Except as provided in subsection (b) of this section, a person or entity providing remote computing service to the public may not knowingly divulge to any other person or entity the contents of any communication which is carried or maintained on that service which it has received:

a. On behalf of and by means of computer processing of communication or by means of electronic transmission from a subscriber or customer of the service; and

b. Solely for the purpose of providing storage or computer processing services to a subscriber or customer if the provider is not authorized to access the contents of any communications for purposes of providing any services other than storage or computer processing.

(b) *Lawful acts.* — A person or entity may divulge the contents of a communication:

(1) To an addressee or intended recipient of the communication or an agent of the addressee or intended recipient;

(2) With the lawful consent of the originator or an addressee or intended recipient of the communication, or the subscriber, in the case of remote computing service;

(3) To a person employed or authorized by facilities or services used to forward the communication to its destination;

(4) If necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

(5) To a law-enforcement agency if the contents were inadvertently obtained by the service provider and appear to pertain to the commission of a crime; or

(6) If otherwise authorized under the provisions of this chapter.

(72 Del. Laws, c. 232, § 1.)

§ 2423. Disclosure of information.

(a) *Disclosure of contents of communications to investigative or law-enforcement officers by electronic communication service or remote computing service.* — (1) An investigative or law-enforcement officer may require a provider of electronic communication service or remote computing service to disclose the contents of an electronic communication that is in electronic storage in an electronic communications system or remote computing service for 180 days or less only in accordance with a search warrant issued by a court of competent jurisdiction.

(2) An investigative or law-enforcement officer may require a provider of electronic communication service or remote computing service to disclose the contents of an electronic communication that is in electronic storage in an electronic communications system or remote computing service for more than 180 days in accordance with the procedures provided under subsection (b) of this section.

(b) *Procedures.* — (1) An investigative or law-enforcement officer may require a provider of remote computing service to disclose the contents of an electronic communication to which this section applies:

a. Without notice to the subscriber or customer if the officer obtains a search warrant issued by a court of competent jurisdiction; or

b. With prior notice to the subscriber or customer if the officer:

1. Obtains a subpoena issued by a court of competent jurisdiction, a grand jury, or as authorized by Chapter 25 of Title 29; or

2. Obtains a court order requiring the disclosure under subsection (d) of this section.

(2) The procedures set forth in this subsection apply to any electronic communication that is held or maintained on a remote computer service that it has received:

a. On behalf of and by means of electronic transmission from or created by means of computer processing of communications received by means of electronic transmission from a subscriber or customer of the remote computing service; and

b. Solely for the purpose of providing storage or computer processing services to the subscriber or customer if the provider is not authorized to access the contents of any communication for purposes of providing any services other than storage or computer processing.

(c) *Definition of "record or other information."* — (1) For the purposes of this subsection, "record or other information" does not include the contents of communications to which subsections (a) and (b) of this section apply.

(2) Except as provided in this subdivision, a provider of electronic communications service or remote computing service may not disclose a record or other information pertaining to a subscriber or customer of the service to any person other than an investigative or law-enforcement officer.

A provider of electronic communications service or remote computing service shall disclose a record or other information pertaining to a subscriber to or a customer of the service to an investigative or law-enforcement officer only if the officer:

a. Obtains a subpoena issued by a court of competent jurisdiction, a grand jury, or as authorized by Chapter 25 of Title 29;

b. Obtains a search warrant from a court of competent jurisdiction;

c. Obtains a court order requiring the disclosure under subsection (d) of this section; or

d. Has the consent of the subscriber or customer to the disclosure.

(3) An investigative or law-enforcement officer receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

(d) *Court orders.* — (1) A court of competent jurisdiction may issue an order requiring disclosure under subsection (b) or (c) of this section only if the investigative or law-enforcement officer shows that there is reason to believe the contents of an electronic communication that is in an electronic communications system or remote computing service or the record or other information sought is relevant to a legitimate law-enforcement inquiry.

(2) A court issuing an order under this section may quash or modify the order on a motion made promptly by the service provider if the information or records requested are unusually voluminous in nature or if compliance with the order otherwise would cause an undue burden on the provider.

(e) *Causes of action.* — Nothing in this chapter may be construed as creating a cause of action against any provider of electronic communication service or remote computing service, such service's officers, employees, or agents or other specified persons for providing information, facilities or assistance in accordance with the terms of a court order, warrant, subpoena or certification under this chapter.

(72 Del. Laws, c. 232, § 1.)

§ 2424. Backup copies of communications.

(a) *Required by subpoena or court order; creation; notice to subscriber; destruction.* — (1) A subpoena or court order issued under § 2423 of this title may include a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of the subpoena or court order, the service provider shall create a backup copy as soon as practicable consistent with the provider's regular business practices and shall confirm to the investigative or law-enforcement agency that the backup copy has been made. The service provider shall create a backup copy under this subsection within 2 business days after the day on which the service provider received the subpoena or court order.

(2) Except as provided in § 2425 of this title, the investigative or law-enforcement officer shall give notice to the subscriber or customer within 3 days after the day on which the governmental entity receives confirmation that a backup copy has been made under paragraph (a)(1) of this section.

(3) The service provider may not destroy the backup copy until the later of:

a. The date of delivery of the information; or

b. The resolution of any proceedings based upon the information provided, including appeals, or any proceedings concerning a subpoena or court order issued under § 2423 of this title.

(4) The service provider shall release the backup copy to the requesting investigative or law-enforcement officer no sooner than 14 days after the day on which the officer gives notice to the subscriber or customer, if the service provider:

a. Has not received notice from the subscriber or customer that the subscriber or customer has challenged the officer's request; or,

b. Has not initiated proceedings to challenge the officer's request.

(5) An investigative or law-enforcement officer may seek to require the creation of a backup copy under paragraph (a)(1) of this section if the officer determines that there is reason to believe that notification to the subscriber or customer under § 2423 of this title of the existence of the subpoena or court order will result in destruction of or tampering with evidence. Such a determination under this paragraph is not subject to challenge by the subscriber or customer or service provider.

(b) *Quashing subpoena; vacating court order.* — (1) Within 14 days after a subscriber or customer receives notice from an investigative or law-enforcement officer under paragraph (a)(2) of this section, the subscriber or customer may file a motion to quash the subpoena or vacate the court order. The subscriber or customer shall serve a copy of the motion on the investigative or law-enforcement officer and give written notice of the challenge to the service provider. A motion to vacate a court order shall be filed in the court that issued the order. Any motion to quash a subpoena shall be filed in the Superior Court. Any motion or application under this subsection shall contain an affidavit or sworn statement averring:

a. That the applicant is a customer of or subscriber to the service from which the contents of electronic communications maintained for the applicant have been sought; and

b. The applicant's reasons for believing that the records sought are not relevant to a legitimate law-enforcement inquiry or that there has not been substantial compliance with this chapter in some other respect.

(2) The applicant shall serve a copy of the motion or application on the investigative or law-enforcement officer in accordance with the Rules of the Superior Court.

(3) If the court finds that the applicant has complied with paragraphs (b)(1) and (2) of this section, the court shall order the investigative or law-enforcement officer to file a sworn response, which may be filed in camera if the investigative or law-enforcement officer includes in the response the reasons which make an in camera review appropriate.

a. If the court is unable to determine the motion or application on the basis of the parties" initial allegations and response, the court may conduct additional proceedings as it deems appropriate.

b. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the investigative or law-enforcement officer's response.

(c) *Findings of the court on application to quash.* — (1) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the investigative or law-enforcement officer are maintained or that there is a reason to believe that the law-enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, the court shall deny the motion or application and order the subpoena or court order to be enforced.

(2) If the court finds that the applicant is the subscriber or customer for whom the communications sought by the investigative or law-enforcement officer are maintained and that there is no reason to believe that the communications sought are relevant to a legitimate law-enforcement inquiry or that there has not been substantial compliance with this chapter, the court shall order the subpoena to be quashed or the court order to be vacated.

(d) *Nature of order; no interlocutory appeal.* — A court order denying a motion or application under this subsection is not a final order and no interlocutory appeal may be taken by the customer.

(72 Del. Laws, c. 232, § 1.)

§ 2425. Delay in giving notices.

(a) *Definitions.* — When used in this section:

(1) "Adverse result" means:

a. Endangering the life or physical safety of an individual;

b. Flight from prosecution;

c. Destruction of or tampering with evidence;

d. Intimidation of potential witnesses; or

e. Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(2) "Supervisory official" means:

a. The Superintendent or Deputy Superintendent of the Delaware State Police;

b. The chief of police, deputy chief of police or equivalent official of a law-enforcement agency of any political subdivision of the state; or

c. The Attorney General of the State, Chief Deputy Attorney General, State Prosecutor, Chief Prosecutor of any County or a Deputy Attorney General.

(b) *Delaying required notices.* — An investigative or law-enforcement officer acting under § 2423 of this title may:

(1) If a court order is sought, include in the application a request for an order delaying the notification required under § 2424 of this title for a period not to exceed 90 days, which the court shall grant if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result; or

(2) If a subpoena issued by a court of competent jurisdiction or a grand jury or the Attorney General is obtained, delay the notification required under § 2424 of this title for a period not to exceed 90 days, upon the execution of a written certification to a court of competent jurisdiction by a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result.

(c) The investigative or law-enforcement officer shall maintain a true copy of a certification executed under paragraph (b)(2) of this section.

(d) Extensions of a delay in notification may be granted by the court upon application or by certification by a supervisory official under the same procedures prescribed in subsection (b) of this section. An extension may not exceed 90 days.

(e) Upon expiration of the period of a delay of notification under subsection (b) or (d) of this section, the investigative or law-enforcement officer shall serve upon by hand or deliver by registered or first class mail to the customer or subscriber a copy of the process or request together with a notice that:

(1) States with reasonable specificity the nature of the law-enforcement inquiry; and

(2) Informs the customer or subscriber:

a. That information maintained for the customer or subscriber by the service provider named in the process or request was supplied to or requested by that investigative or law-enforcement officer and the date on which the information was supplied or the request was made;

b. That notification of the customer or subscriber was delayed;

c. Of the identity of the investigative or law-enforcement officer or court that made the certification or determination authorizing the delay; and

d. Of the statutory authority for the delay.

(f) *Notices not required or previously delayed.* — If notice to the subscriber is not required under § 2423(b)(1) of this title or if notice is delayed under subsection (b) or (d) of this section, an investigative or law-enforcement officer acting under § 2423 of this title may apply to a court for an order requiring a provider of electronic communications service or remote computing service to whom a warrant, subpoena or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena or court order. The court shall enter an order under this subsection if the court determines that there is reason to believe that notification of the existence of the warrant, subpoena or court order will have an adverse result.

(72 Del. Laws, c. 232, § 1.)

§ 2426. Reimbursement of costs.

(a) *General provision.* — Except as otherwise provided in subsection (c) of this section, an investigative or law-enforcement officer obtaining the contents of communications, records or other information under § 2422, § 2423 or § 2424 of this title shall pay to the person or entity assembling or providing the information a fee for reimbursement for costs that are reasonably necessary and that have been directly incurred in searching for, assembling, reproducing or otherwise providing the information. Reimbursable costs shall include any costs due to necessary disruption of normal operations of an electronic communications service or remote computing service in which the information may be stored.

(b) *Amount of fee.* — The amount of the fee authorized under subsection (a) of this section shall be mutually agreed upon by the investigative or law-enforcement officer and the person or entity providing the information, or in the absence of agreement, shall be determined by the court which issued the order for production of the information or the court in which a criminal prosecution relating to the information would be brought, if no court order was issued for production of the information.

(c) *Exceptions.* — The requirement of subsection (a) of this section does not apply with respect to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone listings obtained under § 2423 of this title. The court may, however, order a payment described in subsection (a) of this section if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

(72 Del. Laws, c. 232, § 1.)

§ 2427. Civil actions.

(a) *Right to relief.* — Except as provided in subsection (e) of this section, a provider of electronic communication service, a subscriber or customer aggrieved by a knowing or intentional violation of §§ 2421-2425 of this title may recover appropriate relief in a civil action against the person or entity that engaged in the violation.

(b) *Appropriate relief.* — In a civil action under this section, appropriate relief includes:

(1) Appropriate preliminary and other equitable or declaratory relief;

(2) Damages under subsection (c) of this section; and

(3) A reasonable attorneys' fee and other litigation costs reasonably incurred.

(c) *Damages.* — The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than $1,000.

(d) *Defenses.* — A good faith reliance on any of the following is a complete defense to any civil or criminal action brought under this section or any other law of this state:

(1) A court warrant or order, a grand jury or Attorney General's subpoena, a legislative authorization or a statutory authorization; or

(2) A good faith determination that § 2403 or § 2423 of this title permitted the conduct that is the subject of the action.

(e) *Limitations period.* — A civil action under this section shall be filed within 2 years after the day on which the claimant first discovered or had a reasonable opportunity to discover the violation.

(72 Del. Laws, c. 232, § 1.)

Subchapter III

Pen Traces and Trap and Trace Devices

§ 2430. Definition of "court of competent jurisdiction".

When used in § 2431, § 2432, § 2433 or § 2434, "court of competent jurisdiction" means the Superior Court of this State.

(72 Del. Laws, c. 232, § 1.)

§ 2431. Installation and use generally.

(a) *Court order required.* — Except as provided in subsection (b) of this section, a person may not install or use a pen register or a trap and trace device without first obtaining a court order under § 2433 of this title.

(b) *Exceptions.* — Subsection (a) of this section does not apply to the use of a pen register or a trap and trace device by a provider of wire or electronic communication service:

(1) Relating to the operation, maintenance and testing of a wire or electronic service or to the protection of the rights or property of the provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

(2) To record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the wire communication, or a user of that service from fraudulent, unlawful or abusive use of this service, or with the consent of the user of that service.

(c) *Penalties.* — A person who violates subsection (a) of this section shall be guilty of a class A misdemeanor and be fined not more than $5,000.

(72 Del. Laws, c. 232, § 1.)

§ 2432. Application for order to install and use.

(a) *General provisions.* — An investigative or law-enforcement officer may make application for an order or an extension of an order under § 2433 of this title authorizing or approving the installation and use of a pen register or a trap and trace device, in writing, under oath or equivalent affirmation, to a court of competent jurisdiction of this State.

(b) *Contents of application.* — An application under subsection (a) of this section shall include:

(1) The identity of the law-enforcement or investigative officer making the application and the identity of the law-enforcement agency conducting the investigation; and

(2) A statement under oath by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

(72 Del. Laws, c. 232, § 1.)

§ 2433. Order authorizing installation and use.

(a) *General provisions.* — Upon an application made under § 2432 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the information likely to be obtained by the installation and use is relevant to an ongoing criminal investigation.

(b) *Contents of order.* — An order issued under this section shall:

(1) Specify the identity, if known, of the person to whom is leased or in whose name is listed the electronic communication service to which the pen register or trap and trace device is to be attached;

(2) Specify the identity, if known, of the person who is the subject of the criminal investigation;

(3) Specify the number and, if known, physical location of the electronic communication service to which the pen register or trap and trace device is to be attached and in the case of a trap and trace device, the geographic limits of the trap and trace order;

(4) Contain a description of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

(5) Direct, upon the request of the applicant, the furnishing of information, facilities and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under § 2434 of this title.

(c) *Duration.* — (1) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed 60 days.

(2) Extensions of an order issued under this section may be granted upon an application for an order as prescribed by § 2432 of this title and upon the judicial finding required under subsection (a) of this section. An extension may not exceed 60 days.

(d) *Restrictions.* — An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that:

(1) The order be sealed until further order of the court; and

(2) The person owning or leasing the line to which the pen register or a trap and trace device is attached or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber or to any other person, unless or until otherwise ordered by the court.

(72 Del. Laws, c. 232, § 1.)

§ 2434. Assistance to investigative or law-enforcement officer or agency.

(a) *Installation and use.* — Upon the request of an investigative or law-enforcement officer authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian or other person shall furnish the investigative or law-enforcement officer with all information, facilities and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order under § 2433 of this title.

(b) *Receipt of results.* — Upon the request of an officer of law-enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian or other person shall install the device on the appropriate line and shall furnish the investigative or law-enforcement officer all additional information, facilities and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person ordered by the court accords the party with respect to whom the installation and use is to take place, if the installation and assistance is directed by a court order under § 2433 of this title. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law-enforcement agency, designated in the court order, at reasonable intervals during regular business hours for the duration of the order.

(c) *Compensation.* — A provider of a wire or electronic communication service, landlord, custodian or other person who furnishes facilities or technical assistance under this section shall be compensated for reasonable expenses incurred in providing the facilities and assistance.

(d) *Causes of action.* — Nothing in this chapter may be construed as creating a cause of action against any provider of a wire or electronic communication service, its officers, employees, agents or other specified persons for providing information, facilities or assistance in accordance with the terms of a court order under § 2430, § 2431, § 2432 or § 2433 of this title.

(e) *Defenses.* — A good faith reliance on a court order, a legislative authorization or a statutory authorization is a complete defense against any civil or criminal action brought under § 2430, § 2431, § 2432 or § 2433 of this title or under any other law.

(72 Del. Laws, c. 232, § 1.)

Part II
Criminal Procedure Generally
Chapter 25
Extradition and Detainers
Subchapter I
Extradition; Uniform Criminal Extradition Law

§ 2501. Definitions.

As used in this subchapter, unless the context indicates a different intent:

(1) "Executive authority" includes the governor and any person performing the functions of governor in a state other than this State.

(2) "Governor" includes any person performing the functions of Governor by authority of the law of this State.

(3) "State," referring to a state other than this State, includes any other state or territory, organized or unorganized, of the United States of America.

(41 Del. Laws, c. 213, § 1; 11 Del. C. 1953, § 2501.)

§ 2502. Fugitives from justice; duty of Governor.

Subject to this subchapter, the provisions of the Constitution of the United States and any and all acts of Congress enacted in pursuance thereof, the Governor of this State shall have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this State.

(41 Del. Laws, c. 213, § 2; 11 Del. C. 1953, § 2502.)

§ 2503. Form of demand.

No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing alleging, except in cases arising under § 2506 of this title, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter the accused fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of bail, probation or parole. The indictment, information or affidavit made before the magistrate shall substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence shall be authenticated by the executive authority making the demand.

(41 Del. Laws, c. 213, § 3; 11 Del. C. 1953, § 2503; 70 Del. Laws, c. 186, § 1.)

§ 2504. Investigation by Governor.

When a demand is made upon the Governor of this State by the executive authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Attorney General or any prosecuting officer in this State to investigate or assist in investigating the demand, and to report to the Governor the situation and circumstances of the person so demanded, and whether the person ought to be surrendered.

(41 Del. Laws, c. 213, § 4; 11 Del. C. 1953, § 2504; 70 Del. Laws, c. 186, § 1.)

§ 2505. Persons imprisoned or awaiting trial; involuntary departure.

(a) When it is desired to have returned to this State a person charged in this State with a crime, and such person is imprisoned or is held under criminal proceedings then pending in another state, the Governor of this State may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or the person's term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this State as soon as the prosecution in this State is terminated.

(b) The Governor of this State may surrender, on demand of the executive authority of any other state, any person in this State who is charged in the manner provided in § 2523 of this title with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

(41 Del. Laws, c. 213, § 5; 11 Del. C. 1953, § 2505; 70 Del. Laws, c. 186, § 1.)

§ 2506. Persons absent at time of commission of crime.

The Governor of this State may surrender, on demand of the executive authority of any other state, any person in this State charged in such other state in the manner provided in § 2503 of this title with committing an act in this State, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom,

provided the acts for which extradition is sought would be punishable by the laws of this State, if the consequences claimed to have resulted from those acts in the demanding state had taken effect in this State.

(41 Del. Laws, c. 213, § 6; 11 Del. C. 1953, § 2506; 83 Del. Laws, c. 327, § 4.)

§ 2507. Governor's warrant of arrest; issuance.

If the Governor decides that the demand should be complied with, the Governor shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom the Governor thinks fit to entrust with the execution thereof. The warrant shall substantially recite the facts necessary to the validity of its issuance.

(41 Del. Laws, c. 213, § 7; 11 Del. C. 1953, § 2507; 70 Del. Laws, c. 186, § 1.)

§ 2508. Contents of warrant.

Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where the accused may be found within the State and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to this subchapter, to the duly authorized agent of the demanding state.

(41 Del. Laws, c. 213, § 8; 11 Del. C. 1953, § 2508; 70 Del. Laws, c. 186, § 1.)

§ 2509. Authority of arresting officer to command assistance [Repealed].

(41 Del. Laws, c. 213, § 9; 11 Del. C. 1953, § 2509; repealed by 85 Del. Laws, c. 72, § 1, effective July 14, 2025.)

§ 2510. Rights of accused; habeas corpus.

No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding the person has appointed to receive the person unless the person is first taken forthwith before a judge of a court of record or a justice of the peace in this State, who shall inform the person of the demand made for the person's surrender and of the crime with which the person is charged, and that the person has the right to demand and procure legal counsel. If the prisoner or the prisoner's counsel states that the person or they desire to test the legality of the prisoner's arrest, the judge or justice of the peace shall fix a reasonable time to be allowed within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the Deputy Attorney General of the county in which the arrest is made and in which the accused is in custody, or to the Attorney General or the Chief Deputy Attorney General, and to the agent of the demanding state.

(41 Del. Laws, c. 213, § 10; 11 Del. C. 1953, § 2510; 70 Del. Laws, c. 186, § 1.)

§ 2511. Denial of rights of accused; penalty.

Whoever, being an officer, delivers to the agent for extradition of the demanding state a person in the officer's custody under the Governor's warrant, in wilful disobedience of § 2510 of this title, shall be fined not more than $1,000 or imprisoned not more than 6 months, or both.

(41 Del. Laws, c. 213, § 11; 11 Del. C. 1953, § 2511; 70 Del. Laws, c. 186, § 1.)

§ 2512. Confinement in jail.

(a) The officer or persons executing the Governor's warrant of arrest, or the agent of the demanding state to whom the prisoner has been delivered, may, when necessary, confine the prisoner in the jail of any county, town or city through which the officer passes; and the keeper of such jail shall receive and safely keep the prisoner until the officer or person having charge of the prisoner is ready to proceed on the officer's route, such officer or person being chargeable with the expense of keeping.

(b) The officer or agent of a demanding state to whom a prisoner has been delivered following extradition proceedings in another state, or to whom a prisoner has been delivered after waiving extradition in such other state, and who is passing through this State with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county, town or city through which the officer passes; and the keeper of such jail shall receive and safely keep the prisoner until the officer or agent having charge of the prisoner is ready to proceed on the officer's route, such officer or agent, however, being chargeable with the expense of keeping. Such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that the officer is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this State.

(41 Del. Laws, c. 213, § 12; 11 Del. C. 1953, § 2512; 70 Del. Laws, c. 186, § 1.)

§ 2513. Arrest prior to requisition.

Whenever any person within this State shall be charged on the oath of any credible person before any judge or justice of the peace of this State with the commission of any crime in any other state and, except in cases arising under § 2506 of this title, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of bail, probation or parole, or whenever complaint has been made before any judge or justice of the peace in this State setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been

charged in such state with the commission of the crime, and, except in cases arising under § 2506 of this title, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of bail, probation or parole, and is believed to be in this State, the judge or justice of the peace shall issue a warrant directed to any peace officer commanding the officer to apprehend the person named therein, wherever the person so named is found in this State, and to bring the accused before the same or any other judge, justice of the peace or court who or which is available in or convenient of access to the place where the arrest is made, to answer the charge or complaint and affidavit.

(41 Del. Laws, c. 213, § 13; 11 Del. C. 1953, § 2513; 70 Del. Laws, c. 186, § 1.)

§ 2514. Arrest without warrant.

The arrest of a person may be lawfully made by any peace officer, without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding 1 year, but when so arrested the accused shall be taken before a judge or justice of the peace with all practicable speed and complaint shall be made against the accused under oath setting forth the ground for the arrest as in § 2513 of this title, and thereafter the accused's answer shall be heard as if the accused had been arrested on a warrant.

(41 Del. Laws, c. 213, § 14; 11 Del. C. 1953, § 2514; 70 Del. Laws, c. 186, § 1; 85 Del. Laws, c. 72, § 2.)

§ 2515. Commitment awaiting requisition; bail.

If from the examination before the judge or justice of the peace it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under § 2506 of this title, that the person has fled from justice, the judge or justice of the peace shall, by a warrant reciting the accusation, commit the person to jail for such a time not exceeding 30 days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused gives bail as provided in § 2516 of this title, or until the accused is legally discharged.

(41 Del. Laws, c. 213, § 15; 11 Del. C. 1953, § 2515; 70 Del. Laws, c. 186, § 1.)

§ 2516. Admission to bail; conditions of bond.

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or justice of the peace in this State may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as the judge or justice deems proper, conditioned for the prisoner's appearance before the judge or justice at a time specified in such bond, and for the prisoner's surrender, to be arrested upon the warrant of the Governor of this State.

(41 Del. Laws, c. 213, § 16; 11 Del. C. 1953, § 2516; 70 Del. Laws, c. 186, § 1.)

§ 2517. Extension of time of commitment.

If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or justice of the peace may discharge the accused or may recommit the accused for a further period not to exceed 60 days, or a judge or justice of the peace may again take bail for the accused's appearance and surrender, as provided in § 2516 of this title, but within a period not to exceed 60 days after the date of such new bond.

(41 Del. Laws, c. 213, § 17; 11 Del. C. 1953, § 2517; 70 Del. Laws, c. 186, § 1.)

§ 2518. Forfeiture of bail.

If the prisoner is admitted to bail, and fails to appear and surrender according to the conditions of the bond, the judge or justice of the peace by proper order shall declare the bond forfeited and order the accused's immediate arrest, without warrant if the accused is within this State. Recovery may be had on such bond in the name of the State as in the case of other bonds given by the accused in criminal proceedings within this State.

(41 Del. Laws, c. 213, § 18; 11 Del. C. 1953, § 2518; 70 Del. Laws, c. 186, § 1.)

§ 2519. Persons under criminal prosecution.

If a criminal prosecution has been instituted against such person under the laws of this State and is still pending, the Governor, in the Governor's discretion, either may surrender the accused on demand of the executive authority of another state or hold the accused until the accused has been tried and discharged or convicted and punished in this State.

(41 Del. Laws, c. 213, § 19; 11 Del. C. 1953, § 2519; 70 Del. Laws, c. 186, § 1.)

§ 2520. Inquiry into guilt of accused.

The guilt or innocence of the accused as to the crime of which the accused is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as provided in this subchapter has been presented to the Governor, except as it is involved in identifying the person held as the person charged with the crime.

(41 Del. Laws, c. 213, § 20; 11 Del. C. 1953, § 2520; 70 Del. Laws, c. 186, § 1.)

§ 2521. Recall of warrant; issuance of alias.

The Governor may recall the Governor's own warrant of arrest or may issue another warrant whenever the Governor deems proper.

(41 Del. Laws, c. 213, § 21; 11 Del. C. 1953, § 2521; 70 Del. Laws, c. 186, § 1.)

§ 2522. Warrant to receive fugitive from State.

Whenever the Governor of this State demands a person charged with crime or with escaping from confinement or breaking the terms of bail, probation or parole in this State, from the executive authority of any other state, or from the Chief Justice or an Associate Justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, the Governor shall issue a warrant under the seal of this State, to some agent, commanding the agent to receive the person so charged if delivered to the agent and convey the accused to the proper officer of the county in this State in which the offense was committed.

(41 Del. Laws, c. 213, § 22; 11 Del. C. 1953, § 2522; 70 Del. Laws, c. 186, § 1.)

§ 2523. Application for issuance of requisition.

(a) When the return to this State of a person charged with crime in this State is required, the Attorney General or any Deputy Attorney General shall present to the Governor a written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged, the approximate time and place of its commission, the state in which the accused is believed to be, including the location of the accused therein, at the time the application is made and certifying that, in the opinion of the Attorney General or Deputy Attorney General the ends of justice require the arrest and return of the accused to this State for trial and that the proceeding is not instituted to enforce a private claim.

(b) When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement or broken the terms of bail, probation or parole, the Attorney General or any Deputy Attorney General, the parole board, or any agent thereof, probation or court officer, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which the person was convicted, the circumstances of the person's escape from confinement or of the breach of the terms of bail, probation or parole, the state in which the person is believed to be, including the location of the person therein, at the time application is made.

(c) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by 2 certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or justice of the peace, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The Attorney General or any Deputy Attorney General, parole board, or any agent thereof, probation or court officer, warden or sheriff may also attach such further affidavits and other documents in duplicate as deemed proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and 1 of the certified copies of the indictment, complaint, information, affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the Secretary of State to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

(41 Del. Laws, c. 213, § 23; 11 Del. C. 1953, § 2523; 70 Del. Laws, c. 186, § 1.)

§ 2524. Costs and expenses.

(a) The actual expenses of agents appointed by the Governor to serve requisition papers may be paid indirectly, by having the agent pay the agent's own expenses and then later seek reimbursement by submitting receipts to the State Treasurer; or they may be paid directly, by having the agent pay for the expenses with a credit card registered in the name of the Department of Justice.

(1) When the indirect method is chosen, the agent shall be reimbursed only for reasonable, authorized, extradition-related expenses. Further, the State Treasurer shall reimburse the agent only for receipts that have been approved by the Attorney General or 1 of the Attorney General's deputies.

(2) Similarly, when the direct method is chosen, the credit card may be used only for reasonable, authorized, extradition-related expenses; the agent shall be personally liable for any unauthorized excesses or abuses of the credit card.

(b) Upon the conviction of any individual returned to this State by requisition proceedings, the court shall assess the costs of requisition in the same manner as other costs of the case.

(c) All money received by the State in payment of the costs of requisition shall be credited by the State Treasurer to a fund to be known as the "Extradition Fund."

(d) The Extradition Fund shall be a revolving fund and shall consist of funds transferred to it pursuant to recovery of the costs of requisitions.

(e) If, at the end of any fiscal year, the balance in the Extradition Fund exceeds $40,000, the excess shall be withdrawn from the Extradition Fund and deposited in the General Fund.

(f) The Attorney General is authorized to expend from the Extradition Fund such funds as are necessary for the payment of operating costs, expenses and charges incurred in connection with the requisition proceedings necessary to return individuals to this State.

(41 Del. Laws, c. 213, § 24; 11 Del. C. 1953, § 2524; 64 Del. Laws, c. 122, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 296, § 1.)

§ 2525. Immunity from process in civil actions.

A person brought into this State by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which the person is being or has been returned, until the person has been convicted in the criminal proceeding, or, if acquitted, until the person has had reasonable opportunity to return to the state from which the person was extradited.

(41 Del. Laws, c. 213, § 25; 11 Del. C. 1953, § 2525; 70 Del. Laws, c. 186, § 1.)

§ 2526. Waiver of requisition.

Any person arrested or detained for the commission of a crime in a foreign jurisdiction, may, after the rights to demand requisition papers have been fully explained, waive requisition and consent to return to the jurisdiction in which the person is wanted. The waiver of requisition shall be in writing, and shall set forth that the person voluntarily waives requisition and that the person's rights have been fully explained and are understood, which shall be signed by the prisoner and 3 other witnesses in the prisoner's presence. The proper signing of such a waiver of requisition shall constitute ample authority for the sheriff, or other officer having the prisoner in custody, to deliver the prisoner to the duly authorized agent commissioned to receive the prisoner. The sheriff, or other officer having the prisoner in charge, before the officer surrenders the prisoner shall be satisfied that the agent is duly authorized and commissioned to receive the prisoner, and shall, unless the agent is a known peace officer, demand and retain the agent's warrant of authority, which the officer shall file and preserve together with the prisoner's waiver of requisition.

(41 Del. Laws, c. 213, § 25a; 11 Del. C. 1953, § 2526; 70 Del. Laws, c. 186, § 1.)

§ 2527. Preservation of rights of State.

Nothing in this subchapter shall be deemed to constitute a waiver by this State of its right, power or privilege to try such demanded person for crime committed within this State, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this State, nor shall any proceedings had under this subchapter which result in, or fail to result in, extradition be deemed a waiver by this State of any of its rights, privileges or jurisdiction in any way whatsoever.

(41 Del. Laws, c. 213, § 25b; 11 Del. C. 1953, § 2527.)

§ 2528. Prosecution for other crimes after extradition.

After a person has been brought back to this State by or after waiver of extradition proceedings, the person may be tried in this State for other crimes which the person may be charged with having committed here as well as that specified in the requisition for extradition.

(41 Del. Laws, c. 213, § 26; 11 Del. C. 1953, § 2528; 70 Del. Laws, c. 186, § 1.)

§ 2529. Construction.

The provisions of this subchapter shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

(41 Del. Laws, c. 213, § 27; 11 Del. C. 1953, § 2529.)

§ 2530. Short title.

This subchapter may be cited as the "Uniform Criminal Extradition Law."

(41 Del. Laws, c. 213, § 30; 11 Del. C. 1953, § 2530.)

Subchapter II

Detainers; Uniform Agreement on Detainers

§ 2540. Preamble; purpose.

The Agreement on Detainers is enacted into law and entered into by this State with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that the party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

(11 Del. C. 1953, § 2540; 57 Del. Laws, c. 223, § 1.)

§ 2541. Definitions.

As used in this agreement:

(1) “Receiving state” shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to § 2542 or § 2543 of this title.

(2) “Sending state” shall mean a state in which a prisoner is incarcerated at the time that the prisoner initiates a request for final disposition pursuant to § 2542 of this title or at the time that a request for custody or availability is initiated pursuant to § 2543 of this title.

(3) “State” shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(11 Del. C. 1953, § 2541; 57 Del. Laws, c. 223, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2542. Written notice requesting disposition, trial within 180 days; waiver of extradition.

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, the prisoner shall be brought to trial within 180 days after the prisoner shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer’s jurisdiction written notice of the place of imprisonment and the request for a final disposition to be made of the indictment, information or complaint; provided, that for good cause shown in open court, the prisoner or the prisoner’s counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in subsection (a) of this section shall be given or sent by the prisoner to the Commissioner of Correction or other official having custody of the prisoner, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The Commissioner of Correction, the Commissioner’s delegated agent or other official having custody of the prisoner shall promptly inform the prisoner of the source and contents of any detainer lodged against the prisoner and shall also inform the prisoner of the right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to subsection (a) of this section shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The Commissioner of Correction or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner’s request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this subsection shall be accompanied by copies of the prisoner’s written notice, request and the certificate. If trial is not had on any indictment, information or complaint contemplated by this section prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to subsection (a) of this section shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of subsection (d) of this section, and a waiver of extradition to the receiving state to serve any sentence there imposed upon the prisoner, after completion of the term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of the prisoner’s body in any court where the prisoner’s presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with this agreement. Nothing in this subsection shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to execution of the request for final disposition referred to in subsection (a) of this section shall void the request.

(g) Written notice shall not be deemed to have been caused to be delivered to the prosecuting officer and the appropriate court of this State in accordance with subsection (a) of this section until such notice or notification has actually been received by the appropriate court and by the appropriate prosecuting attorney of this State, the prosecuting attorney’s deputy, an assistant or any other person empowered to receive mail on behalf of said attorney.

(11 Del. C. 1953, § 2542; 57 Del. Laws, c. 223, § 1; 63 Del. Laws, c. 32, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2543. Approval of court; disapproval of governor, trial; dismissal.

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom the officer has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with § 2544(a) of this title, upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided, that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further, that there shall be a period

of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon the governor's own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in subsection (a) of this section, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner. The authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this section, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or the prisoner's counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this section shall be construed to deprive any prisoner of any right which the prisoner may have to contest the legality of the prisoner's delivery as provided in subsection (a) of this section, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated by this section prior to the prisoner's being returned to the original place of imprisonment pursuant to § 2544(e) of this title, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(11 Del. C. 1953, § 2543; 57 Del. Laws, c. 223, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2544. Delivery of temporary custody; refusal; return; responsibility.

(a) In response to a request made under § 2542 or § 2543 of this title, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in § 2542 of this title. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of the officer's authority to act for the state into whose temporary custody the prisoner is to be given;

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of the person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in § 2542 or § 2543 of this title, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in 1 or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for attendance at court and while being transported to or from any place where the prisoner's presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the 1 or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. This subsection shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing contained in this subsection shall be construed to alter or affect any internal relationship among the department, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(11 Del. C. 1953, § 2544; 57 Del. Laws, c. 223, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2545. Time periods; determination; tolling.

(a) In determining the duration and expiration dates of the time periods provided in §§ 2542 and 2543 of this title, the running of the time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

(11 Del. C. 1953, § 2545; 57 Del. Laws, c. 223, § 1.)

§ 2546. Commissioner of Correction designated enforcing officer.

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement; for purposes of this section in this State the Commissioner of the Department of Correction of this State is so designated.

(11 Del. C. 1953, § 2546; 57 Del. Laws, c. 223, § 1.)

§ 2547. Effect of agreement; repeal; preservation of rights.

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

(11 Del. C. 1953, § 2547; 57 Del. Laws, c. 223, § 1.)

§ 2548. Construction; severability.

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability to any government, agency, person or circumstance shall not be affected. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(11 Del. C. 1953, § 2548; 57 Del. Laws, c. 223, § 1.)

§ 2549. Habitual offenders law; application.

Nothing in this agreement shall be construed to require the application of the habitual offenders law to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of the agreement.

(11 Del. C. 1953, § 2549; 57 Del. Laws, c. 223, § 1.)

§ 2550. Power of Commissioner of Correction; transfer of inmate.

It shall be lawful and mandatory upon the Commissioner of Correction or other official in charge of a penal or correctional institution in this State to give over the person of any inmate whenever so required by the operation of the Agreement on Detainers.

(11 Del. C. 1953, § 2550; 57 Del. Laws, c. 223, § 1.)

Part II
Criminal Procedure Generally

Chapter 27
Jurisdiction and Venue

Subchapter I
General Provisions

§ 2701. Original jurisdiction.

(a) The justices of the peace shall have original jurisdiction to hear, try and finally determine all violations alleged to have been committed. They shall have such jurisdiction over misdemeanors alleged to have been committed only when it is expressly conferred by law. Such jurisdiction, unless otherwise expressly provided by law, shall be throughout the State.

(b) The Court of Common Pleas for the State shall have original jurisdiction to hear, try and finally determine all misdemeanors and violations alleged to have been committed within the State, except where jurisdiction over such offenses is vested exclusively in another court.

The Court of Common Pleas shall have original jurisdiction to hear, try and finally determine all offenses committed within the City of Wilmington against any of the laws, ordinances, regulations or charter of the City.

The jurisdiction conferred by this subsection includes concurrent jurisdiction with the justices of the peace in all cases in which the justices of the peace have jurisdiction.

(c) The Superior Court shall have jurisdiction, original and concurrent, over all crimes, except where jurisdiction is exclusively vested in another court.

(d) The Family Court of the State shall have such criminal jurisdiction, exclusive or concurrent, as is expressly conferred upon it by law.

(e) The jurisdiction conferred by this section to hear, try and finally determine prosecutions of a crime or offense includes the power to issue all process and to conduct such proceedings as may be necessary or appropriate for the complete exercise of such jurisdiction.

(11 Del. C. 1953, § 2701; 58 Del. Laws, c. 497, § 2; 59 Del. Laws, c. 133, § 2; 59 Del. Laws, c. 547, § 16; 71 Del. Laws, c. 176, § 17.)

§ 2702. Jurisdiction of the Justice of the Peace Court of offenses contained in Chapter 5 of this title.

(a) The Justice of the Peace Court shall have original jurisdiction to hear, try and finally determine all misdemeanors created in Chapter 5 of this title, and any attempt, conspiracy or solicitation to commit such misdemeanors unless such jurisdiction is excluded by subsection (b) of this section or is otherwise excluded by law.

(b) The Justice of the Peace Court shall not have jurisdiction over the following misdemeanors created in Chapter 5 of this title:

(1) Section 601(a)(2) of this title (offensive touching with bodily fluid).

(2) Section 614 of this title (assault on a sports official);

(3) Section 625 of this title (unlawfully administering drugs);

(4) Section 627 of this title (prohibited acts as to substances releasing vapors or fumes);

(5) Section 628A of this title (vehicular assault in the second degree);

(6) Section 652 of this title (self-abortion) [repealed];

(7) Section 653 of this title (issuing abortional articles) [repealed];

(8) Section 763 of this title (sexual harassment);

(9) Section 764 of this title (indecent exposure 2nd degree);

(10) Section 765 of this title (indecent exposure 1st degree);

(11) Section 766 of this title (incest);

(12) Section 767 of this title (unlawful sexual contact 3rd degree);

(13) Section 785 of this Title (interference with custody);

(14) Section 805 of this title (cross or religious symbol burning) [repealed];

(15) Section 850 of this title (use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices);

(16) Section 871 of this title (falsifying business records);

(17) Section 873 of this title (tampering with public records);

(18) Section 877 of this title (offering a false instrument for filing);

(19) Section 881 of this title (bribery);

(20) Section 882 of this title (bribe receiving);
(21) Section 892 of this title (fraud in insolvency);
(22) Section 906 of this title (deceptive business practices);
(23) Section 910 of this title (debt adjusting);
(24) Section 916 of this title (home improvement fraud);
(25) Section 917 of this title (new home construction fraud);
(26) Section 918 of this title (ticket scalping)
(27) Section 921 of this title (sale of transferred recorded sounds);
(28) Section 932 of this title (unauthorized access to computer system);
(29) Section 933 of this title (theft of computer services);
(30) Section 934 of this title (interruption of computer services);
(31) Section 935 of this title (misuse of computer system information);
(32) Section 936 of this title (destruction of computer equipment);
(33) Section 937 of this title (unrequested or unauthorized electronic mail);
(34) Section 938 of this title (failure to promptly cease electronic communication upon request);
(35) Section 1101 of this title (abandonment of a child);
(36) Section 1103 of this title (child abuse in the fourth degree);
(37) Section 1102 of this title (endangering the welfare of a child).
(38) Section 1105 of this title (crime against a vulnerable adult);
(39) Section 1106 of this title (unlawfully dealing with a child);
(40) Section 1113 of this title (criminal nonsupport);
(41) Section 1114 of this title (body-piercing; tattooing or branding);
(42) Section 1205 of this title (giving unlawful gratuities);
(43) Section 1206 of this title (receiving unlawful gratuities);
(44) Section 1207 of this title (improper influence);
(45) Section 1211 of this title (official misconduct);
(46) Section 1212 of this title (profiteering);
(47) Section 1246 of this title (compounding a crime);
(48) Section 1249 of this title (abetting the violation of driver's license restrictions);
(49) Section 1250 of this title (offenses against law-enforcement animals);
(50) Section 1256 of this title (promoting prison contraband);
(51) Section 1260 of this title (misuse of prisoner mail);
(52) Section 1266 of this title (tampering with a juror);
(53) Section 1267 of this title (misconduct by a juror);
(54) Section 1271A of this title (criminal contempt of a domestic violence protective order);
(55) Section 1273 of this title (unlawful grand jury disclosure);
(56) Section 1304 of this title (hate crimes);
(57) Section 1327 of this title (maintaining a dangerous animal);
(58) Section 1332 of this title (abusing a corpse);
(59) Section 1333 of this title (trading in human remains and associated funerary objects);
(60) Section 1335 of this title (violation of privacy);
(61) Section 1365 of this title (obscene literature harmful to minors);
(62) Section 1366 of this title (outdoor motion picture theatres);
(63) Section 1411 of this title (unlawfully disseminating gambling information);
(64) Section 1428 of this title (maintaining an obstruction of gambling location);
(65) Section 1448A of this title (offenses related to criminal history record checks for sale of firearms);
(66) Section 1456 of this title (unsafe storage of a firearm);
(67) Section 1457 of this title (possession of a weapon in a safe school zone).

(11 Del. C. 1953, § 2702; 58 Del. Laws, c. 497, § 2; 59 Del. Laws, c. 203, § 33; 59 Del. Laws, c. 547, §§ 17, 18; 63 Del. Laws, c. 327, § 1; 66 Del. Laws, c. 141, § 1; 69 Del. Laws, c. 301, § 1; 71 Del. Laws, c. 240, § 2; 72 Del. Laws, c. 83, § 1; 72 Del. Laws,

c. 147, § 1; 72 Del. Laws, c. 391, § 2; 73 Del. Laws, c. 31, §§ 2, 3; 73 Del. Laws, c. 36, § 1; 73 Del. Laws, c. 255, §§ 3, 4; 74 Del. Laws, c. 155, § 1; 74 Del. Laws, c. 322, §§ 2, 3; 77 Del. Laws, c. 416, § 1; 78 Del. Laws, c. 168, § 7; 78 Del. Laws, c. 406, § 4; 82 Del. Laws, c. 35, § 1; 83 Del. Laws, c. 169, § 2; 83 Del. Laws, c. 200, § 1; 83 Del. Laws, c. 477, § 3; 84 Del. Laws, c. 126, § 9.)

Subchapter II

Venue

§ 2731. Bigamy.

In any case of bigamy, prosecution may be had in the county where the bigamous marriage was contracted, where the offender resides or where the offender is apprehended.

(11 Del. C. 1953, § 2731; 58 Del. Laws, c. 497, § 2; 70 Del. Laws, c. 186, § 1.)

§ 2732. Homicide.

In every case of murder and of manslaughter, if a person is poisoned or wounded in 1 county and dies thereof in another county, prosecution shall be had in the county wherein such person was poisoned or wounded. Whenever the cause producing the death of a person happens in a county and the death out of it, the offense shall be deemed complete in the county wherein the cause happens and shall there be inquired of, heard and determined.

(Code 1852, § 2947; Code 1915, § 4818; Code 1935, § 5306; 11 Del. C. 1953, § 2732.)

§ 2733. Offenses involving the conduct of another.

Any prosecution involving liability for the conduct of another may be heard and determined in the county in which the principal crime was committed or in the county where the offense charged was committed.

(11 Del. C. 1953, § 2733; 58 Del. Laws, c. 497, § 2.)

§ 2734. Receiving stolen property.

A person charged with receiving stolen property may be prosecuted either in the county wherein the theft was committed or in the county where property was received.

(11 Del. C. 1953, § 2734; 58 Del. Laws, c. 497, § 2.)

§ 2735. Transportation of stolen property by thief.

If property is stolen in 1 county of this State and carried into another by the thief, the thief may be prosecuted in either county.

(11 Del. C. 1953, § 2735; 58 Del. Laws, c. 497, § 2.)

§ 2736. Offenses begun in this State.

If any criminal offense is begun in this State and completed elsewhere, it shall be deemed to have been committed in this State, and may be dealt with, inquired of, tried, determined and punished in this State in the same manner as if it had been actually and wholly committed in this State.

(21 Del. Laws, c. 307; Code 1915, § 4818; Code 1935, § 5306; 11 Del. C. 1953, § 2736.)

§ 2737. Kidnapping.

In any case of kidnapping, the prosecution may be had in the county where the crime was commenced or in any county through which the person kidnapped was transported.

(11 Del. C. 1953, § 2737; 58 Del. Laws, c. 497, § 2.)

§ 2738. Computer fraud or misuse.

A person charged with computer fraud or misuse may be prosecuted in the county where the act was committed, in the county where the violator had possession of any proceeds or materials used in such violation or in the county where the principal place of business of the owner or lessee of the computer or computer system is located.

(63 Del. Laws, c. 422, § 2.)

Part II
Criminal Procedure Generally

Chapter 31
Indictment and Information

§ 3101. Degrees of murder.

The different degrees of murder shall be distinguished in indictments.

(Code 1852, § 2960; Code 1915, § 4828; Code 1935, § 5317; 11 Del. C. 1953, § 3102.)

§ 3102. Forgery.

In an indictment for forgery, it is sufficient to set forth the substance of the instrument whereof the forgery is alleged.

(Code 1852, § 2961; Code 1915, § 4829; Code 1935, § 5320; 11 Del. C. 1953, § 3103.)

§ 3103. Perjury.

In an indictment for perjury, it is sufficient to set forth the substance of the offense charged, stating before whom or in what court the oath or affirmation was administered or taken, the general nature of the cause or proceedings, with the names of the parties and proper averments to falsify the matter wherein the perjury is assigned, without setting forth the complaint, answer, indictment, information, declaration or any part of any record, either in law or in equity and without setting forth the commission or authority of the court or person, before whom the perjury was committed.

(Code 1852, § 2964; Code 1915, § 4833; Code 1935, § 5324; 11 Del. C. 1953, § 3104.)

§ 3104. Ownership or possession of property by more than 1 person.

Whenever it may be necessary, in any indictment or information, to state ownership of any property, real or personal, belonging to, or in the possession of more than 1 person, whether such persons be partners in trade, joint tenants, parceners or tenants in common, trustees or members of a joint stock company, it shall be sufficient to name 1 person only, and the property may be described as belonging to the person so named, and another or others, as the case may be.

(Code 1852, § 2962; Code 1915, § 4830; Code 1935, § 5321; 11 Del. C. 1953, § 3105.)

§ 3105. Description of money.

When money, whether coins or paper money, is the subject of larceny, it shall be sufficient to describe the same in the indictment or information as “money of the aggregate value of . . . dollars.”

In any indictment or information the words “money,” “dollars” or “cents” shall be construed to mean lawful money of the United States.

(19 Del. Laws, c. 268; Code 1915, § 4831; 29 Del. Laws, c. 265, § 1; Code 1935, § 5322; 11 Del. C. 1953, § 3106.)

§ 3106. Allegation of intent to defraud.

Whenever it may be necessary, in any indictment or information, to allege an intent to injure or defraud, it shall be sufficient to allege an intent to injure or defraud without naming the particular person or body corporate intended to be injured or defrauded, and on the trial of the action it shall not be deemed a variance, but be deemed sufficient, if there appear to be an intent to injure or defraud the United States, or any state, territory, county, town or other municipal or public corporation, or any public officer in an official capacity, or any private corporation, copartnership or member thereof, or any particular person or persons.

(11 Del. C. 1953, § 3107; 50 Del. Laws, c. 403, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3107. DNA.

(a) In any indictment for a crime in which the identity of the accused is unknown, it is sufficient to describe the accused as a person whose name is unknown but who has a particular DNA profile.

(b) [Repealed.]

(73 Del. Laws, c. 160, § 1; 85 Del. Laws, c. 143, § 8.)

Part II
Criminal Procedure Generally

Chapter 33
Trial Jurors

§ 3301. Examination upon voir dire in capital cases.

When a juror is called in a capital case, the juror shall be first sworn or affirmed upon the voir dire and then asked, under the direction of the court, if the juror has formed or expressed any opinion in regard to the guilt or innocence of the prisoner at the bar. If the answer is in the negative, the juror shall be sworn as a juror in the case, unless the juror has conscientious scruples against finding a verdict of guilty in a case where the punishment is death, even if the evidence should so warrant, or unless the juror shall be peremptorily challenged, challenged for cause or excused by consent of counsel on both sides. If the juror's answer to the question be in the affirmative, the juror shall be disqualified to sit in the case, unless the juror shall say, upon oath or affirmation, to the satisfaction of the court, that the juror feels able, notwithstanding such an opinion, to render an impartial verdict upon the law and the evidence, in which event the juror shall be a competent juror, if not otherwise disqualified, challenged or excused.

(17 Del. Laws, c. 221; Code 1915, § 4823; Code 1935, § 5312; 11 Del. C. 1953, § 3301; 70 Del. Laws, c. 186, § 1.)

Part II
Criminal Procedure Generally
Chapter 35
Witnesses and Evidence
Subchapter I
General Provisions

§ 3501. Testimony of accused persons.

Every person who is accused of any crime whatsoever, punishable by the laws of this State, may upon trial before any tribunal established by the Constitution or laws of this State, testify in the person's own behalf, and may testify for or against any other person jointly tried with the person. A refusal or failure to testify shall not be construed or commented upon as an indication of guilt.

(19 Del. Laws, c. 777; Code 1915, § 4215; Code 1935, § 4690; 11 Del. C. 1953, § 3501; 70 Del. Laws, c. 186, § 1.)

§ 3502. Testimonial immunity.

(a) A party to an offense under Chapter 15 of this title may be required to furnish evidence, or to testify concerning the offense.

(b) No evidence or testimony required to be furnished under this section, nor any information directly or indirectly derived from such evidence or testimony, may be used against the witness in any criminal case, except in a prosecution for perjury or contempt.

(c) If a witness or other person is or may be called to produce evidence at a hearing or trial under Chapter 15 of this title, or at an investigation brought by the Attorney General under § 1509 of this title, the Superior Court for the county in which the hearing, trial or investigation is or may be held shall, upon certification in writing of such request by the Attorney General, require such person to produce the evidence, notwithstanding the person's refusal to do so on the basis of the privilege against self-incrimination.

(65 Del. Laws, c. 493, § 3; 70 Del. Laws, c. 186, § 1.)

§ 3503. Prima facie evidence of bank incorporation.

In criminal proceedings it shall be prima facie evidence of the incorporation of a bank that it has been reputed to be an incorporated bank or has issued notes as a bank.

(Code 1852, § 2350; Code 1915, § 4227; Code 1935, § 4702; 11 Del. C. 1953, § 3503.)

§ 3504. Proof of possession of property.

In the prosecution of any offense committed upon, in relation to or in any way affecting any real estate, or personal property, chose in action or thing, it is sufficient if it is proved in the trial that, at the time when the offense was committed, either the actual or constructive possession, or the general or special property, in the whole, or any part thereof, was in the person or community, alleged in the indictment or information to be the owner thereof.

(Code 1852, § 2967; Code 1915, § 4834; Code 1935, § 5325; 11 Del. C. 1953, § 3505.)

§ 3505. Evidence of alcohol in blood of one operating motor vehicle under influence of liquor [Repealed].

Repealed by 69 Del. Laws, c. 325, § 1, effective July 8, 1994.

§ 3506. Obtaining of testimony under court order; witness immunity.

(a) In any criminal action or in any investigation carried on by the grand jury, if a person refuses to answer any question or to produce evidence of any kind solely on the ground that the person may thereby be incriminated, the Superior Court, upon motion of the Attorney General, may order such person to answer the question or produce the evidence after notice to the witness and a hearing; provided, however, the Court shall not enter such order if the Court finds:

(1) That such person may be subjected to criminal prosecution relating to the same transaction or occurrence under the laws of the United States or any other state and that any such evidence so compelled could be used against the person in any such prosecution; or

(2) Such order would otherwise be clearly contrary to the public interest.

Such person, so ordered by the Court, shall comply with the Court order. After complying, such person shall not be prosecuted or subjected to penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in accordance with the order, the person gave answer or produced evidence; provided that, but for this section, such person would have been privileged to withhold the answer given or the evidence produced. In no event, however, shall such person, acting pursuant to such order, be exempt from prosecution or penalty or forfeiture for any perjury, false statement or contempt committed in answering or failing to answer, or in producing or failing to produce evidence in accordance with the order, and any testimony or evidence so given or produced shall not by virtue of this section be rendered inadmissible in evidence upon any criminal action, investigation or proceeding concerning such perjury, false statement or contempt.

(b) No statement or other evidence obtained from any person who shall have been compelled to make such statement or produce such evidence by any court of competent jurisdiction of the United States or of any other state pursuant to a claim of privilege and court order

under a statute substantially equivalent to subsection (a) of this section shall be admissible in evidence in any criminal prosecution in this State against such person arising out of the same transaction or occurrence.

(11 Del. C. 1953, § 3508; 56 Del. Laws, c. 151; 70 Del. Laws, c. 186, § 1.)

§ 3507. Use of prior statements as affirmative evidence.

(a) In a criminal prosecution, the voluntary out-of-court prior statement of a witness who is present and subject to cross-examination may be used as affirmative evidence with substantive independent testimonial value.

(b) The rule in subsection (a) of this section shall apply regardless of whether the witness' in-court testimony is consistent with the prior statement or not. The rule shall likewise apply with or without a showing of surprise by the introducing party.

(c) This section shall not be construed to affect the rules concerning the admission of statements of defendants or of those who are codefendants in the same trial. This section shall also not apply to the statements of those whom to cross-examine would be to subject to possible self-incrimination.

(11 Del. C. 1953, § 3509; 57 Del. Laws, c. 525.)

§ 3508. Rape — Sufficiency of evidence; proceedings in camera.

(a) In any prosecution for the crime of any degree of rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact; an attempt to commit any degree of rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, if such attempt conforms to § 531 of this title; solicitation for the crime of any degree of rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, if such offense conforms to § 502 of this title; or conspiracy to commit any degree of rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, if such offense conforms to § 512 of this title, if evidence of the sexual conduct of the complaining witness is offered to attack the credibility of the complaining witness the following procedure shall be followed:

(1) The defendant shall make a written motion to the court and prosecutor stating that the defense has an offer of proof concerning the relevancy of evidence of the sexual conduct of the complaining witness which the defendant proposes to present, and the relevancy of such evidence in attacking the credibility of the complaining witness.

(2) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated.

(3) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at such hearing allow the questioning of the complaining witness regarding the offer of proof made by the defendant.

(4) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the complaining witness is relevant, and is not inadmissible, the court may issue an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(b) As used in this section, "complaining witness" shall mean the alleged victim of any degree of rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, any degree of attempted rape, attempted unlawful sexual intercourse, attempted unlawful sexual penetration or attempted unlawful sexual contact, conspiracy or assault.

(60 Del. Laws, c. 257, § 1; 66 Del. Laws, c. 269, §§ 3-5; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 285, § 2.)

§ 3509. Rape — Admissibility of certain evidence.

(a) Notwithstanding any other provision of this Code to the contrary, and except as provided in this section, in any prosecution for any degree of rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, any opinion evidence, reputation evidence and evidence of specific instances of the complaining witness' sexual conduct, or any of such evidence, is not admissible by the defendant in order to prove consent by the complaining witness.

(b) This section, however, shall not be applicable to evidence of the complaining witness' sexual conduct with the defendant.

(c) If the prosecutor introduces evidence, including testimony of a witness, or the complaining witness as a witness gives testimony, and such evidence or testimony relates to the complaining witness' sexual conduct, the defendant may cross-examine the witness who gives such testimony and offer relevant evidence limited specifically to the rebuttal of such evidence introduced by the prosecutor or given by the complaining witness.

(d) Nothing in this section shall be construed to make inadmissible any evidence offered to attack the credibility of the complaining witness as provided in § 3508 of this title.

(e) As used in this section, "complaining witness" shall mean the alleged victim of the crime charged, the prosecution of which is subject to this section.

(60 Del. Laws, c. 257, § 1; 66 Del. Laws, c. 269, § 6; 71 Del. Laws, c. 285, § 2.)

§ 3510. Admissibility of certificate of title in criminal proceedings involving motor vehicles.

In any criminal proceeding in which ownership, possession or use of a motor vehicle is an issue, a certified copy of the certificate of title on file with the Division of Motor Vehicles shall be admissible as proof of ownership of the motor vehicle.

(64 Del. Laws, c. 276, § 1.)

§ 3511. Videotaped deposition and procedures for child witnesses.

(a) In any criminal case or hearing on delinquency, upon motion of the Deputy Attorney General prior to trial and with notice to the defense, the court may order all questioning of any witnesses under the age of 12 years to be videotaped in a location designated by the court. Persons present during the videotaping shall include the witness, the Deputy Attorney General, the defendant's attorney and any person whose presence would contribute to the welfare and well-being of the witness, and if the court permits, the person necessary for operating the equipment. Only the attorneys or a defendant acting pro se may question the child. The court shall permit the defendant to observe and hear the videotaping of the witness in person or, upon motion by the State, the court may exclude the defendant providing the defendant is able to observe and hear the witness and communicate with the defense attorney. The court shall ensure that:

(1) The recording is both visual and oral and is recorded on film or videotape or by other electronic means;

(2) The recording equipment was capable of making an accurate recording, the operator was competent to operate such equipment and the recording is accurate and is not altered;

(3) Each voice on the recording is identified;

(4) Each party is afforded an opportunity to view the recording before it is shown in the courtroom.

(b) If the court orders testimony of a witness taken under this section, the witness may not be compelled to testify in court at the trial or upon any hearing for which the testimony was taken. At the trial or upon any hearing, a part or all of the videotaped deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence. If only a part of a deposition is offered in evidence by a party, an adverse party may require the party to offer all of it which is relevant to the part offered and any party may offer other parts. Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

(c) The witness need not be physically present in the courtroom when the videotape is admitted into evidence.

(d) The cost of such videotaping shall be paid by the court.

(e) Videotapes which are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the witness.

(65 Del. Laws, c. 109, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3512. Presence of victims.

A "victim" or a "member of the victim's family," as defined in § 9401 of this title, has the right to be present during all stages of a criminal proceeding even if called upon to testify therein, except as follows:

(1) A grand jury proceeding.

(2) If the defendant shows good cause to exclude them.

(67 Del. Laws, c. 232, § 1; 70 Del. Laws, c. 186, § 1; 85 Del. Laws, c. 142, § 5.)

§ 3513. Hearsay exception for child victim's or witness's out-of-court statement of abuse.

(a) An out-of-court statement made by a child victim or witness who is under 11 years of age at the time of the proceeding concerning an act that is a material element of the offense relating to sexual abuse, physical injury, serious physical injury, death, abuse or neglect as described in any felony delineated in subpart A, B or D of subchapter II of Chapter 5 of this title, or in any of the felonies delineated in § 782, § 783, § 783A, § 787, § 1100A, § 1102, § 1108, § 1109, § 1111, § 1112A, § 1112B, § 1335(a)(6), § 1335(a)(7), § 1353(2), or § 1361(b) of this title or in any attempt to commit any felony delineated in this paragraph that is not otherwise admissible in evidence is admissible in any judicial proceeding if the requirements of subsections (b) through (f) of this section are met.

(b) An out-of-court statement may be admitted as provided in subsection (a) of this section if:

(1) The child is present and the child's testimony touches upon the event and is subject to cross-examination rendering such prior statement admissible under § 3507 of this title; or

(2) a. The child is found by the court to be unavailable to testify on any of these grounds:

1. The child's death;

2. The child's absence from the jurisdiction;

3. The child's total failure of memory;

4. The child's persistent refusal to testify despite judicial requests to do so;

5. The child's physical or mental disability;

6. The existence of a privilege involving the child;

7. The child's incompetency, including the child's inability to communicate about the offense because of fear or a similar reason; or

8. Substantial likelihood that the child would suffer severe emotional trauma from testifying at the proceeding or by means of a videotaped deposition or closed-circuit television; and

b. The child's out-of-court statement is shown to possess particularized guarantees of trustworthiness.

(c) A finding of unavailability under paragraph (b)(2)a.8. of this section must be supported by expert testimony.

(d) The proponent of the statement must inform the adverse party of the proponent's intention to offer the statement and the content of the statement sufficiently in advance of the proceeding to provide the adverse party with a fair opportunity to prepare a response to the statement before the proceeding at which it is offered.

(e) In determining whether a statement possesses particularized guarantees of trustworthiness under paragraph (b)(2) of this section, the court may consider, but is not limited to, the following factors:

(1) The child's personal knowledge of the event;

(2) The age and maturity of the child;

(3) Certainty that the statement was made, including the credibility of the person testifying about the statement;

(4) Any apparent motive the child may have to falsify or distort the event, including bias, corruption or coercion;

(5) The timing of the child's statement;

(6) Whether more than 1 person heard the statement;

(7) Whether the child was suffering pain or distress when making the statement;

(8) The nature and duration of any alleged abuse;

(9) Whether the child's young age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;

(10) Whether the statement has a "ring of verity," has internal consistency or coherence and uses terminology appropriate to the child's age;

(11) Whether the statement is spontaneous or directly responsive to questions;

(12) Whether the statement is suggestive due to improperly leading questions;

(13) Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.

(f) The court shall support with findings on the record any rulings pertaining to the child's unavailability and the trustworthiness of the out-of-court statement.

(68 Del. Laws, c. 362, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 467, § 9; 72 Del. Laws, c. 212, §§ 1-3; 80 Del. Laws, c. 175, § 8.)

§ 3514. Testimony of victim or witness in child abuse, and victim of domestic violence, sexual assault or stalking cases by means of secured video connection.

(a) (1) In any prosecution involving any offense set forth in § 3513(a) of this title, domestic violence as defined in § 1041 of Title 10, and §§ 768 thru 778 and 1312 of this title a court may order that the testimony of a witness less than 11 years of age or any victim of the offenses described herein be taken outside the courtroom and shown in the courtroom by means of secured video connection if:

a. The testimony is taken during the proceeding; and

b. The judge determines that testimony by the witness less than 11 years of age or any victim of the offenses described herein in the courtroom will result in the witness less than 11 years of age or any victim of the offenses described herein suffering serious emotional distress such that the witness less than 11 years of age or any victim of the offenses described herein cannot reasonably communicate.

(2) Only the prosecuting attorney, the attorney for the defendant, and the judge may question the child victim or witness.

(3) The operators of the secured video connection shall make every effort to be unobtrusive.

(b) (1) Only the following persons may be in the room when the witness less than 11 years of age or any victim of the offenses described herein testifies by closed circuit television:

a. The prosecuting attorney;

b. The attorney for the defendant;

c. The operators of the closed circuit television equipment; and

d. Any person whose presence, in the opinion of the court, contributes to the well-being of the witness less than 11 years of age or any victim of the offenses described herein, including a person who has dealt with the witness less than 11 years of age or any victim of the offenses described herein in a therapeutic setting concerning the abuse.

(2) During the witness or victim's testimony by secured video connection, the judge and the defendant shall be in the courtroom.

(3) The judge and the defendant shall be allowed to communicate with the persons in the room where the witness less than 11 years of age or any victim of the offenses described herein is testifying by any appropriate electronic method.

(c) The provisions of this section do not apply if the defendant is an attorney pro se.

(d) This section may not be interpreted to preclude, for purposes of identification of a defendant, the presence of both the victim and the defendant in the courtroom at the same time.

(e) The proponent of the witness's or victim's testimony must inform the adverse party of the proponent's intention to offer the testimony and the content of the testimony sufficiently in advance of the proceeding to provide the adverse party with fair opportunity to prepare a response to the testimony before the proceeding at which it is offered.

(68 Del. Laws, c. 407, § 1; 72 Del. Laws, c. 212, §§ 4, 5; 80 Del. Laws, c. 59, § 1.)

§ 3515. Admissibility of DNA profiles.

(a) [Repealed.]

(b) *Purposes.* — In any criminal proceeding, the evidence of a DNA profile is admissible to prove or disprove the identity of any person, if the party seeking to introduce the evidence of a DNA profile:

(1) Notifies in writing the other party or parties by mail at least 45 days before any criminal proceeding; and

(2) Provides, if requested in writing, the other party or parties at least 30 days before any criminal proceeding with:

a. Duplicates of the actual autoradiographs generated;

b. The laboratory protocols and procedures;

c. The identification of each probe utilized;

d. A statement describing the methodology of measuring fragment size and match criteria; and

e. A statement setting forth the allele frequency and genotype data for the appropriate database utilized.

(c) *Prerequisites.* — If a party is unable to provide the information required under subsection (b) of this section at least 30 days prior to the criminal proceeding, the court may grant a continuance to permit such timely disclosures as justice may require.

(69 Del. Laws, c. 249, § 2; 85 Del. Laws, c. 143, § 9.)

§ 3516. Hearsay exception for an adult who is impaired or patient or resident victim's out-of-court statement of abuse.

(a) An out-of-court statement made by an adult who is impaired, as defined in § 3902 of Title 31, or by a patient or resident of a state facility, as defined in § 1131 of Title 16, at the time of the proceeding concerning an act that is a material element of any of the following offenses:

(1) Abuse, neglect, exploitation or mistreatment of an adult who is impaired or a patient/resident, as set forth in § 3913 of Title 31 and § 1136 of Title 16 respectively; or

(2) Any felony set forth in this title which is defined as a violent felony pursuant to § 4201 of this title; or

(3) Any felony set forth in subparts D, E, H or I of subchapter III of Chapter 5 of this title, that is not otherwise admissible in evidence, is admissible in any judicial proceeding if the requirements of subsections (b) through (f) of this section are met.

(b) An out-of-court statement may be admitted as provided in subsection (a) of this section if:

(1) The victim is present and the victim's testimony touches upon the event and is subject to cross-examination rendering such prior statement admissible under § 3507 of this title; or

(2) a. The victim is found by the court to be unavailable to testify on any of these grounds and there is corroborative evidence to support the out-of-court statement:

1. The victim's death;

2. The victim's absence from the jurisdiction;

3. The victim's total failure of memory due to age or other infirmity;

4. The victim's physical or mental disability including the inability to communicate about the offense because of fear or a similar reason; or

5. Substantial likelihood that the victim would suffer severe medical or emotional trauma from testifying at the proceeding or by means of a videotaped deposition or closed-circuit television; and

b. The victim's out-of-court statement is shown to possess particularized guarantees of trustworthiness.

(c) A finding of unavailability under paragraph (b)(2)a.5. of this section must be supported by expert testimony.

(d) The proponent of the statement must inform the adverse party of the proponent's intention to offer the statement and the content of the statement sufficiently in advance of the proceeding to provide the adverse party with a fair opportunity to prepare a response to the statement before the proceeding at which it is offered.

(e) In determining whether a statement possesses particularized guarantees of trustworthiness under paragraph (b)(2)b. of this section, the court may consider, but is not limited to, the following factors:

(1) The victim's personal knowledge of the event;

(2) The victim's communicative and cognitive abilities at the time the statement is made;

(3) Certainty that the statement was made, including the credibility of the person testifying about the statement;

(4) Any apparent motive the victim may have to falsify or distort the event, including bias, corruption, coercion or a history of false reporting;

(5) The timing of the victim's statement;

(6) Whether more than 1 person heard the statement;

(7) Whether the victim was suffering pain or distress when making the statement;

(8) The nature and duration of any alleged abuse, neglect, exploitation or mistreatment;

(9) Whether the statement has a "ring of verity," has internal consistency or coherence and uses terminology appropriate to the victim's mental abilities;

(10) Whether the statement is spontaneous or directly responsive to questions;

(11) Whether the statement is suggestive due to improperly leading questions; or

(12) Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the victim's statement.

(f) The court shall support with findings on the record any rulings pertaining to the victim's unavailability and the trustworthiness of the out-of-court statement.

(71 Del. Laws, c. 334, § 1; 78 Del. Laws, c. 179, § 371; 78 Del. Laws, c. 224, §§ 16, 17.)

Subchapter II

Uniform Law to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings

§ 3521. Definitions.

As used in this subchapter:

(1) "State" includes any territory of the United States and District of Columbia.

(2) "Summons" includes a subpoena, order or other notice requiring the appearance of a witness.

(3) "Witness" includes a person whose testimony is desired in any proceeding or investigation by a grand jury or in any criminal proceeding.

(41 Del. Laws, c. 214, § 1; 11 Del. C. 1953, § 3521.)

§ 3522. Testimony in another state.

(a) If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this State certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this State is a material witness in such prosecution or grand jury investigation, and that the person's presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

(b) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state and that the laws of the state in which the prosecution is pending or grand jury investigation has commenced or is about to commence will give to the witness protection from arrest and the service of civil and criminal process, the judge shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(c) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before the judge for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

(d) If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of 10 cents a mile for each mile by the ordinarily traveled route to and from the court where the prosecution is pending and $5 for each day that the witness is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, the witness shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State.

(41 Del. Laws, c. 214, § 2; 11 Del. C. 1953, § 3522; 70 Del. Laws, c. 186, § 1.)

§ 3523. Testimony in this State.

(a) If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations commenced or about to commence in this State, is a material witness in a prosecution

pending in a court of record in this State or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this State to assure attendance in this State. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(b) If the witness is summoned to attend and testify in this State the witness shall be tendered the sum of 10 cents a mile for each mile by the ordinarily traveled route to and from the court where the prosecution is pending and $5.00 for each day that the witness is required to travel and attend as a witness. A witness who has appeared in accordance with the summons shall not be required to remain within this State a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this State, fails without good cause to attend and testify as directed in the summons, the witness shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State.

(41 Del. Laws, c. 214, § 3; 11 Del. C. 1953, § 3523; 70 Del. Laws, c. 186, § 1.)

§ 3524. Immunity from arrest and service of process.

(a) If a person comes into this State in obedience to a summons directing the person to attend and testify in this State the person shall not, while in this State pursuant to such summons, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before the person's entrance into this State under the summons.

(b) If a person passes through this State while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, the person shall not while so passing through this State be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before the person's entrance into this State under the summons.

(41 Del. Laws, c. 214, § 4; 11 Del. C. 1953, § 3524; 70 Del. Laws, c. 186, § 1.)

§ 3525. Uniformity of interpretation.

This subchapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

(41 Del. Laws, c. 214, § 5; 11 Del. C. 1953, § 3525.)

§ 3526. Short title.

This subchapter may be cited as "Uniform Law to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings."

(41 Del. Laws, c. 214, § 6; 11 Del. C. 1953, § 3526.)

Subchapter III

Intimidation of Witnesses and Victims

§ 3531. Definitions.

The following words, terms and phrases, when used in this subchapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Malice" shall mean an intent to vex, annoy, harm or injure in any way another person, or to thwart or interfere in any manner with the orderly administration of justice.

(2) "Victim" shall mean any natural person against whom any crime (as defined under the laws of this State, of any other state or of the United States) has been attempted, is being perpetrated or has been perpetrated.

(3) "Witness" shall mean any natural person:

a. Having knowledge of the existence or nonexistence of facts relating to any crime; or

b. Whose declaration under oath is received, or has been received, as evidence for any purpose; or

c. Who has reported any crime to any peace officer, prosecuting agency, law-enforcement officer, probation officer, parole officer, correctional officer or judicial officer; or

d. Who has been served with a subpoena issued under the authority of any court of this State, of any other state or of the United States; or

e. Who would be believed by any reasonable person to be an individual described in any paragraph of this subparagraph of this paragraph.

(63 Del. Laws, c. 275, § 3.)

§ 3532. Act of intimidation; class D felony.

Except as provided in § 3533 of this title, every person who knowingly and with malice prevents or dissuades (or who attempts to prevent or dissuade) any witness or victim from attending or giving testimony at any trial, proceeding or inquiry authorized by law is committing an act of intimidation and is guilty of a class D felony. A person who knowingly and with malice retaliates against any victim

or witness who has attended or given testimony at any trial proceeding or inquiry authorized by law by committing any crime as defined by the laws of this State against such victim or witness is committing an act of intimidation and is guilty of a class D felony. A person who knowingly and with malice attempts to prevent another person who has been the victim of a crime, or a witness to a crime (or any person acting on behalf of a victim or witness) from:

(1) Making any report of such crime or victimization to any peace officer, law-enforcement officer, prosecuting agency, probation officer, parole officer, correctional officer or judicial officer;

(2) Causing a complaint, indictment, information, probation or parole violation to be sought or prosecuted, or from assisting in the prosecution thereof; or

(3) Arresting, causing or seeking the arrest of any person in connection with such crime or victimization;

Is guilty of a class D felony.

(63 Del. Laws, c. 275, § 3; 71 Del. Laws, c. 430, § 1; 79 Del. Laws, c. 237, § 1.)

§ 3533. Aggravated act of intimidation; class B felony.

Every person doing any of the acts set forth in § 3532 of this title, knowingly and with malice under 1 or more of the following circumstances, shall be guilty of a class B felony if, in addition, such act:

(1) Is accompanied by an express or implied threat of force or violence, upon a victim, a witness or any third person (or upon the property of a victim, witness or third person);

(2) Is in furtherance of a conspiracy;

(3) Is committed by any person who has been convicted of any violation of this subchapter, any predecessor law hereto, the statute of any other state or any federal statute which would be a violation of this subchapter if committed in this State; or

(4) Committed, for pecuniary gain or for any other consideration, by any person acting upon the request of another person.

(63 Del. Laws, c. 275, § 3; 79 Del. Laws, c. 237, § 2.)

§ 3534. Attempt to intimidate.

Every person attempting the commission of any act described in §§ 3532 and 3533 of this title is guilty of the offense attempted, without regard to the success or failure of such attempt. The fact that no person was actually physically injured, or actually intimidated, shall be no defense against any prosecution under this subchapter.

(63 Del. Laws, c. 275, § 3.)

§ 3535. Protective orders — Issuance.

Any court with jurisdiction over any criminal matter may in its discretion and upon good cause (which may include, but is not limited to, such matters as credible hearsay, the declaration of the prosecutor or the declaration of the defense attorney) find that intimidation or dissuasion of a victim or witness has occurred (or is reasonably likely to occur) and may issue orders including, but not limited to, the following:

(1) An order that a defendant not violate any provision of this subchapter;

(2) An order that a person before the court other than a defendant (including, but not limited to, a subpoenaed witness) not violate any provision of this subchapter;

(3) An order that a designated person maintain a prescribed geographic distance from any other person specified by the court;

(4) An order that any designated person have no communication whatsoever with any person specified by the court, except through an attorney, and under such reasonable restrictions as the court may impose;

(5) An order for a hearing to determine if any order under this section should be issued;

(6) An order that a particular law-enforcement agency within the jurisdiction of the court provide protection for a person specified by the court.

(63 Del. Laws, c. 275, § 3.)

§ 3536. Protective orders — Violations.

(a) A person who violates an order made pursuant to this subchapter may be punished for any substantive offense set forth in this subchapter.

(b) A person who violates an order made pursuant to this subchapter may be punished as a contempt of the court making such order. No finding of contempt shall be a bar to prosecution for a substantive offense under this subchapter, but:

(1) Any person so held in contempt shall be entitled to credit for any punishment imposed therein, against any sentence imposed upon conviction for that offense; and

(2) Any conviction or acquittal for any substantive offense under this subchapter shall be a bar to subsequent punishment for contempt arising out of the same act.

(c) A person who violates an order made pursuant to this subchapter may be punished by revocation of any form of pretrial release, by the forfeiture of bail and/or by the issuance of a bench warrant which requires the defendant's arrest or which remands the defendant into custody. Said revocation may, after a hearing, and upon a showing by a clear and convincing evidence in the sound discretion of the court, be made either where the violation complained of has been committed by the defendant personally, or has in any way been caused indirectly or through the encouragement of the defendant.

(63 Del. Laws, c. 275, § 3.)

§ 3537. Pretrial release.

(a) Any pretrial release of any defendant (whether on bail or under any other form of recognizance) shall be deemed, as a matter of law, to include a condition that the defendant neither do, nor cause to be done, nor knowingly permit to be done on the defendant's behalf, any act proscribed by this subchapter hereof and any wilful violation of said condition is subject to sanction as prescribed in § 3536 of this title whether or not the defendant was the subject of an order under § 3535 of this title.

(b) From and after June 22, 1982, any receipt or any bail or bond given by the clerk of any court, by any surety or bondsperson and/or any other form of conditional release shall contain, in a conspicuous location, notice that such bail bond, or other release, is conditioned upon strict adherence to the requirements and prohibitions of this subchapter.

(63 Del. Laws, c. 275, § 3; 70 Del. Laws, c. 186, § 1.)

Part II
Criminal Procedure Generally
Chapter 39
Sentence, Judgment, Execution and Mandatory Testing
Subchapter I
Sentence, Judgment and Execution

§ 3901. Fixing term of imprisonment; credits.

(a) When imprisonment is a part of the sentence, the term shall be fixed, and the time of its commencement and ending specified. An act to be done at the expiration of a term of imprisonment shall be done on the last day thereof, unless it be Sunday, and in that case, the day previous. Months shall be reckoned as calendar months.

(b) All sentences for criminal offenses of persons who at the time sentence is imposed are held in custody in default of bail, or otherwise, shall begin to run and be computed from the date of incarceration for the offense for which said sentence shall be imposed, unless the person sentenced shall then be undergoing imprisonment under a sentence imposed for any other offense or offenses, in which case the said sentence shall begin to run and be computed, either from the date of imposition thereof or from the expiration of such other sentence or sentences, as the court shall, in its discretion, direct.

(c) Any period of actual incarceration of a person awaiting trial, who thereafter before trial or sentence succeeds in securing provisional liberty on bail, shall be credited to the person in determining the termination date of sentence. Where a prisoner is hospitalized, the time spent in an institution under involuntary restraint is to be credited to the person when calculating the sentence under this subsection.

(d) The court shall direct whether the sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently or consecutively with any other sentence of confinement imposed on such criminal defendant. Notwithstanding the foregoing, no sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently with any other sentence of confinement imposed on such criminal defendant for any conviction of the following crimes:

Title 11, Section	Crime
606	Abuse of a pregnant female in the first degree
613	Assault in the first degree
635	Murder in the second degree
636	Murder in the first degree
772	Rape in the second degree
773	Rape in the first degree
777A	Sex offender unlawful sexual conduct against a child
778(1), (2) or (3)	Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree
783A	Kidnapping in the first degree
1254	Assault in a detention facility
1447A	Possession of a firearm during the commission of a felony if the firearm was used, displayed, or discharged during the commission of a Title 11 or Title 31 violent felony as set forth in § 4201(c) of this title.

Notwithstanding the foregoing, where there are multiple victims, any sentence for each victim shall be consecutive to one another for the following crimes:

Title 11, Section	Crime
632	Manslaughter

(e) [Repealed.]

(Code 1852, §§ 2931, 2932; Code 1915, § 4813; Code 1935, § 5301; 11 Del. C. 1953, § 3902; 49 Del. Laws, c. 244; 60 Del. Laws, c. 308, §§ 1, 2; 61 Del. Laws, c. 158, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 297, § 1; 82 Del. Laws, c. 66, § 1; 84 Del. Laws, c. 525, § 25.)

§ 3902. Solitary confinement [Repealed].

(Code 1852, §§ 2927, 2929; 21 Del. Laws, c. 247, § 4; 27 Del. Laws, c. 271; Code 1915, §§ 4810, 4811; Code 1935, § 5299; 11 Del. C. 1953, § 3203; repealed by 83 Del. Laws, c. 233, § 1, effective Sept. 30, 2021.)

§ 3903. Delivery of copy of sentence to warden.

The Prothonotary shall deliver to the warden of the workhouse or jail in which the convicted person is to be confined a duly certified copy of the sentence in every criminal case.

(Code 1852, § 2930; Code 1915, § 4812; 40 Del. Laws, c. 226, § 5; Code 1935, § 5300; 11 Del. C. 1953, § 3904.)

§ 3904. [Reserved.]

§ 3905. Instructions on separate issues of guilt and insanity; instructions on verdicts.

At the conclusion of a trial under this title, where warranted by the evidence, the charge to the jury shall contain instructions that shall consider separately the issues of guilt and the presence or absence of insanity, and shall also contain instructions as to the verdicts of "guilty;" "guilty, but mentally ill;" "not guilty by reason of insanity;" and "not guilty" with regard to the offense or offenses charged and, as required by law, any lesser included offenses.

(63 Del. Laws, c. 328, § 3.)

§ 3906. Domestic violence offenses.

The sentence for a second conviction for any crime or attempt to commit any crime hereinafter specifically named when such crime is committed by a member of the victim's family as defined by § 901(12) of Title 10, regardless of the state of residence of the parties; by a former spouse of the victim; by a person who cohabited with the victim at the time of the offense; or by a person with a child in common with the victim shall include completion of a psychocial assessment. Such crimes shall be:

(1) Any offense set forth in subchapter II of Chapter 5 of this title;

(2) Any offense set forth in subparts A and B of subchapter III of Chapter 5 of this title;

(3) Any offense set forth in subpart A of subchapter V of Chapter 5 of this title;

(4) Any offense set forth in § 1301, § 1311, § 1312 or § 1312A [transferred to § 1312] of this title, administered by any agency or batterer's intervention treatment provider certified by the Domestic Violence Coordinating Council, and adherence to all recommendations made in the completed assessment. The court shall impose any other appropriate legal sanction, including fines or incarceration, along with the required completion of the assessment.

Nothing in this section shall be construed to preclude a court from mandating this treatment in any first offense situation.

(72 Del. Laws, c. 62, § 1.)

Subchapter II

Voluntary and Mandatory Testing of Offenders Charged with Certain Sex Crimes

§ 3910. Definitions.

For purposes of this subchapter, the following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Human immunodeficiency virus test" means a test or tests of an individual for presence of human immunodeficiency virus, or for antibodies or antigens that result from human immunodeficiency virus infection, or for any other substance specifically indicating human immunodeficiency virus infection, and includes preliminary screening tests.

(69 Del. Laws, c. 231, § 1.)

§ 3911. Human immunodeficiency virus (HIV) testing at the request of the victim.

At the request of the victim and/or by order of the court, a defendant who has been arrested for a crime which has sexual intercourse, deviant sexual intercourse, or sexual contact as an element must submit to testing for HIV not later than 48 hours after the victim has requested, and/or the court has ordered, such testing.

(69 Del. Laws, c. 231, § 1; 76 Del. Laws, c. 365, § 1.)

§ 3912. Test result not a public record.

The result of any human immunodeficiency virus test conducted pursuant to this subchapter shall not be a public record for purposes of Chapter 100 of Title 29.

(69 Del. Laws, c. 231, § 1; 76 Del. Laws, c. 365, § 2.)

§ 3913. Test results; notification to Department of Correction; counseling; cost; notice of appeal not to automatically stay order for HIV testing.

(a) The result of any human immunodeficiency virus testing conducted pursuant to this subchapter shall only be made available by the Division of Public Health to the victim, or the parent or guardian of the victim who is a minor or has an intellectual disability or

a mental incapacity, the defendant, the court issuing the order for testing, and any other person or agency pursuant to Chapters 12 and 12A of Title 16.

(b) In addition, the Division of Public Health shall provide to the Department of Correction the result of any human immunodeficiency virus test conducted pursuant to this subchapter which indicates that the defendant is infected with the human immunodeficiency virus. The Department of Correction shall use this information solely for the purpose of providing medical treatment to the defendant while incarcerated in any correctional institution.

(c) If the human immunodeficiency virus test indicates the presence of human immunodeficiency virus infection, the Division of Public Health shall provide counseling to the victim and the defendant regarding human immunodeficiency virus disease, and referral for appropriate health-care and support services.

(d) The cost of testing under this subchapter shall be paid by the defendant tested, unless the court has determined that the defendant is an indigent person.

(e) Filing of a notice of appeal shall not automatically stay an order that the defendant submit to a human immunodeficiency virus test.

(f) A defendant must submit to follow-up tests for HIV as may be medically appropriate.

(69 Del. Laws, c. 231, § 1; 76 Del. Laws, c. 365, §§ 2, 3; 78 Del. Laws, c. 224, § 18.)

§ 3914. [Transferred.]

Subchapter III

Mandatory Testing of Offenders Charged With Assault or Related Offenses Against Law-Enforcement Officers

§ 3915. Scope.

A person who is charged with any criminal offense in which it is alleged that the person interfered with the official duties of a law-enforcement officer by biting, scratching, spitting or transferring blood or other bodily fluids on or through the skin or membranes of a law-enforcement officer is subject to a court order requiring testing for the human immunodeficiency virus, any antibody to human immunodeficiency virus or hepatitis.

(72 Del. Laws, c. 22, § 1.)

§ 3916. Petition and hearing.

(a) The law-enforcement officer or the employing agency or entity may petition the Superior Court for an order authorizing testing for the human immunodeficiency virus, any antibody to human immunodeficiency virus, or hepatitis. The Superior Court shall hear the petition promptly.

(b) If the Court finds that probable cause exists to believe that a possible transfer of blood or other bodily fluid occurred between the person charged and the law-enforcement officer, the Court shall order that the person charged provide 2 specimens of blood for testing.

(72 Del. Laws, c. 22, § 1.)

§ 3917. Notice provided.

(a) Notice of the test results shall be provided as prescribed by the Division of Public Health to the person tested, as well as to the law-enforcement officer named in the petition and to the officer's employing agency or entity, who shall otherwise maintain the confidentiality of that information.

(b) The result of any test conducted pursuant to this subchapter shall not be a public record for purposes of Chapter 100 of Title 29.

(72 Del. Laws, c. 22, § 1.)

§ 3918. Positive results; counseling; costs.

(a) If the test indicates the presence of human immunodeficiency virus infection, the Division of Public Health shall provide counseling to the law-enforcement officer and the person charged with the criminal offense regarding human immunodeficiency virus disease, and referral for appropriate health care and support services.

(b) The cost of testing under this subchapter shall be paid by the person tested, unless the court has determined that person is indigent.

(72 Del. Laws, c. 22, § 1.)

Part II
Criminal Procedure Generally
Chapter 41
Fines, Costs, Penalties and Forfeitures
Subchapter I
General Provisions

§ 4101. Payment of fines, fees, costs, assessments, and restitution on conviction.

(a) On conviction on indictment or information for any crime or offense, a defendant must pay all costs imposed by a court.

(b) (1) When a court sentence includes a fine, fee, cost, assessment, or restitution, the full amount imposed becomes a judgement against the defendant immediately on sentencing.

(2) A judgment under this subsection is executable, enforceable, or transferable by the State in the same manner as other judgments of the court.

(3) If not paid promptly on its imposition or in accordance with the terms of the order of the court, or immediately if so requested by the State, the clerk or Prothonotary may cause the judgment to be entered on the civil judgment docket of the court. If a stay of execution is otherwise permitted by law, the stay may not be granted as a matter of right but only within the discretion of the court.

(4) If the court imposing a sentence to pay a fine, fee, cost, assessment, or restitution does not have a civil docket for the entry of a judgment, then the court may immediately transfer the judgment to the civil judgment docket of an appropriate court, as determined by the court imposing the sentence.

(5) Judgments docketed under this subsection are exempt from the provisions of § 4711 of Title 10, which mandate the expiration of judgments and require the renewal of judgments; however, no such judgment will attach to a parcel of real property for more than 7 years after the convicted person has sold, transferred, or lost ownership interest in that specific parcel of real property.

(c) The provisions of this section are cumulative and shall not impair any judgment given upon any conviction.

(d) In addition to, and at the same time as, any fine, penalty or forfeiture is assessed to any criminal defendant or any child adjudicated delinquent, there shall be levied an additional penalty of $1.00 imposed and collected by the courts for crimes or offenses as defined in § 233 of this title. When a fine, penalty or forfeiture is suspended, in whole or in part, the penalty assessment shall not be suspended.

(1) Upon collection of the penalty assessment, the same shall be paid over to the prothonotary or clerk of courts, as the case may be, who shall collect the same and transmit it to the State Treasury to be deposited in a separate account for the administration of this subsection, which account shall be designated the “Videophone Fund,” which is hereby created. This fund is to be administered by the Criminal Justice Council. Funds shall be utilized to cover line charges, maintenance costs and purchase and upgrade of videophone systems used by state and local agencies in the criminal justice system.

(2) For each fiscal year, if the balance in the Videophone Fund exceeds $250,000, said funds shall be transferred to the General Fund of the State of Delaware on June 30. The Criminal Justice Council shall submit a detailed spending plan for the use of the videophone funds to the Director of the Office of Management and Budget and Controller General no later than September 30 of each fiscal year. No funds shall be expended until the plan is approved by the Director of the Office of Management and Budget and the Controller General.

(3) The courts may expunge the record of any videophone assessment which remains uncollected for a period in excess of 3 years.

(e) (1) If any school teacher or administrator who holds a license or certificate under Title 14 or who is a teacher or administrator in a charter school but is exempt from licensing under § 507(c) of Title 14 or is a teacher or administrator employed by any state agency or under contract to a state agency is convicted of a violation of § 904(c) of Title 4 as a felony offense in this title, any offense in Chapter 47 of Title 16, and/or any offense in the Delaware Code that is a crime against a child, or a similar statute of another state, commonwealth or the District of Columbia, the court shall forward a copy of the conviction data to the employing school district’s superintendent, school person-in-charge or state agency head.

(2) If the arrest and conviction occurs outside the State of Delaware, the teacher or administrator shall notify the superintendent, school person-in-charge or state agency head by providing copies of the conviction documents and sentence.

A teacher or administrator who fails to comply with paragraph (e)(2) of this section shall be guilty of a violation.

(f) [Repealed.]

(g) (1) In addition to, and at the same time as any fine, penalty or forfeiture is assessed to a criminal defendant, recipient of a civil offense, or any child adjudicated delinquent, there shall be levied an additional surcharge of 50% of the fine for the Transportation Trust Fund imposed and collected for any violations of Title 21.

(2) For fiscal years ending prior to July 1, 2008, no more than $1.5 million of the surcharge collected under this Section shall be deposited into the Transportation Trust Fund. Any amount in excess of $1.5 million collected prior to July 1, 2008, shall be deposited into the General Fund.

(3) If a fine or penalty is waived in whole or in part, the court may, in its discretion, waive up to the same percentage of the assessment.

(h) In addition to, and at the same time as, any fine or other penalty is assessed to any criminal or traffic defendant or any child adjudicated delinquent, there shall be levied an additional penalty of $15 imposed and collected by the courts for each crime and offense as defined in § 233 of this title or for any civil violation or civil penalty under this title, subchapters IV and V of Chapter 47 of Title 16, or Title 21. When a fine or other penalty is suspended in whole or in part, the penalty assessment may not be suspended, except for a violation of § 4129 of Title 21.

(1) Upon collection of the penalty assessment, the assessment must be paid over to the prothonotary or clerk of courts, as the case may be, who shall collect the same and transmit it to the State Treasury to be deposited in a separate account for the administration of this subsection, which account shall be designated the "Fund to Combat Violent Crimes," which is hereby created.

(2) One-half of the Fund, but no more than $2,125,000 per year, shall be distributed to the Department of Safety and Homeland Security for use in connection with initiatives to combat violent crime. Funds distributed to the Department of Safety and Homeland Security hereunder may be used to cover salaries, overtime and other salary costs, expenses, equipment, and supplies for state troopers and other personnel.

(3) One-half of the Fund, but no more than $2,125,000 per year, shall be distributed to local law-enforcement agencies for use in connection with initiatives to combat violent crime. Funds may be used to cover overtime, expenses, equipment and supplies, and as otherwise set forth in paragraph (h)(6) of this section.

(4) The Fund to Combat Violent Crimes Committee shall administer the moneys distributable to local law-enforcement agencies hereunder. The Committee shall be comprised of 5 members, namely the Secretary of the Department of Safety and Homeland Security, the Superintendent of the Delaware State Police, the Attorney General, the President of the Delaware Police Chiefs Council and the President of the Delaware State Lodge of the Fraternal Order of Police, or the respective designees of such members. The Secretary of the Department of Safety and Homeland Security shall be the chairperson of the Committee.

a. All local law-enforcement agencies seeking funds hereunder shall submit a yearly request for funding to the Committee. Such request shall include, without limitation:

1. A detailed description of how the requested funds will be used by the local law-enforcement agency to combat violent crime;

2. The amount of any and all funds received by said local law-enforcement agency from the Fund during the previous 5 fiscal years; and

3. The name of the local law-enforcement agency requesting said funds and the name of the individual in such agency who shall be responsible for keeping accurate records as to the use of said funds.

b. In addition, prior to receiving any funds hereunder in any fiscal year, all local law-enforcement agencies shall certify in writing to the Committee that:

1. Funds received from the Fund to Combat Violent Crimes will supplement, not supplant, any nonstate funding to local law-enforcement agencies that would otherwise be available for activities funded under this paragraph;

2. The award of any funds hereunder shall not guarantee that funding shall be available to the same extent in future fiscal years;

3. The responsibility for any future decrease in funding shall be borne by the local law-enforcement agency, not the State.

c. The Committee may require such additional information from local law-enforcement agencies, and may otherwise adopt such procedures and forms, as shall be necessary for the effective administration of this paragraph.

(5) If a majority of the Committee determines that all of the funds requested by a local law-enforcement agency will be used for purposes permitted hereunder, the Committee shall authorize payment to each local law-enforcement agency as follows:

a. Each full-time local law-enforcement agency shall receive $15,000 per year and each part-time local law-enforcement agency shall receive $7,500 per year.

b. All funds in excess of the amounts set forth above shall be distributed to local law-enforcement agencies on a pro rata basis, based upon the local law-enforcement agency's actual strength of full-time sworn officers.

(6) Local law-enforcement agencies shall not be permitted to use moneys hereunder to cover salaries or other salary costs, except overtime, unless the Committee:

a. Determines that sufficient funding is available from the Fund to Combat Violent Crimes to support such expenditures on a long-term basis; and

b. Issues a written opinion to that effect, signed by all of the members of the Committee and provided to the Governor and the chair and co-chair of the Joint Finance Committee, no earlier than June 30, 2012.

(7) Any funds granted to a local law-enforcement agency pursuant to paragraphs (h)(5) and (6) of this section that are not fully expended within 12 months of receipt thereof must be returned by the agency to the Fund to Combat Violent Crimes within 60 days, unless the agency has requested and has received an authorization in writing for an extension of up to 120 days by the Committee.

(8) Notwithstanding anything to the contrary herein, no more than $4.25 million of the funds collected under this paragraph in each fiscal year shall be deposited into the Fund to Combat Violent Crimes. Any amount in excess of $4.25 million in each fiscal year shall be deposited into the General Fund.

(9) For purposes of this subsection:

a. "Full-time local law-enforcement agency" shall mean any local law-enforcement agency providing continuous, 24-hour coverage to a county or municipality.

b. “Fund” shall mean the Fund to Combat Violent Crimes.

c. “Initiative to combat violent crime” means any initiative, plan, proposal, operation, or strategy designed to reduce the prevalence of 1 or more offenses classified as “violent felonies” under § 4201(c) of this title.

d. “Local law-enforcement agency” means any county or municipal police department within this State, but does not include any county sheriff’s office.

e. “Part-time local law-enforcement agency” shall mean any local law-enforcement agency providing less than continuous, 24-hour coverage to a county or municipality.

(i) [Repealed.]

(j) In addition to, and at the same time as any fine, penalty, or forfeiture assessed to a criminal defendant or recipient of a civil offense, there shall be levied an additional penalty of $10 imposed and collected for any violations of Title 21. When a fine, penalty, or forfeiture is suspended, in whole or in part, this penalty assessment may not be suspended, except for a violation of § 4129 of Title 21.

(1) This penalty assessment shall, for collection purposes, have first priority over all other penalty assessments created by this section and shall:

a. Have first priority after payments to the Victim Compensation Fund and restitution, consistent with § 4106(c) of this title, and the Court Security Fund, created by § 8505 of Title 10; and

b. Have priority over all other penalty assessments, costs, or fees established by an act of the General Assembly.

(2) Upon collection of this penalty assessment, the assessment must be paid over to the State Treasury to be deposited in a separate account for the administration of this subsection, which account shall be designated as the “Volunteer Ambulance Company Fund” (Fund), which is hereby created.

(3) The Fund shall be administered by the State Fire Prevention Commission. The Commission shall pay the moneys from the Fund directly to each volunteer ambulance company in this State in proportion to the number of ambulance runs by a volunteer ambulance company out of the total number of ambulance runs by all volunteer ambulance companies in this State.

(4) For the purposes of this subsection:

a. “Ambulance runs” means volunteer ambulance company responses to dispatched calls for service.

b. “Basic life support (BLS)” shall have the same meaning as set forth in § 9702 of Title 16.

c. “Volunteer ambulance company” means a nonprofit ambulance company that is certified by the State Fire Prevention Commission and is providing basic life support (BLS) services.

(Code 1852, §§ 2939-2941; Code 1915, § 4816; Code 1935, § 5304; 11 Del. C. 1953, § 4101; 57 Del. Laws, c. 508, §§ 1, 2; 63 Del. Laws, c. 140, § 1; 63 Del. Laws, c. 141, § 6; 70 Del. Laws, c. 461, § 1; 71 Del. Laws, c. 43, § 2; 71 Del. Laws, c. 387, § 1; 74 Del. Laws, c. 27, §§ 7, 8; 74 Del. Laws, c. 68, § 70; 75 Del. Laws, c. 88, § 21(6); 75 Del. Laws, c. 424, § 1; 76 Del. Laws, c. 77, § 1; 76 Del. Laws, c. 133, § 1; 78 Del. Laws, c. 160, § 1; 78 Del. Laws, c. 239, § 1; 79 Del. Laws, c. 436, § 1; 80 Del. Laws, c. 74, § 1; 80 Del. Laws, c. 276, §§ 1, 2; 81 Del. Laws, c. 34, § 1; 83 Del. Laws, c. 54, § 180; 83 Del. Laws, c. 283, § 13; 83 Del. Laws, c. 441, § 5; 83 Del. Laws, c. 497, § 1A; 84 Del. Laws, c. 360, § 1; 84 Del. Laws, c. 361, §§ 1, 3.)

§ 4102. Payment of costs upon acquittal.

(a) If, upon indictment or information, the defendant is acquitted, the costs shall be paid by the county.

(b) In cases of surety of the peace (which are herein deemed to be cases of a criminal nature) the court may order that the costs shall be paid by the defendant or by the prosecutor or by the county, as it deems just.

(Code 1852, §§ 2942, 2943; 20 Del. Laws, c. 596; Code 1915, § 4817; Code 1935, § 5305; 11 Del. C. 1953, § 4102; 63 Del. Laws, c. 140, § 1.)

§ 4103. Refund of fines upon reversal of conviction.

(a) The State Treasurer shall remit to each person, or to the attorney of such person, who has paid a fine upon a conviction which was later set aside by a court of higher jurisdiction upon a certiorari or appeal from the lower court.

(b) The State Treasurer shall pay the refund upon proper voucher drawn by the person, or by the attorney of such person, upon whom the fine was originally imposed when the voucher is accompanied by a certificate of the Prothonotary of any of the several counties showing that the conviction of the lower court upon which the fine was imposed has been set aside by a higher court.

(c) The State Treasurer shall remit the amount of any fine or costs to each person, or the attorney of such person, who has paid a fine upon conviction before a justice of the peace, which conviction was later set aside by the same Justice of the Peace Court. The State Treasurer shall pay such refund upon proper voucher drawn by such person, or by the attorney of such person, upon whom the fine was originally imposed when the voucher is accompanied by a certified copy of the docket entries of the case in the Justice of the Peace Court showing the setting aside of the conviction, together with the certificate of the Clerk of the Justice of the Peace Court, verifying the final disposition of the case, and stating that the remittance of the fine or costs to such person is proper.

(d) The State Treasurer shall remit the amount of any fine or costs to each person, or the attorney of such person, who has paid a fine upon conviction in the Court of Common Pleas, which conviction was later set aside by the Court of Common Pleas. The State Treasurer shall pay such refund upon proper voucher drawn by such person, or by the attorney of such person, upon whom the fine was originally imposed when the voucher is accompanied by a certified copy of the docket entries of the case in the Court of Common Pleas showing

the setting aside of the conviction together with the certificate of the Clerk of the Court of Common Pleas verifying the final disposition of the case and stating that the remittance of the fine or costs to such person is proper.

(48 Del. Laws, c. 278, §§ 1, 2; 11 Del. C. 1953, § 4104; 56 Del. Laws, c. 394; 58 Del. Laws, c. 210; 63 Del. Laws, c. 140, § 1; 78 Del. Laws, c. 243, § 1.)

§ 4104. Fines, fees, costs, assessments, or restitution; how collected; suspending driver's license for nonpayment prohibited.

(a) (1) When a court imposes a fine, fee, cost, assessment, or restitution on a defendant, the court may order any of the following:

a. That the defendant pay the entire amount at the time sentence is imposed.

b. That the defendant pay a specified portion of the fine, fee, cost, assessment, or restitution at designated periodic intervals.

(2) If the defendant is sentenced to a period of probation as well as to pay a fine, fee, cost, or assessment, the court may not make the payment of the fine, fee, cost, or assessment a condition of the probation.

(3) a. A court may not impose an additional fee for any of the following:

1. The payment of a fine, fee, cost, assessment, or restitution that is made at designated periodic intervals.

2. A late payment of a fine, fee, cost, assessment, or restitution.

3. Supervision by probation of the payment of a fine, fee, cost, assessment, or restitution.

b. A court may not charge interest for a payment of a fine, fee, cost, assessment, or restitution that is made late or at designated periodic intervals.

c. A court may not charge a convenience fee for a payment made at a court-designated payment kiosk or through an Internet-based court payment system.

(4) A court may not charge a penalty, assessment, or fee to a defendant for a capias issued due to the defendant's nonpayment of a fine, fee, cost, assessment, or restitution.

(b) (1) A defendant's ability or inability to pay a fine, fee, cost, or assessment may not influence a court's decision whether to impose a custodial or probationary sentence.

(2) A court shall advise a defendant on the record or in writing of the financial obligations and the possible sanctions for noncompliance.

(c) (1) A court may direct a defendant sentenced to pay a fine, fee, cost, assessment, or restitution on conviction of a crime, who is employed within this State or by a Delaware resident or employer, to execute an assignment of a specified periodic sum not to exceed ¼ of the defendant's total earnings. The assignment must direct the defendant's employer to withhold and remit that amount to this State up to the total of the fine, fee, cost, assessment, or restitution imposed.

(2) An assignment of earnings executed under this subsection is binding on an employer in the same manner as an attachment of wages under Title 10, except that an assignment must be filed only once with the defendant's employer. The defendant's employer shall make the withholding and remittances until the full amount is paid. An amount of total earnings consistent with federal law may be assigned. A defendant's employer may not take an action against an employee who has executed an assignment, and the penalty imposed on a defendant solely because of an assignment under this subsection must be in accordance with the manner set forth for attachments.

(d) For purposes of ensuring the payment of a fine, fee, cost, assessment, or restitution and the enforcement of any orders imposed under this section, the court shall retain jurisdiction over a defendant until the fine, fee, cost, assessment, or restitution is paid in full. The court may write off the fine, fee, cost, assessment, or restitution of a defendant when the court receives evidence that the defendant is deceased.

(e) The Division of Motor Vehicles of the Department of Transportation or a court may not suspend a defendant's driver's license as a penalty for nonpayment of a fine, fee, cost, assessment, or restitution.

(1) Except as provided under § 2732(g)(1) of Title 21, a defendant whose driver's license was suspended before October 3, 2022, only as a penalty for nonpayment of a fine, fee, cost, assessment, or restitution is eligible for restoration of the defendant's driving privileges.

(2) The Division of Motor Vehicles of the Department of Transportation shall develop policies and procedures to implement the restoration of driving privileges under paragraph (e)(1) of this section by April 4, 2023. The policies and procedures must address the process for restoration of driving privileges for defendants convicted of a motor vehicle offense that originated in the voluntary assessment center under § 709 of Title 21 before, on, or after October 3, 2022.

(3) A defendant who seeks to restore the defendant's driving privileges under paragraph (e)(1) of this section is not required to pay a fee to do so.

(f)-(h) [Repealed.]

(11 Del. C. 1953 § 4105; 57 Del. Laws, c. 198, § 2; 57 Del. Laws, c. 513, §§ 2, 3; 59 Del. Laws, c. 194, § 1; 59 Del. Laws, c. 269, § 1; 63 Del. Laws, c. 140, § 1; 63 Del. Laws, c. 141, §§ 7, 8; 63 Del. Laws, c. 223, §§ 1-4; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 5; 83 Del. Laws, c. 441, § 6.)

§ 4105. Default in payment of fine; inability to pay.

(a) No person sentenced to pay a fine, costs or restitution upon conviction of a crime shall be ordered to be imprisoned in default of the payment of such fine, costs or restitution.

(b) (1) Where a person sentenced to pay a fine, costs, restitution or all 3, on conviction of a crime is unable or fails to pay such fine, costs, restitution or all 3, at the time of imposition of sentence or in accordance with the terms of payment set by the court, the court may order the person to report at any time to the Commissioner of the Department of Correction, or a person designated by the Commissioner, for work for a number and schedule of hours necessary to discharge the fine, costs or restitution imposed.

(2) For purposes of this section, the hourly rate shall be established in accordance with the then prevailing federal minimum wage, and shall be used in computing the amount credited to any person discharging fines, costs and restitution.

(3) In cases involving Justices of the Peace Courts, the Chief Magistrate thereof shall establish guidelines for the number of hours of work which may be assigned and the Courts shall adhere to said guidelines.

(4) The Department may approve public work assignments for convicted persons in accordance with subsection (c) of this section, whereupon the Commissioner, or a person designated by the Commissioner, may assign the convicted person to work under the supervision of any state, county or municipal agency on any project or assignment specifically certified for that purpose.

(5) The Department of Correction shall not compensate any convicted person assigned to work under the supervision of any state, county or municipal agency but shall credit such person with the number of hours of satisfactory service.

(6) When the number of such hours equals the number of hours imposed by the court, the Department shall certify this fact to the appropriate court, and the court shall proceed as if the fines, costs and restitution had been paid in cash. Fines, costs and restitution successfully worked off under this subsection shall not be considered as receivables of the court, but the records shall show the hours worked.

(7) Failure to comply with an order of the court made pursuant to this section shall be punishable as civil contempt and all courts shall have the power to punish as a civil contempt any convicted person who fails to comply with such an order.

(8) In the event a person serves all or part of a sentence of incarceration for contempt of court in accordance with this subsection, the length of the sentence being in the court's discretion and based upon the amount of the outstanding fines and costs, the court shall cancel all or part of the fines and costs. The amount of fines and costs cancelled shall be commensurate with the amount of the time served.

(9) For any offense in which the penalty is civil, a court may order a person to report to the Commissioner of the Department of Correction, or a person designated by the Commissioner, for work under this subsection and consistent with the procedures of this subsection until the civil penalties and costs are discharged. Notwithstanding paragraph (b)(7) of this section, a person's failure to participate in work ordered under this paragraph is not punishable as contempt of court. A person's failure to participate in work ordered under this paragraph may result in the transfer of the judgment to the Office of State Court Collections Enforcement to be collected according to § 4104 of this title.

(c) Any agency of the State, county or any municipality or any nonprofit organization approved by the court may submit public work projects or proposed assignments to the Department of Correction for certification as approved public work projects under this section. Upon certification the agency will be notified and the Commissioner of the Department of Correction will be authorized to begin to assign convicted persons to the certified project or assignment.

(d) Notwithstanding subsection (a) of this section, where a defendant sentenced to be imprisoned is ordered to pay a fine, costs, restitution or all 3, the court may order an additional sentence of imprisonment in lieu of requiring the payment of the fine, costs, restitution or all 3; provided, however, that this additional sentence of imprisonment may not exceed 30 days, to be served concurrently or consecutively with the sentence originally imposed, as the court may order.

(e) A court having probationary powers may, in its discretion, treat any failure to comply with a court order in respect to fines, costs, restitution or all 3 either as a civil contempt or as if the defendant had been placed on probation and the probation violated; provided, however, that any sentence for violation of probation may not exceed 30 days.

(11 Del. C. 1953, § 4106; 57 Del. Laws, c. 198, § 3; 57 Del. Laws, c. 509; 57 Del. Laws, c. 513, § 4; 59 Del. Laws, c. 145, § 1; 59 Del. Laws, c. 270, § 1; 60 Del. Laws, c. 465, § 1; 62 Del. Laws, c. 220, § 1; 63 Del. Laws, c. 140, § 1; 63 Del. Laws, c. 141, § 9; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 19, § 1; 80 Del. Laws, c. 254, § 1.)

§ 4106. Restitution for property damage or loss.

(a) Any person convicted of stealing, taking, receiving, converting, defacing or destroying property, shall be liable to each victim of the offense for the value of the property or property rights lost to the victim and for the value of any property which has diminished in worth as a result of the actions of such convicted offender and shall be ordered by the court to make restitution. If the court does not require that restitution be paid to a victim, the court shall state its reason on the record. The convicted offender shall also be liable for direct out-of-pocket losses, loss of earnings and other expenses and inconveniences incurred by victim as a direct result of the crime. For each criminal offense resulting in arrest in which property is alleged to have been unlawfully taken, damaged or otherwise diminished in value, a loss statement shall be prepared, by the police or by the victim when there is no police involvement, documenting for the court the value of the property lost or diminished as a direct result of the crime.

(b) In accordance with the evidence presented to the court, the court shall determine the nature and amount of restitution, if any, to be made to each victim of the crime of each convicted offender. The offender shall be ordered to pay a fixed sum of restitution or shall be ordered to work a fixed number of hours under the work referral program administered by the Department of Correction, or both.

(c) In the event a convicted offender is ordered by the court to pay fines, costs or other financial obligations along with restitution, payments shall first be applied to Victim Compensation Fund, next to pay restitution and then to the other payments ordered to be made.

(d) Each court shall establish procedures for the collection and disbursement of funds ordered under this section, including notification of the victim that restitution has been ordered. Such procedures shall at minimum include the following:

(1) All restitution payments shall be disbursed to victims within 90 days of receipt or whenever the accumulated amount of the restitution payments received is $50 or more, whichever event first occurs.

(2) Where there are multiple victims, disbursements shall be in proportion to the amounts owed to each victim, with individuals to receive disbursements in full before insurance companies receive any disbursements.

(3) Any and all interest earned on deposited restitution payments shall be set aside and deposited on at least a quarterly basis to the Victim Compensation Fund.

Any and all principal amounts received as restitution payments which are unclaimed after 5 years from date of receipt shall be deposited in the Victim Compensation Fund.

If, at any time in the future, the victim owed restitution requests the transferred funds, and makes application to the Victim Compensation Fund Board, said moneys will be refunded, following verification by the transferring Court.

(e) An order of restitution may not preclude the victim from proceeding in a civil action to recover damages from the offender. A civil verdict shall be reduced by the amount of restitution paid under the criminal restitution order.

(f) Except as provided under § 9014(c) of this title, restitution may not be ordered to an insurance provider on behalf of a victim to recover the provider's losses due to a crime. An insurance provider may seek a civil judgement to recover losses.

(63 Del. Laws, c. 141, § 1; 66 Del. Laws, c. 174, § 1; 67 Del. Laws, c. 260, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 220, § 1; 83 Del. Laws, c. 441, § 7.)

§ 4107. Annual report.

(a) The Administrative Office of the Courts shall prepare an annual report by February 15 on behalf of the Superior Court, the Family Court, the Court of Common Pleas, the Justice of the Peace Court, and the Office of State Courts Collection Enforcement.

(b) The report under subsection (a) of this section must include information on the following:

(1) Amount of each of the following collected by the Judiciary:

a. Fines.

b. Fees and costs.

c. Assessments.

d. Restitution.

(2) Amount of fines, fees, costs, or assessments retained by the Judiciary and as a percentage of the Judiciary's budget.

(3) Amount of fines, fees, costs, assessments, or restitution distributed to the State, a municipality, or a statutorily-created fund.

(c) The report under subsection (a) of this section must be publicly available on the Administrative Office of the Courts' website or published as part of the Judiciary's annual report.

(d) The Delaware Criminal Justice Information System shall prepare an annual report by February 15 detailing the amount of fines, fees, costs, and assessments collected by entities other than the Judiciary. The report must be publicly available on the Delaware Criminal Justice Information System's website.

(e) The reports by the Administrative Office of the Courts and the Delaware Criminal Justice Information System must be submitted to the President Pro Tempore of the Senate and the Speaker of the House of Representatives, with copies to all members of the General Assembly, the Governor, the Chief Justice, the Attorney General, the Chief Defender, the Director and the Librarian of the Division of Legislative Services, and the Delaware Public Archives.

(83 Del. Laws, c. 441, § 8; 84 Del. Laws, c. 255, § 7.)

Subchapter II

Special Law Enforcement Assistance Fund

§ 4110. Purpose; created.

The General Assembly hereby declares that in order to provide funds to enhance the suppression, investigation and prosecution of criminal activity, promote officer safety, facilitate the training of law-enforcement personnel, further public safety, public education, and community awareness and improve victim services, it is necessary to establish a fund for the use of law-enforcement agencies in the State. This special fund is hereby created and shall be known as the "Special Law Enforcement Assistance Fund."

(63 Del. Laws, c. 140, § 1; 79 Del. Laws, c. 107, § 1.)

§ 4111. Use.

(a) The use of money from the Special Law Enforcement Assistance Fund [SLEAF] must be for the purposes declared in § 4110 of this title. The Attorney General shall allocate resources and approve expenditures in respect of permitted uses in accordance with this

subchapter, including any disbursement guidelines established under § 4113(a) of this title, and shall consider the recommendations of the SLEAF Committee, as defined below, in connection with any such allocation or approval.

(b), (c) [Repealed.]

(63 Del. Laws, c. 140, § 1; 77 Del. Laws, c. 176, § 1; 79 Del. Laws, c. 107, § 1.)

§ 4112. Source of funds.

(a) Upon the forfeiture of any money in a criminal case in any court of this State, the same shall be paid over to the Prothonotary or clerk of the court, as the case may be, who shall collect the same and transmit it to the State Treasurer to be held as special funds for the purposes referred to in §§ 4110 and 4111 of this title. The Special Law Enforcement Assistance Fund shall not include fines, court costs or restitution ordered by the court in any criminal case, nor shall it include bail forfeitures. It shall, however, include any money or the proceeds obtained from the sale or other disposition of any property which is forfeited to the State by determination of the court that the property was:

(1) Used for criminal purposes; or

(2) Obtained as the fruits of a criminal enterprise.

(b) Upon the signing of any forfeiture order pursuant to this section, the clerk of the court or the Prothonotary in which the order was signed shall transmit a copy of said order to the State Treasurer. If the forfeited money is not in the possession of the court clerk or Prothonotary, the money shall be transmitted to the State Treasurer, for deposit into the Special Law Enforcement Assistance Fund directly by the law-enforcement agency which is in possession of the money.

(63 Del. Laws, c. 140, § 1; 63 Del. Laws, c. 356, § 1; 67 Del. Laws, c. 260, § 1.)

§ 4113. Disbursement of funds [For application of this section, see 80 Del. Laws, c. 281, § 3].

(a) The disbursement of funds from this account shall be made by the State Treasurer to a law-enforcement agency only upon written application by the agency and upon authorization by the Attorney General, the Director of the Office of Management and Budget and the Controller General on a form designed for such purpose by the Attorney General and the State Treasurer. Guidelines for appropriate uses of the fund shall be established by the Attorney General with the concurrence of the Director of the Office of Management and Budget and the Controller General.

(b) This application and authorization form must include the following information:

(1) The amount of funds requested;

(2) The anticipated purpose for which such funds are requested;

(3) The amount of any and all funds received by said agency from the Special Law Enforcement Assistance Fund during the previous 5 fiscal years; and

(4) The name of the agency requesting said funds and the name of the individual in that agency who shall be responsible for keeping accurate records as to the use of said funds.

(c) (1) The Attorney General shall determine whether or not the expressed purposes for expenditures requested are:

a. Included within those purposes allowed under this subchapter;

b. Consistent with the disbursement guidelines; and

c. In the best interests of law enforcement.

(2) In determining whether proposed expenditures meet these criteria, the Attorney General shall periodically meet and confer with and consider the recommendations of a special advisory committee with respect to all such proposed expenditures, which special advisory committee is hereby created and shall be known as the "Special Law Enforcement Assistance Fund Committee" or "SLEAF Committee." Thereafter, the Attorney General, with the concurrence of the Director of the Office of Management and Budget and the Controller General, may authorize the expenditures in whole or in part and only then shall the funds be paid to the appropriate law-enforcement agencies. The recommendations of the Special Law Enforcement Assistance Fund Committee shall not be binding on the Attorney General, the Director of the Office of Management and Budget or the Controller General.

(3) The SLEAF Committee shall develop procedures to allow an applicant to submit an application that the applicant believes would be exempted from the definition of public record contained in Chapter 100 of Title 29. Such an application shall not be a public record while the SLEAF Committee reviews the application to determine if the application, or any portion thereof, would be exempted from the definition of public record. If the SLEAF Committee determines the application, or any portion thereof, would not be exempted from the definition of public record, the applicant may withdraw the application within 10 business days of the determination. If the applicant withdraws the application, it shall be exempt from disclosure under Chapter 100 of Title 29 to the extent it would have been exempt prior to being submitted to the SLEAF Committee. If the applicant does not withdraw the application within the allotted 10 business days, the application shall thereafter be subject to Chapter 100 of Title 29.

(d) The methods and procedures established for the application and expenditure of this Fund are not subject to the normal accounting practices set forth in Chapter 65 of Title 29.

(e) All records, applications, approvals, authorizations and reports required by this subchapter shall be subject to Chapter 100 of Title 29. In addition, the SLEAF Committee shall be deemed a public body as defined in Chapter 100 of Title 29. Any records, applications, approvals, authorizations, and reports required by this subchapter may be redacted to the extent permitted by Chapter 100 of Title 29.

(f) For purposes of this subchapter, the SLEAF Committee shall mean an advisory body comprised initially of the following 8 members:

(1) The State Prosecutor, acting on behalf of the Department of Justice, who shall serve as the Chairperson of the SLEAF Committee;

(2) The chief law-enforcement officer or other representative of the Delaware State Police;

(3) The chief law-enforcement officer or other representative of the New Castle County Police Department;

(4) The chief law-enforcement officer or other representative of the Wilmington City Police Department;

(5) The chief law-enforcement officer or other representative of the Dover City Police Department;

(6) An at-large representative of county, municipal and other local law-enforcement agencies located within New Castle County, as designated by the local chiefs' association;

(7) An at-large representative of county, municipal and other local law-enforcement agencies located within Kent County, as designated by the local chiefs' association; and

(8) An at-large representative of county, municipal and other local law-enforcement agencies located within Sussex County, as designated by the local chiefs' association.

The SLEAF Committee shall meet quarterly, at times and locations specified by the Chairperson, to review applications and make recommendations to the Attorney General with respect to applications and the allocation of funds. The SLEAF Committee may adopt such advisory committee bylaws or other rules or procedures governing the SLEAF Committee and the conduct of its affairs as the SLEAF Committee deems appropriate or necessary to carry out its duties under this subchapter.

(63 Del. Laws, c. 140, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 94, §§ 19, 20; 75 Del. Laws, c. 88, § 21(6); 79 Del. Laws, c. 107, § 1; 80 Del. Laws, c. 281, § 1.)

§ 4114. Accounting of funds; permissible types of investigative activities.

(a) Each agency receiving funding from the Special Law Enforcement Assistance Fund during any fiscal year shall render on or before June 30 of each year a full and complete accounting for the use of such funds to the Attorney General, who shall attain such accountings for inspection by the State Auditor. Any funding received from the Special Law Enforcement Assistance Fund during any fiscal year that remains in the hands of any agency at the end of the fiscal year and that has not been earmarked for or allocated to expenditures that were authorized under this subchapter prior to the end of the fiscal year must be returned by the agency to the Special Law Enforcement Assistance Fund unless the agency has requested and received an authorization in writing for an extension of up to 120 days by the Attorney General.

(b) [Repealed.]

(63 Del. Laws, c. 140, § 1; 74 Del. Laws, c. 57, § 2; 78 Del. Laws, c. 28, § 1; 79 Del. Laws, c. 107, § 1.)

§ 4115. Review [For application of this section, see 80 Del. Laws, c. 281, § 3].

Any agency receiving funds from the Special Law Enforcement Assistance Fund shall, on or before July 15, submit a detailed and complete accounting of the disbursement for all such funds from the prior fiscal year to the Auditor of Accounts and the Attorney General. The Auditor and Attorney General shall review said accounting and shall maintain them. The Attorney General shall submit on or before October 1 of each year a report to the Chairperson and Vice-Chairperson of the Joint Finance Committee summarizing the expenditures from this Fund during the preceding fiscal year.

(63 Del. Laws, c. 140, § 1; 80 Del. Laws, c. 281, § 2.)

§ 4116. Excess funds.

If at any time the amount of funds segregated in the Special Law Enforcement Assistance Fund exceeds $500,000, the excess shall be deposited in the General Fund.

(63 Del. Laws, c. 140, § 1; 74 Del. Laws, c. 111, § 33.)

Subchapter III

Sex Offender Management and Public Safety

§ 4120. Registration of sex offenders.

(a) Unless otherwise indicated, the definitions set forth in § 4121(a) of this title shall apply to this section. In addition, when used in this section, the phrase "custodial institution" includes any Level IV or V facility operated by or for the Department of Correction, the Division of Youth Rehabilitative Services or the Delaware Psychiatric Center, or any like institution, and the phrase "temporary resident" shall include any person who is for more than 7 days or for more than an aggregate of 30 days in any 12-month period, employed or works in Delaware, or who is a full- or part-time student in Delaware. A student is any person who attends or enrolls in any public or private educational facility, including, but not limited to, colleges or universities.

(b) (1) Any sex offender who is released, discharged or paroled from any Level IV or Level V facility or other custodial institution after that sex offender has completed a sentence imposed following a conviction for any offense specified in § 4121(a)(4) of this title shall be required to register as a sex offender, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register. The registration shall be completed during the Level IV or V sentence, but not more than 90

days, nor less than 45 days, prior to the offender's release, discharge or parole. The registration information shall be collected from the sex offender by the agency having custody over the sex offender at the time specified herein for registration. This subsection shall apply to any sex offender who is sentenced to serve any portion of the sex offender's sentence at Level IV or V, unless such sentence is suspended in its entirety, in which case subsection (c) of this section shall apply. The registration required by this subsection shall be required whenever the sex offender is released from any Level V facility to any Level IV facility, and again when the offender is released from the Level IV facility.

(2) If an offender is released to a treatment program by the Division of Youth Rehabilitative Services and the date of release could not have been determined 45 days prior to release, registration shall be completed within 48 hours of determining the release date, or upon release, whichever is earlier, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register.

(3) If an offender is attending school, the offender shall inform the principal of the school upon enrollment of the offender's registration, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register.

(c) Any sex offender who is sentenced to Level IV home confinement, or to a period of probation at Level III or below, or who is required to pay a fine of any amount following a conviction for any offense specified in § 4121(a)(4) of this title shall be required to register as a sex offender, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register. The registration information shall be collected from the sex offender by the sentencing court following the conviction, but no later than the time of sentencing.

(d) (1) Registration information shall be collected by the agency or court specified in subsections (b) and (c) of this section on registration forms provided by the Superintendent of the Delaware State Police. The original copy of the completed and executed registration form shall be forwarded by the registering agency or court to the Superintendent of the Delaware State Police within 3 business days following the completion of the form. The completed registration form shall be signed by the sex offender and by a witness to the signature representing the registering agency or court. The Superintendent of the Delaware State Police shall notify the chief law-enforcement officer having jurisdiction over the sex offender's residence, place of employment, and/or study. The notice shall include, but is not limited to, all available registration information pertaining to the sex offender as set forth herein. The registration information shall be immediately entered into DELJIS by the registering agency or court, unless such agency or court does not have access to DELJIS in which case the completed registration form shall be immediately forwarded to the Superintendent of the Delaware State Police who shall immediately enter the registration information into DELJIS. Registration information entered into DELJIS pursuant to this subsection shall be entered into a database of registered sex offenders which shall be developed and maintained by DELJIS. Nothing herein shall prevent the use of the registered sex offender database for any lawful purpose. The Superintendent of the Delaware State Police shall have the authority to audit the registration forms and information, and shall have the authority to require the sex offender to provide revised or additional information, photographs, fingerprints or exemplars if those submitted are deemed to be insufficient, and the sex offender may be required to appear at a Delaware State Police facility for such purposes.

(2) The registration forms shall include, but are not limited to, the following information: the sex offender's legal name, any previously used names, aliases or nicknames, Social Security number, e-mail address or addresses, Internet identifiers, and the age, gender, race and physical description of the sex offender. The registration form shall also include all other known identifying factors, the offense history and the sex offender's current residences or anticipated place of future residences, places of study and/or places of employment, and the registration plate numbers and descriptions of any vehicles owned or operated by the offender, including any watercraft or aircraft with the locations where such vehicles are docked, parked or otherwise stored, copies of that offender's passport, any licenses to engage in an occupation or to carry out a trade or business, and the offender's home telephone number and any cellular telephone numbers. The forms shall also include a statement of any relevant conditions of release, discharge, parole or probation applicable to the sex offender. Additionally, the form shall identify the age of the victim or victims of the offense or offenses and describe the victim's relationship to the offender. The form shall also indicate on its face that false statements therein are punishable by law. A photograph of the offender taken at the time of registration shall be appended to the registration form. Notwithstanding any provision to the contrary, a DNA sample will also be taken from the offender. The resulting DNA profile will be submitted for entry into the Combined DNA Index System (CODIS). All information collected pursuant to this paragraph shall be kept in digitized form in an electronic database maintained by the designated Delaware Police facility responsible for registration.

(e) (1) Any person convicted of any offense specified in the laws of another state, commonwealth, territory, or other jurisdiction of the United States or any foreign government, which is the same as, or equivalent to, any of the offenses set forth in § 4121(a)(4) of this title; or any person convicted of any federal or military offense enumerated in 42 U.S.C. § 16911(5)(A)(iii) and (iv), who is a permanent or temporary resident of the State on the date of that person's conviction shall register as a sex offender within 3 business days of conviction, unless the person is confined in a penal institution located outside the State at the time of conviction, in which case the person shall register as a sex offender within 3 business days of that person's first return to the State of Delaware after release from custody. Any such person shall register at a designated Delaware State Police facility, and the Delaware State Police shall be deemed to be the registering agency.

(2) Any person convicted of any offense specified in the laws of another state, the United States or any territory of the United States, or any foreign government, which is the same as, or equivalent to, any of the offenses set forth in § 4121(a)(4) of this title; or any

person convicted of any federal or military offense enumerated in 42 U.S.C. § 16911(5)(A)(iii) and (iv), who is not a permanent or temporary resident of the State on the date of that person's conviction, and who thereafter becomes a permanent or temporary resident of the State shall register as a sex offender within 3 business days of establishing permanent or temporary residency within the State. Any such person shall register at a designated Delaware State Police facility, and the Delaware State Police shall be deemed to be the registering agency.

(3) Any person convicted as described in paragraph (1) or paragraph (2) of this subsection, who is thereafter released on probation, parole or any form of early release which is supervised or monitored by the Department of Correction or the Division of Youth Rehabilitative Services shall be registered pursuant to this subsection. The Department of Correction or the Division of Rehabilitative Services shall ensure and verify such registration.

(f) (1) Any sex offender who is required to register pursuant to this section who thereafter changes the sex offender's own name, residence address or place of employment and/or study shall reregister with the Delaware State Police by appearing in person within 3 business days of the change. The sex offender shall be required to provide adequate verification of residence at the stated address. The Superintendent of the Delaware State Police shall be deemed to be the registering agency and shall comply with the requirements of subsection (d) of this section.

(2) Within 3 business days of receiving a re-registration as provided in paragraph (f)(1) of this section, the Superintendent of the Delaware State Police shall notify the chief law-enforcement officer having jurisdiction over the sex offender's prior residence, place of employment or study and the chief law-enforcement officer having jurisdiction over the offender's new residence, or place of employment or study. The notice shall include, but is not limited to, all available registration information pertaining to the sex offender as set forth in subsection (d) of this section.

(3) Whenever a sex offender who is required to register re-registers pursuant to this subsection, notification shall be provided pursuant to the requirements of § 4121 of this title.

(4) Any agency or court which collects information from a sex offender pursuant to this section shall, at the time of registration, provide written notice to the sex offender of the offender's duty to re-register pursuant to this section. The written notice shall also inform the offender that if the offender changes residence to another State, such new address must be registered with the Delaware State Police, with the law-enforcement agency having jurisdiction over the offender's new residence, and that the offender must comply with any sex offender registration requirement in the new state of residence. The written notice shall also inform the offender that the offender must also comply with any sex offender registration requirement in any state where the offender is employed, carries on a vocation, or is a student. The written notice shall be provided on forms provided by the Superintendent of the Delaware State Police. Receipt of this written notice shall be acknowledged by the sex offender, who shall sign the original copy of the written notice. The original copy of the written notice shall be forwarded to the Superintendent of the Delaware State Police along with the registration form. Failure of the registering agency to provide such written notice shall not constitute a defense to any prosecution based upon a violation of this section.

(5) The requirements of this subsection shall apply regardless of whether the sex offender's new residence is located within or without the State.

(6) Any sex offender who is required to re-register pursuant to this subsection, who is serving a sentence at Level II, III or IV at the time of such re-registration, may re-register with the agency supervising that sex offender's sentence within 3 business days of the change of address.

(7) For purposes of this subchapter, "residence" shall be defined as the real property the person owns as a place of abode, the real property the person leases as a place of abode, the real property the person uses as a place of abode, the real property where the person vacations for a period greater than 2 weeks within a 1-year period, and the real property where the person is an overnight guest for a period greater than 2 weeks within a 1-year period. A sex offender may have more than 1 address that meets this definition of residence at the same time. If the sex offender has more than 1 residence address at the same time, the offender must register each of those addresses. In any prosecution for the offense of failing to re-register as a sex offender, the prosecution shall not be required to prove that the sex offender abandoned one residence in order to establish that the offender established another residence.

(g) Any person required to register as a sex offender pursuant to this section shall be required periodically to verify that the person continues to reside at the address provided at the time of registration. The frequency of periodic address verification shall be:

(1) Every 90 days for life following the date of completion of the initial registration form if the person is designated to Risk Assessment Tier III pursuant to § 4121 of this title. A Tier III offender shall appear in person at locations designated by the Superintendent of the Delaware State Police to verify all registry information every 90 days for life; or

(2) Every 6 months after the completion of the initial registration form, if the person is designated to Risk Assessment Tier II pursuant to § 4121 of this title. A Tier II offender shall appear in person at locations designated by the Superintendent of the Delaware State Police to verify all registry information every 6 months unless relieved of registration obligations.

(3) Every year after the completion of the initial registration form, if the person is designated to Risk Assessment Tier I pursuant to § 4121 of this title. A Tier I offender shall appear in person at locations designated by the Superintendent of the Delaware State Police to verify all registry information every 12 months unless relieved of registration obligations.

There shall be assessed an annual administrative fee in the amount of $30 collected from the offender by January 31 of each year payable at the time of verification.

(h) Any sex offender required to register pursuant to this section who seeks relief or redesignation must petition the Superior Court for release from the registration requirements as set forth in § 4121(e)(2) of this title.

(i) Any agency responsible for complying with this section may promulgate reasonable regulations, policies and procedures for the purpose of implementing this section. Such rules, regulations, policies and procedures shall be effective and enforceable upon their adoption by the agency, and shall not be subject to Chapter 11 or Chapter 101 of Title 29.

(j) All elected and appointed public officials, public employees or public agencies including but not limited to the members of the Sex Offender Management Board, are immune from civil liability for any discretionary decision to release relevant information, unless it is shown that the official, employee or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public. There shall be no civil legal remedies available as a cause of action against any public official, public employee or public agency for failing to release information as authorized in this section.

(k) A warrant shall issue for any sex offender required to register who knowingly or recklessly fails to register or re-register or provide verification on the date on which it is required pursuant to this section or § 4121 of this title or to otherwise comply with any of the provisions of this section or § 4121 of this title, and any sex offender doing so shall be guilty of a class G felony.

(l) Any registration or re-registration information collected by the Superintendent of the Delaware State Police pursuant to this section shall be promptly forwarded to the Federal Bureau of Investigation for use pursuant to 42 U.S.C. § 14072 [repealed, but see 42 U.S.C. § 16919].

(m) Notwithstanding any law, rule or regulation to the contrary, any law-enforcement agency may release relevant information collected pursuant to this section where it is necessary to protect the public concerning a sex offender required to register pursuant to this section, except that the identity of a victim of the offense, any arrests not resulting in conviction, the offender's social security number and travel and/or immigration document numbers shall not be released.

(69 Del. Laws, c. 282, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 397, §§ 1-19, 23[24], 24[25], 25[26], 23[27]; 71 Del. Laws, c. 203, §§ 1-5; 71 Del. Laws, c. 429; 73 Del. Laws, c. 122, §§ 2, 3; 73 Del. Laws, c. 245, §§ 1-3; 73 Del. Laws, c. 418, §§ 1, 2; 76 Del. Laws, c. 25, §§ 1-8; 76 Del. Laws, c. 88, § 4; 76 Del. Laws, c. 374, §§ 1-3; 77 Del. Laws, c. 148, §§ 1-11; 78 Del. Laws, c. 367, § 1; 79 Del. Laws, c. 123, § 3.)

§ 4120A. Sex Offender Management Board.

(a) The General Assembly hereby declares that the comprehensive evaluation, identification, classification, treatment, and continued monitoring of sex offenders who are subject to the supervision of the criminal justice system is necessary in order to work toward the reduction of recidivism by such offenders. Therefore, the General Assembly hereby creates a Board which shall develop and standardize the evaluation, identification, classification, treatment, and continued monitoring of sex offenders at each stage of the criminal justice system so that such offenders will curtail recidivistic behavior and the protection of victims and potential victims will be enhanced. The General Assembly hereby recognizes that some sex offenders cannot or will not respond to treatment and that, in creating the Board described in this section, the General Assembly does not intend to imply that all sex offenders can be successful in treatment. Further, the General Assembly mandates that each member agency as outlined below must act in accordance with the standards established by the Board.

(b) *Definitions.* — As used in this section, unless the context otherwise requires, the following words and phrases shall have the meaning ascribed to them in this section:

(1) "Board" means the Sex Offender Management Board created in this § 4120A.

(2) "Sex offender" or "offender" means any person who has ever been convicted or adjudicated of an offense as defined in Title 11, §§ 761 and 4121(a)(4) of this title.

(3) "Treatment" means therapy, monitoring, and supervision of any sex offender which conforms to the standards created by the State's Sex Offender Management Board.

(c) *Creation of the Sex Offender Management Board.* — (1) There is hereby created, in the Delaware Department of Safety and Homeland Security, a Sex Offender Management Board which shall consist of the following members:

a. The President Judge of the Delaware Superior Court, or the President Judge's designee;

b. The Commissioner of the Delaware Department of Correction, or the Commissioner's designee;

c. A representative from the Office of Probation and Parole appointed by the Commissioner of the Delaware Department of Correction;

d. The Chairperson of the Board of Parole or the Chairperson's designee;

e. A representative from the Division of Prevention and Behavioral Health Services appointed by the Secretary for the Delaware Department of Children, Youth and Their Families;

f. One licensed mental health professional with experience in treatment of adult sex offenders appointed by the Governor, and who shall serve on the Board for a term of 4 years;

g. One member at-large who can represent sex abuse victims, victims' rights organizations, and/or the community at large appointed by the Governor, and who shall serve on the Board for a term of 4 years;

h. The Secretary for the Delaware Department of Health and Social Services, or the Secretary's designee;

i. The Superintendent of the Delaware State Police, or the Superintendent's designee;

j. One member who is a recognized expert in the treatment of juvenile sex offenders, appointed by the Governor, and who shall serve on the Board for a term of 4 years;

k. The Attorney General for the State, or the Attorney General's designee;

l. The Chief Defender of the State, or the Chief Defender's designee;

m. The Chairperson of the Police Chief's Council of Delaware, or the Chairperson's designee;

n. Two members appointed by the Governor who are recognized experts in the field of sexual abuse and who can represent sexual abuse victims and victims' rights organizations, and who shall serve on the Board for a term of 4 years;

o. A member of the Delaware State Police Sex Offender Registry appointed by the Superintendent of the Delaware State Police;

p. The Executive Director of Delaware Criminal Justice Information System (DELJIS), or the Executive Director's designee;

q. A representative from Youth Rehabilitative Services appointed by the Secretary for the Delaware Department of Children, Youth and Their Families;

r. One member from the Delaware Department of Education who has experience in dealing with juvenile sex offenders in the public school system appointed by the Secretary for the Delaware Department of Education;

s. The Chief Judge of Family Court or the Chief Judge's designee; and,

t. The Secretary for the Delaware Department of Safety and Homeland Security, or the Secretary's designee.

(2) Members shall serve without compensation.

(3) The Secretary of the Delaware Department of Safety and Homeland Security shall preside as Chairperson of the Board or shall appoint a presiding officer for the Board from among the members appointed in paragraph (c)(1) of this section who shall preside over the Board as Chairperson for a period not to exceed 2 years.

(4) The Board shall elect from amongst its membership, a Vice Chair, who shall become the Chairperson of the Board upon the expiration of the Chairperson's term.

(5) The Board shall meet on a regular basis. Meetings shall be subject to all relevant open-meeting laws and regulations.

(6) The Sex Offender Management Board shall adopt bylaws, within 6 months from the enactment of this section, to govern itself. Such bylaws shall include, at a minimum, the factors outlined within this section.

(7) The Board may, as needed and appropriate, create subcommittees, task forces, or working groups to explore specific issues or opportunities or to provide subject matter expertise in the promulgation of the rules and regulations and the development of standards and programs as they relate to the evaluation, identification, classification, treatment and continued monitoring of sex offenders within the criminal justice system.

(8) The Board shall adopt rules and regulations to effectuate compliance by all affected agencies.

(d) The duties and authority of the Sex Offender Management Board shall be as follows:

(1) Prior to January 1, 2011, the Board shall develop and prescribe a standardized procedure for the evaluation, identification, and classification of adult and juvenile sex offenders. Such procedure shall provide for an evaluation, identification, and classification of the offender and recommend behavior management, monitoring, and treatment based upon the knowledge that some sex offenders are extremely habituated and that there is no known cure for the propensity to commit sexual abuse. The Board shall develop and implement measures of success based upon a no-cure policy for intervention. The Board shall develop and implement methods of intervention for sex offenders which have as a priority the physical and psychological safety of victims and potential victims and which are appropriate to the needs of the particular offender, so long as there is no reduction of the safety of victims and potential victims.

(2) Prior to January 1, 2011, the Board shall develop guidelines and standards for a system of programs for the treatment of sex offenders which can be utilized by offenders who are incarcerated or under the supervision of the Department of Correction or the Board of Parole. The programs developed pursuant to this subsection shall be as flexible as possible so that such programs may be utilized by each offender to prevent the offender from harming victims and potential victims. Such programs shall be structured in such a manner that the programs provide a continuing monitoring process as well as a continuum of treatment programs for each offender as that offender proceeds through the criminal justice system and may include, but shall not be limited to, group counseling, individual counseling, outpatient treatment, inpatient treatment, or treatment in a therapeutic community. Also, such programs shall be developed in such a manner that, to the extent possible, the programs continue to be accessible by all offenders in the criminal justice system.

(3) On or before January 1, 2011, the Board shall consult on and approve the risk assessment screening instrument to assist any sentencing authority in determining the likelihood that an offender would commit 1 or more sex offenses. In carrying out this duty, the Board shall consider sex offender risk assessment research and shall consider as 1 element the risk posed by a sex offender who suffers from a mental abnormality, psychosis, or personality disorder that makes the person more likely to engage in sexually violent predatory offenses.

(4) The Board shall develop criteria for measuring a sex offender's progress in treatment. The criteria shall be designed to assist the Courts and the State Board of Parole in determining whether a sex offender would pose an undue public safety threat to the community if that sex offender were released from incarceration, released to a reduced level of supervision, or discharged from probation or parole. The criteria shall not limit the decision-making authority of the courts or the State Board of Parole.

(5) The Board shall research and analyze the effectiveness of the monitoring and tracking, evaluation, identification, classification, and treatment procedures and programs developed pursuant to this section. The Board shall also develop and prescribe a system for implementation of the guidelines and standards developed pursuant to this § 4120A and for tracking offenders who have been subjected to evaluation, identification, classification, and treatment pursuant to this section. The Board shall implement the guidelines and standards so developed in this § 4120A by no later than January 1, 2012.

(6) The Board shall research and analyze the safety issues raised by living arrangements for and the location of sex offenders within the community, including but not limited to shared or structured living arrangements. At a minimum, the Board shall consider the issues raised by the location of sex offender residences, especially in proximity to public or private schools and child care facilities, and public notification of the location of sex offender residences. On or before July 15, 2010, the Board shall prepare and submit a report concerning the research and analysis conducted pursuant to this paragraph and any related legislative recommendations. The Board shall submit the report to the Public Safety, Judiciary and Corrections Committees of the House of Representatives and the Senate. On or before January 1, 2012, the Board shall adopt such guidelines as it may deem appropriate regarding the living arrangements and location of sex offenders. The Board shall accomplish the requirements specified in this paragraph within existing appropriations.

(7) Prior to January 1, 2012, the Board, in collaboration with law-enforcement agencies, victim advocacy organizations, the Department of Education, and the Department of Safety and Homeland Security, shall develop, for use by schools, educational materials regarding general information about sex offenders, safety concerns related to sex offenders, and other relevant material. The Board shall provide these materials to the Department of Education, and the Department of Education shall make these materials available to schools in the State.

(8) The Board and the individual members thereof shall be immune from any liability, whether civil or criminal, for the good faith performance of the duties of the Board as specified in this section except when such performance constitutes wilful or wanton conduct or gross negligence.

(e) Each sex offender sentenced by a court for an offense committed on or after January 1, 2010, shall be required, as a part of any sentence to probation, community corrections, or incarceration with the Department of Correction, to undergo treatment to the extent appropriate to such offender based upon the recommendations of the evaluation and identification.

(f) Each sex offender placed on parole by the State Board of Parole on or after January 1, 2010, shall be required, as a condition of such parole, to undergo treatment based upon the recommendations of the evaluation and identification regarding such offender during the offender's incarceration or any period of parole.

(g) The Board shall require any person who applies for placement, including any person who applies for continued placement, on the list of persons who may provide sex offender treatment and sex offender services pursuant to this section, to submit fingerprints and other necessary information in order to obtain the following:

(1) A report of the applicant's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Bureau of Identification Central Repository contains no such information relating to that person.

(2) A report of the applicant's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be the intermediary for the purposes of this section and the Board shall be the screening point for the receipt of said federal criminal history records.

(3) The Board may obtain such other information and recommendations from third parties which may be relevant to the applicant's fitness to provide sex offender treatment and sex offender services pursuant to this section.

(h) The Board shall use the information obtained from the State and national criminal history record check and the current background investigation in determining whether to place or continue the placement of the person on the approved provider list.

(76 Del. Laws, c. 88, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 148, §§ 30-32; 77 Del. Laws, c. 327, § 210; 79 Del. Laws, c. 123, § 4; 80 Del. Laws, c. 26, § 3.)

§ 4121. Community notification of sex offenders on probation, parole, conditional release, or release from confinement.

(a) As used in this subchapter:

(1) "Community notification" means notice that includes, to the extent possible, all information required to be included in the searchable records available to the public under paragraph (a)(3) of this section and that is provided by any method devised specifically to notify members of the public who are likely to encounter a sex offender. Methods of notification may include door-to-door appearances, mail, e-mail, telephone, fax, newspapers or notices, or any combination of methods to schools, licensed day care facilities, public libraries, any other organization, company or individual upon request, and other accessible public facilities within the community. "Community notification" also includes notice provided through an alert system added to the Delaware State Police Sex Offender Central Registry website that allows governmental agencies; public officials such as county or municipal executives, mayors,

commissioners, or council members; and members of the general public to register to receive updates by geographical region whenever a sex offender is added to, deleted from, or has any change in status on the registry created pursuant to § 4120 of this title.

(2) "Conviction" and "convicted" shall include, in addition to their ordinary meanings, adjudications of delinquency and persons who enter a plea of guilty, or are found guilty but mentally ill or not guilty by reason of insanity, as provided in § 401 of this title.

(3) a. "Searchable records available to the public" means records regarding every sex offender who is designated to Risk Assessment Tier II or III under this section.

b. The searchable records available to the public must include all of the following information:

1. The last verified addresses for the sex offender.

2. The specific sex offense or offenses of which the sex offender was convicted.

3. The date of each conviction.

4. All information required for registration under § 4120(d)(2) of this title as is practicable given the method of community notification. But the sex offender's relationship to the victim may not be included in the searchable records available to the public and age of the victim may be searchable only by age ranges birth to 11 years, 12 to 15 years, 16 to 17 years, and 18 years and older.

c. The searchable records available to the public may also include other information designated for public access by the Superintendent of the Delaware State Police. But the searchable records available to the public must not include the identity of the victims, the Social Security number of the offender, and arrests that do not result in conviction.

d. The searchable records available to the public must include a warning that information should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address. The warning must note that any such action could result in civil or criminal penalties.

e. The searchable records available to the public must be searchable by the name of the sex offender, by suitable geographic criteria, and by as many other required data elements as is technically feasible.

f. The searchable records available to the public must be made available upon request through police agencies and the Delaware State Police Sex Offender Central Registry website.

g. The Delaware State Police, shall maintain the searchable records available to the public as required by this section and § 4120 of this title. The records must be updated as often as practicable, but not less than every 3 months.

(4) "Sex offender" means any person who is, or has been:

a. Convicted of any of the offenses specified in §§ 765 through 780, § 787(b)(3)-(4), § 1100A, §§ 1108 through 1112B, § 1335(a)(6), § 1335(a)(7), § 1352(2), § 1353(2) or § 1361(b) of this title, or of any attempt or conspiracy to commit any of the aforementioned offenses; or

b. Any juvenile who is adjudicated delinquent of any offense which would constitute any of the offenses set forth in paragraph (a)(4)a. of this section if that juvenile delinquent had been charged as an adult; or

c. Convicted or adjudicated delinquent of any offense specified in the laws of another state, commonwealth, territory, or other jurisdiction of the United States requiring registration in that jurisdiction, or a conviction or adjudication in any foreign government, which is the same as, or equivalent to, any of the offenses set forth in paragraph (a)(4)a., (a)(4)b. or (a)(4)d. of this section; or convicted of any federal or military offense enumerated in 42 U.S.C. § 16911(5)(A)(iii) and (iv); or

d. Convicted or adjudicated delinquent of a violation of § 783(4) or § 783(6) or § 783A(4) or § 783A(6) of this title; or

e. Charged by complaint, petition, information or indictment with any of the offenses set forth in paragraph (a)(4)a., (a)(4)b., (a)(4)c. or (a)(4)d. of this section, and who thereafter pleads guilty to any offense included in the originally charged offense, as provided in § 206 of this title, if the person is thereafter designated as a sex offender by the sentencing judge pursuant to subsection (c) of this section; or

f. Convicted or adjudicated delinquent of any of the offenses set forth in paragraph (a)(4)a., (a)(4)b., (a)(4)c. or (a)(4)d. of this section, or of any offense which is the same as or equivalent to such offenses as the same existed and were defined under the laws of this State existing at the time of such conviction; or

g. Any person convicted after June 27, 1994, of a violation of § 764 of this title if the person had previously been convicted of the same offense or any other offense set forth in this paragraph, and the previous conviction occurred within 5 years of the date of the conviction for the current offense.

(b) Upon a person's conviction or adjudication of delinquency or at the time of sentencing for any offense set forth in paragraph (a)(4)a., (a)(4)b., (a)(4)d., (a)(4)e., (a)(4)f., or (a)(4)g. of this section, the court shall inform the person that the person shall be designated as a sex offender and that a Risk Assessment Tier will be assigned to that person by the court, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register.

(c) Following the sentencing of a person convicted or adjudicated delinquent for any offense described in paragraph (a)(4)e. of this section, or following a finding by the sentencing court that the person has violated the terms of that person's own probation or parole as set forth in paragraph (a)(4)f. of this section, the sentencing court shall assign the defendant to the Risk Assessment Tier applicable for the originally charged offense, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register.

(d) Sex offenders shall be assigned to a Risk Assessment Tier as follows, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register:

(1) *Risk Assessment Tier III.* — Any sex offender convicted or adjudicated delinquent of any of the following offenses shall be designated by the court to Risk Assessment Tier III:

a. Rape in the first degree, rape in the second degree, rape in the third degree if the offense involved a child under the age of 13 or the offense involved force or threat of physical violence, or was without consent, unlawful sexual contact in the first degree, unlawful sexual intercourse in the first or second degree, unlawful sexual penetration in the first or second degree, unlawful sexual contact in the first degree, sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree, sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree if the offense involved a child under the age of 13, continuous sexual abuse of a child, sexual exploitation of a child, trafficking in persons where the victim is under the age of 13 or the offense involved sexual servitude of a minor through force or threat of force, sexual extortion if the offense involved force or threat of force, dangerous crime against a child if the offense involved force or the threat of force; or

b. Kidnapping in the first or second degree, if a purpose of the crime was to take or entice any child less than 18 years of age from the custody of the child's parent, guardian, or lawful custodian, where the defendant is not a parent, step parent, or guardian of the victim, to inflict physical injury upon the victim, or to violate or abuse the victim sexually; or

c. Federal offenses found at 18 U.S.C. § 2241, § 2242, § 2244, or any comparable military offense specified by the Secretary of Defense under § 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. § 951 note); or

d. Any attempt or conspiracy to commit any of the offenses set forth in paragraph (d)(1)a. or (d)(1)b. of this section; or

e. Any offense specified in the laws of another state, any territory of the United States or any foreign government, which is the same as, or equivalent to, any offense set forth in paragraphs (d)(1)a. through (d)(1)e. of this section; or

f. Upon motion of the State, any person convicted of any felony set forth in §§ 761 through 777 or §§ 1108 through 1112A of this title which is not otherwise set forth in paragraphs (d)(1)a. through (d)(1)c. of this section, if the victim of the offense had not yet reached that victim's sixteenth birthday at the time of the crime, and if the sentencing court determines by a preponderance of the evidence, after it weighs all relevant evidence which bears upon the particular facts and circumstances of the offense and the character and propensities of the offender, that public safety will be enhanced by assigning the offender to Risk Assessment Tier III.

(2) *Risk Assessment Tier II.* — Risk Assessment Tier II. Any sex offender convicted or adjudicated delinquent of any of the following offenses shall be designated by the court to Risk Assessment Tier II:

a. Rape in the third degree unless the offense involved a child under 12 or the offense involved force or the threat of physical violence, rape in the fourth degree, sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree unless the offense involved a child under 12, unlawful sexual contact in the second degree, unlawful sexual intercourse in the third degree, unlawful sexual penetration in the third degree, sexual extortion unless the offense involved force or the threat of force, bestiality, dangerous crime against a child unless the offense involved force or the threat of force, unlawfully dealing in child pornography, possession of child pornography, providing obscene materials to a person under the age of 18, sexual solicitation of a child, trafficking in persons where the offense involved sexual servitude of a minor aged 13 to 17 years old unless the offense involved force or threat of force, promoting prostitution in the second degree, promoting prostitution in the first degree; or

b. Federal offenses found at 18 U.S.C. § 2243, § 2244, § 2251, § 2251A, § 2252, § 2252A, § 2260, § 2421, § 2422(b), § 2423(a); or

c. Any comparable military offense specified by the Secretary of Defense under § 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. § 951 note); or

d. Any attempt or conspiracy to commit any of the offenses set forth in paragraph (d)(2)a. of this section; or

e. Any offense specified in the laws of another state, the United States, any territory of the United States or any foreign government, which is the same as, or equivalent to, any of the offenses set forth in paragraph (d)(2)a. and b. of this section; or

f. Upon motion of the State, any person convicted of any offense set forth in §§ 761 through 767 or §§ 1108 through 1111 or § 1321(5) or § 1352(2) or § 1353(2) of this title which is not otherwise specified in this paragraph, or in paragraph (d)(1) of this section, if the sentencing court determines by a preponderance of the evidence after it weighs all relevant evidence which bears upon the particular facts and circumstances or details of the commission of the offense and the character and propensities of the offender, that public safety will be enhanced by assigning the offender to Risk Assessment Tier II; or

g. Any person described in paragraph (a)(4)f. of this section.

(3) *Risk Assessment Tier I.* — Risk Assessment Tier I. Any sex offender not otherwise designated to Risk Assessment Tier II or III in accord with paragraphs (d)(1) and (2) of this section shall be designated by the court to Risk Assessment Tier I. Moreover, offenders convicted of the following federal offenses shall register under Tier I: 18 U.S.C. § 1591; § 1801; § 2252(CP) [sic]; § 2252B; § 2252C; § 2422(a); § 2423(b), (c); § 2424; § 2425; or any comparable military offense specified by the Secretary of Defense under § 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. § 951 note).

(4) Notwithstanding any provision of this section to the contrary, any sex offender who has previously been convicted of any offense set forth in paragraph (d)(1) or paragraph (d)(2) of this section and who is thereafter convicted of any second or subsequent offense set forth in paragraph (d)(1) or paragraph (d)(2) of this section shall be designated to Risk Assessment Tier III.

(5) Notwithstanding any provision in this section to the contrary, any sex offender who has previously been convicted of any offense set forth in paragraph (d)(3) of this section and who is thereafter convicted of an offense which would otherwise result in a designation to Risk Assessment Tier I shall be designated to Risk Assessment Tier II if the conviction for the subsequent offense occurred within 5 years of the previous conviction.

(6) Notwithstanding any provision in this section or in § 4120 of this title to the contrary, any person who would otherwise be designated as a sex offender pursuant to this section and to § 4120 of this title may petition the sentencing court for relief from such designation, and from all obligations imposed by this section and § 4120 of this title if:

a. The Tier II or Tier III offense for which the person was convicted was a misdemeanor and the victim was not a child under 13 years of age; and

b. The person has not previously been convicted of a violent felony, or any other offense set forth in paragraph (a)(4) of this section, or of any offense specified in the laws of another state, the United States or any territory of the United States, or any offense in a foreign jurisdiction which is the same as, or equivalent to, such offenses; and

c. The sentencing court determines by a preponderance of the evidence that such person is not likely to pose a threat to public safety if released from the obligations imposed by this section, and by § 4120 of this title.

Notwithstanding anything in this paragraph to the contrary, no person designated as a Tier II or Tier III sex offender shall be afforded relief from designation as a sex offender if the victim of any of the offenses for which the person was convicted were less than 12 years old at the time of the crime, unless the person was also less than 18 years old at the time of the crime in which case the prohibition set forth in this sentence shall not apply. Any person seeking relief from designation as a sex offender under this paragraph shall file a petition with the sentencing court prior to sentencing requesting such relief. The petition shall be granted or denied by the sentencing court after it weighs all relevant evidence which bears upon the particular facts and circumstances of the offense, and the character and propensities of the offender.

(7) In any case in which the State seeks to have the offender designated to a Risk Assessment Tier higher than the presumptive tier, the motion required by this subsection shall be filed by the State before sentencing, provided that such a motion shall be unnecessary if any written plea agreement relating to the conviction clearly informs the defendant of the State's intention to request a higher Tier designation.

(e) (1) Any person designated as a sex offender under this section who is required to register shall comply with the registration provisions of § 4120 of this title as follows:

a. For life, if the sex offender is designated to Risk Assessment Tier III, or if the person is designated to Risk Assessment Tier I or II, and has previously been convicted of any of the offenses specified in paragraph (a)(4)a., (a)(4)c. or (a)(4)d. of this section;

b. For 25 years following the sex offender's release from Level V custody, or for 25 years following the effective date of any sentence to be served at Level IV or below, if the person is designated to Risk Assessment Tier II, and is not otherwise required to register for life pursuant to this subsection, except that any time spent at any subsequent period of Level V custody shall not be counted against such 25-year period; or

c. For 15 years following the sex offender's release from Level V custody, or for 15 years following the effective date of any sentence to be served at Level IV or below, if the person is designated to Risk Assessment Tier I, and is not otherwise required to register for life pursuant to this subsection, except that any time spent at any subsequent period of Level V custody shall not be counted against such 15-year period.

(2) Notwithstanding any provision in this section to the contrary:

a. Any sex offender designated to Risk Assessment Tier III may petition to the Superior Court for redesignation to Risk Assessment Tier II if 25 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no Level IV or V sentence was imposed, and the offender has successfully completed an appropriate sex offender treatment program certified by the State, has not been convicted of any crime (other than a motor vehicle offense) during such time. If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 25 years have elapsed from the date of the subsequent conviction or finding of a violation, during which time no additional convictions or findings of violation can have occurred. Notwithstanding any provision of this section or § 4120 of this title to the contrary, any sex offender who is redesignated from Risk Assessment Tier III to Risk Assessment Tier II shall continue to comply with the registration and re-registration requirements imposed by § 4120(g) upon Tier III offenders for life. Any re-designation from Risk Assessment Tier III to Risk Assessment Tier II shall not release the offender from the requirement of lifetime registration or address verification every 90 days pursuant to § 4120(g)(1)(a) of this title [repealed] and paragraph (e)(1) of this section.

b. Any sex offender designated to Risk Assessment Tier II may petition the Superior Court for redesignation to Risk Assessment Tier I if the victim was not a child under 18 years of age and 10 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no Level IV or V sentence was imposed, and the offender has successfully completed an appropriate sex offender treatment program certified by the State and has not been convicted

of any crime (other than a motor vehicle offense) during such time. If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 10 years have elapsed from the date of the subsequent conviction or finding of violation, during which time no additional convictions or findings of violation can have occurred.

c. Any sex offender designated to Risk Assessment Tier I may petition the Superior Court for relief from designation as a sex offender, and from all obligations imposed pursuant to this section and § 4120 of this title, if 10 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no Level IV or V sentence was imposed, and if the offender has successfully completed an appropriate sex offender treatment program certified by the State and has not been convicted of any crime (other than a motor vehicle offense) during such time. If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 10 years have elapsed from the date of the subsequent conviction or finding of violation, during which time no additional convictions or findings of violation can have occurred.

d. The Superior Court shall not grant a petition for redesignation or relief filed pursuant to this subsection unless:

1. The sex offender establishes, by a preponderance of the evidence, that the public safety no longer requires preservation of the original designation; and

2. The Court provides the Attorney General with notice of the petition and with a reasonable period of time to be heard upon the matter.

e. When considering a petition for redesignation, the Court shall weigh all the relevant evidence which bears upon the character and propensities of the offender, and the facts and circumstances of that offender's prior offenses. The Court may in its discretion hold a hearing on the petition. If the Court grants the petition, it shall promptly notify the Sex Offender registry.

(f) Whenever a sex offender is released, discharged or paroled from any Level IV or V or other custodial institution after that sex offender has completed a Level IV or V sentence imposed following a conviction for any offense specified in paragraph (a)(4) of this section, the agency having custody over the sex offender at the time of the release, discharge or parole shall provide written notice of the release, discharge or parole to the Superintendent of the Delaware State Police, to the chief law-enforcement officer having jurisdiction over the offender's intended residence, to the original arresting law-enforcement agency and to the Attorney General. Such notice shall be provided not more than 90 days, and not less than 45 days, prior to the offender's release, discharge or parole. The notice shall include, but is not limited to, the sex offender's legal name, and any previously used names, aliases or nicknames, and the age, gender, race and physical characteristics of the sex offender, a photograph of the offender taken within 90 days of that offender's release, along with any other known identifying factors, the person's offense history and that person's place of anticipated future residence, school and/or employment. The notice shall also include a statement of any relevant conditions of release, discharge, parole or probation applicable to the offender. Additionally, the form shall identify or describe that offender's relationship to the victim. Notwithstanding any law, rule or regulation to the contrary, no person shall be released from any Level V facility unless and until that person has made a good faith effort to cooperate with the appropriate authorities pursuant to this section except that no such person shall be held at Level V pursuant to this subsection beyond the maximum period of such custody originally ordered by the sentencing court. The notice required by this subsection shall be required whenever the offender is released from any Level V facility to any Level IV facility, and again when such offender is released from the Level IV facility.

(g) Whenever a sex offender is sentenced to a period of probation at Level III or below, or is required to pay a fine in any amount following a conviction for any offense specified in paragraph (a)(4) of this section, the sentencing court shall provide the notice specified in subsection (f) of this section to the entities specified therein. This subsection shall not apply whenever a sex offender is sentenced to serve a portion of that sex offender's sentence at Level IV or Level V, unless such sentence is suspended in its entirety. Notice pursuant to this subsection shall be provided within 3 business days of sentencing.

(h) Upon receipt of the notice specified in subsections (f) and (g) of this section, the Attorney General shall use any reasonable means to notify the victim or victims of the crime or crimes for which the sex offender was convicted of the release or sentencing unless the victim has requested not to be notified. Such notice may include any information provided pursuant to subsections (f) and (g) of this section.

(i) Whenever a sex offender assigned to Risk Assessment Tier II or III provides registration information under § 4120 of this title, the chief law-enforcement officer of the local jurisdiction where the offender intends to reside, or the Superintendent of the State Police if no local police agency exists, shall provide public notification as follows:

(1) For sex offenders assigned to Risk Assessment Tier II, notification must consist of searchable records available to the public, and may also consist of community notification under paragraph (*l*)(3) of this section.

(2) For sex offenders assigned to Risk Assessment Tier III, notification must consist of searchable records available to the public and community notification.

(3) For sex offenders assigned to Tier II or III, notice must be given to any school the offender plans to attend and to the chief law-enforcement officer of the local jurisdiction where the offender plans to study or be employed.

(j) A complete register of all persons convicted of any of the offenses specified in paragraph (a)(4) of this section, who are thereafter designated sex offenders pursuant to this section, shall be created, maintained and routinely updated and audited by the Delaware State Police. The register shall be immediately accessible by the use of DELJIS computer by all law-enforcement agencies. The register shall be searchable by the name of the sex offender and by suitable geographic criteria.

(k) Notwithstanding any law, rule or regulation to the contrary, if after the exercise of due diligence by the sex offender, the offender is unable to secure an anticipated place of future residence, for the purposes of this subsection the offender shall be designated as "homeless." "Homeless persons" must report their habitual locale, park or locations during the day and night, public buildings, restaurants, and libraries frequented. The term "homeless" shall also include any person who anticipates a future place of residence in or at any temporary homeless shelter or other similar place of temporary residence for 7 or more days. The fact that a sex offender has secured an anticipated place of future residence at a homeless shelter or other similar place of temporary residence shall be reported by the court or agency having custody of the offender, along with the name and address of the shelter or residence as required by subsections (h) and (i) of this section, but such information shall not be included in any public notification required or permitted by subsection (i) or subsection (j) of this section, except that such information shall be provided to the agency, organization or entity having supervisory or operational authority over such shelter or similar place of temporary residence. Notwithstanding any law, rule or regulation to the contrary, any sex offender who is designated as "homeless" pursuant to this section shall verify the sex offender's own registration information as follows:

(1) A Tier III sex offender designated as "homeless" shall appear in person at locations designated by the Superintendent of the Delaware State Police to verify all registration information every week following the date of completion of the initial registration form;

(2) A Tier II sex offender designated as "homeless" shall appear in person at locations designated by the Superintendent of the Delaware State Police to verify all registration information every 30 days following the date of completion of the initial registration form;

(3) A Tier I sex offender designated as "homeless" shall appear in person at locations designated by the Superintendent of the Delaware State Police to verify all registration information every 90 days following the date of completion of the initial registration form.

(*l*) (1) All elected public officials, public employees and public agencies are immune from civil liability for any discretionary decision to release relevant information unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant information to other employees, officials, or public agencies, and the general public.

(2) There shall be no civil legal remedies available as a cause of action against any public official, public employee or public agency for failing to release information as authorized in this section.

(3) Any information contained in searchable records available to the public may be used in any manner by any person or by any public, governmental or private entity, organization or official, or any agent thereof, for any purpose consistent with the enhancement of public safety.

(m) Notwithstanding any law, rule or regulation to the contrary, upon a finding of probable cause that a sex offender has failed to comply with any provision of § 4120 of this title, the sex offender may be designated to Risk Assessment Tier III until such time as the agency or court to which the sex offender is obligated to provide notice determines that the sex offender is again in compliance with § 4120 of this title. In such cases, the agency or court which investigates the alleged noncompliance shall, upon a finding of probable cause that a violation has occurred, immediately notify the Superintendent of the Delaware State Police that a violation of the provisions of § 4120 of this title has occurred and that, as a result, the sex offender is redesignated to Risk Assessment Tier III until such time as the offender complies fully with § 4120 of this title. The agency or court shall also immediately notify the Superintendent of the Delaware State Police when the sex offender is again in compliance with § 4120 of this title, at which time the sex offender will be returned to that sex offender's originally designated Risk Assessment Tier.

(n) Notwithstanding any provision of this section to the contrary, any sex offender convicted of any offense specified in paragraph (a)(4)c. of this section shall be designated to a Risk Assessment Tier by the court. The designation shall be in accord with the provisions of subsection (d) of this section.

(o) When a sex offender is designated to a Risk Assessment Tier pursuant to this section, that fact shall be made a part of any written or electronic sentencing order produced by the sentencing court, and shall be entered into the DELJIS system by the sentencing court. The agency responsible for registering the offender shall have the information entered into the DELJIS system for any offender designated pursuant to subsection (n) of this section.

(p) Any agency responsible for complying with this section shall be permitted to promulgate reasonable regulations, policies and procedures to implement this statute. Such rules, regulations, policies and procedures shall be effective and enforceable upon their adoption by the agency, and shall not be subject to Chapter 11 or Chapter 101 of Title 29.

(q) This section shall be effective notwithstanding any law, rule or regulation to the contrary.

(r) Any sex offender who knowingly or recklessly fails to comply with any provision of this section shall be guilty of a class G felony.

(s) Subject to § 4122 of this title, this section shall apply to all persons convicted.

(t) (1) a. For purposes of this paragraph (t)(1), "school and child-care notification" means notice of all of the following information:

1. That searchable records available to the public can be obtained online at the Delaware State Police Sex Offender Central Registry website or in person at a Delaware State Police troop or the Delaware State Bureau of Identification.

2. That the public can register to receive community notifications through the Delaware State Police Sex Offender Central Registry website.

3. The Uniform Resource Locator address of the Delaware State Police Sex Offender Central Registry website.

b. A school, school district, and licensed child-care provider shall provide school and child-care notification as follows:

1. By posting the school and child-care notification on its website if the school, school district, or licensed child-care provider has a website.

2. By sending the school and child-care notification to faculty, staff, and a parent or guardian of an enrolled child in writing at least annually if the school, school district, or licensed child-care provider does not have a website.

3. By providing the school and child-care notification to staff, faculty, or a parent or guardian of an enrolled child upon a request for sex offender registry information.

(2) The physical posting of community notifications in public school buildings and licensed child care facilities is prohibited.

(3) Schools shall ensure that students are taught personal safety and awareness skills in an age-appropriate manner consistent with the Delaware Health Education Curriculum Framework.

(u) Notwithstanding any provision of this section or title to the contrary, any Tier III sex offender being monitored at Level IV, III, II or I, shall as a condition of their probation, wear a GPS locator ankle bracelet paid for by the probationer. The obligation to pay for the GPS locator ankle bracelet shall not apply to any juvenile who is adjudicated delinquent and designated a Tier III sex offender pursuant to this title.

(v) If any provision of this subchapter or any amendment hereto, or the application thereof to any person, thing or circumstances is held invalid, such invalidity shall not affect the provisions or application of this subchapter or such amendments that can be given effect without the invalid provisions or application, and to this end the provisions of this subchapter and such amendments are declared to be severable.

(71 Del. Laws, c. 429, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 410, §§ 1-3; 72 Del. Laws, c. 480, § 16; 73 Del. Laws, c. 122, §§ 1, 4, 5, 6, 7, 8, 9, 10, 11; 73 Del. Laws, c. 172, § 4; 73 Del. Laws, c. 177, § 1; 73 Del. Laws, c. 230, § 2; 73 Del. Laws, c. 245, §§ 4-8; 74 Del. Laws, c. 26, § 1; 76 Del. Laws, c. 25, §§ 9-51; 76 Del. Laws, c. 123, § 1; 76 Del. Laws, c. 374, §§ 4-24; 77 Del. Laws, c. 148, §§ 12-29; 77 Del. Laws, c. 318, §§ 6, 11, 12; 78 Del. Laws, c. 406, § 1; 79 Del. Laws, c. 58, § 1; 79 Del. Laws, c. 123, § 5; 79 Del. Laws, c. 276, § 5; 80 Del. Laws, c. 175, § 9; 85 Del. Laws, c. 126, § 1.)

§ 4122. Transition provisions.

(a) Section 4121 of this title and this section shall be retroactively applicable to any person convicted of a registering offense.

(b) Notwithstanding any law, rule or regulation to the contrary, as soon after March 1, 1999, as is practicable, the Attorney General shall apply § 4121 of this title to those persons identified by subsection (a) of this section, and will redesignate those persons to a Risk Assessment Tier pursuant to § 4121 of this title. Upon the redesignation, the Attorney General will provide notice of such redesignation by registered or certified mail to the person's last registered address, or by any other means which creates a reliable record of the receipt by the offender of such notice or of the attempts to provide the offender with the notice. The notice shall advise the person as to the duties and consequences imposed by law upon persons designated to the particular Risk Assessment Tier, and of the person's right to elect a hearing on the issue of the new Risk Assessment Tier designation. The Attorney General shall have the authority to promulgate reasonable regulations to implement this subsection. Such regulations shall be effective and enforceable upon their adoption, and shall not be subject to Chapters 11 and 101 of Title 29.

(c) Any sex offender redesignated to a Risk Assessment Tier pursuant to this section shall have the right to request that the Superior Court review and finally determine such designation. The request shall be made in writing and delivered to the Superior Court within 10 days of the receipt by the offender of the notice described in subsection (b) of this section. The Superior Court shall promptly forward a copy of the request to the Attorney General. Failure of the offender to deliver the request to the Superior Court within the time limits specified shall constitute a waiver of the offender's right to review.

(d) Following receipt of timely notice by the Superior Court, it shall hold a hearing to determine the appropriateness of the Attorney General's new Risk Assessment Tier designation. The person and the Attorney General shall have the right to be heard at the hearing. This hearing shall not be held unless written notice of the hearing is provided to the Attorney General at least 30 days prior to the scheduled hearing date. A copy of the application for review shall be provided to the Attorney General along with written notice of the hearing date.

(e), (f) [Repealed.]

(g) Whenever an offender fails to elect a hearing in a timely fashion, the Attorney General shall forward notice of the redesignated Risk Assessment Tier to the Superintendent of the Delaware State Police and to the chief law-enforcement officer of the jurisdiction where the person is residing at the time of the redesignation. In the event the person requests a hearing, at the conclusion of the hearing, the Attorney General shall forward a notice of the redesignated Risk Assessment Tier to the Superintendent of the Delaware State Police and to the chief law-enforcement officer of the jurisdiction where the person is residing at the time of the redesignation. The Superintendent of the Delaware State Police shall enter information pertaining to any redesignation pursuant to this section into the DELJIS computer system.

(h) Upon Risk Assessment Tier redesignation pursuant to this section, §§ 4120 and 4121 of this title shall apply. Until redesignation, §§ 4120 and 4336 of this title shall remain in full force and effect.

(71 Del. Laws, c. 429, § 2; 76 Del. Laws, c. 374, § 25; 80 Del. Laws, c. 167, § 1; 81 Del. Laws, c. 277, § 1.)

§ 4123. Juveniles adjudicated delinquent of sex offenses.

(a) Notwithstanding any law, rule or regulation to the contrary, this section shall apply to any sex offender who was a juvenile on the date of the offense and adjudicated delinquent by the Family Court.

(b) Prior to sentencing any juvenile adjudicated delinquent of a sex offense, Family Court shall order and receive a comprehensive evaluation, risk assessment and treatment recommendations for said juvenile by a certified mental health professional who specializes in the evaluation and/or treatment of juvenile sex offenders. If said juvenile is already in treatment at the time of adjudication, the current treatment provider may provide the evaluation, risk assessment and treatment recommendations required above.

(c) Following receipt by Family Court and the parties of the comprehensive evaluation, risk assessment and treatment recommendations required by subsection (b) of this section, Family Court shall conduct a sentencing hearing in which the Court shall address appropriate treatment for the juvenile, and the registration and community notification requirements for the juvenile as follows:

(1) If the juvenile was at least 14 years old on the date of the sex offense, and was adjudicated delinquent of any of the offenses enumerated in § 770(a)(3)a., § 771, § 772, § 773, § 776, or § 778 of this title, or of conspiracy, under §§ 512 and 513 of this title, or attempt, under § 531 of this title, to commit any of those enumerated offenses, the juvenile shall be immediately registered as a sex offender as prescribed by § 4120 of this title, and the community shall be provided notification as prescribed by § 4121 of this title.

(2) If the juvenile does not fit the criteria set forth in paragraph (c)(1) of this section above, the Family Court shall have the discretion to relieve the juvenile of registration and community notification requirements or to assign such juvenile to a lower tier than that prescribed by § 4121 of this title if the Court determines by a preponderance of the evidence that such juvenile is not likely to pose a threat to public safety if relieved of the requirements or assigned to a lower tier. In making this determination, the Family Court shall consider all relevant factors, including:

a. The risk the juvenile poses to the victim, the community and to other potential victims;

b. The nature and circumstances of the offense;

c. The impact on the victim, including the effects of registration and community notification;

d. The comprehensive evaluation, risk assessment and treatment recommendations or outcomes for the juvenile required by subsection (b) of this section;

e. The likelihood of successful rehabilitation, if known; and

f. The adverse impact of public registration on the juvenile and the rehabilitative process.

(d) A juvenile may through the juvenile's parent or guardian, or upon becoming an adult, petition Family Court for a registry review hearing. For offenses enumerated in paragraph (c)(1) of this section, a registry review petition may be filed no sooner than 5 years from the date of the adjudication. For all other offenses, a registry review petition may be filed no sooner than at the conclusion of treatment or 2 years from the date of the adjudication, whichever comes first. Following a hearing, Family Court may maintain the current tier designation for the adjudicated offense pursuant to § 4121 of this title, or where it appears by a preponderance of the evidence after consideration of the factors set forth in paragraph (c)(2) of this section above that modification will not pose a threat to public safety, the Court may relieve the person of all registration and notification requirements or assign the person to a lower tier. All such petitions shall be filed in the Family Court in the county in which such case was adjudicated. The provisions of this paragraph apply to adjudications occurring both before and after October 18, 2023.

(e) The decision of the Family Court with regard to discretionary registration, modification, or removal may be appealed by the State or the juvenile.

(79 Del. Laws, c. 123, § 6; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 79, § 15; 82 Del. Laws, c. 150, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 239, § 1.)

Subchapter IV

Animal Abuse Offender List

(85 Del. Laws, c. 166, § 1.)

§ 4130. Definitions.

As used in this subchapter:

(1) "Animal" means as defined in § 1325(a) of this title.

(2) "Animal abuse offense" means any of the following offenses as defined in this title:

a. Section 775. Bestiality.

b. Section 1325. Cruelty to animals; class A misdemeanor; class F felony.

c. Section 1325A. The unlawful trade in dog or cat byproducts; class B misdemeanor, class A misdemeanor.

e. Section 1326. Animals; fighting and baiting prohibited; class E felony.

(3) "Conviction" or "convicted" means a judgment entered by a Delaware court upon a plea of guilty, a plea of nolo contendere, a plea of guilty to a criminal charge where the defendant does not admit to the factual basis of the crime but agrees to the consequences of the plea, a probation before judgment discharge without judgment of conviction notwithstanding the provisions of § 4218(g) of this title, a finding of guilt by a jury or the court, or a finding of not guilty after trial as a result of the defense of mental disease or defect pursuant to this title.

(85 Del. Laws, c. 166, § 1.)

§ 4131. Animal abuse offender list; public website.

(a) The Office of Animal Welfare shall create a list of adult individuals convicted of an animal abuse offense and publicly post the list on the Office of Animal Welfare's website with information set forth in subsection (b) of this section.

(b) The list shall include all of the following:

(1) The individual's legal name and any previously-used names, aliases, or nicknames.

(2) Date of birth.

(3) A photograph taken of the individual as part of the criminal booking process.

(4) The crime in which the individual was convicted.

(c) The list may not include any of the following:

(1) The individual's Social Security number.

(2) The individual's driver license number.

(3) Any other state or federal identification number.

(d) The court clerk shall forward a copy of the judgment and date of birth of all individuals convicted of an animal abuse offense to the Office of Animal Welfare within 21 calendar days of the date of judgment.

(e) The Office of Animal Welfare shall maintain the individual's information described in subsection (b) of this section for as long as follows:

(1) Five years for an individual convicted of a misdemeanor animal abuse offense.

(2) Fifteen years for an individual convicted of a felony animal abuse offense.

(f) The Office of Animal Welfare shall remove the individual's information described in subsection (b) of this section, provided that the individual is not convicted of another animal abuse offense during the period of time the individual was on the list.

(85 Del. Laws, c. 166, § 1.)

§ 4132. Rules.

The Office of Animal Welfare may promulgate rules necessary for implementation of this chapter.

(85 Del. Laws, c. 166, § 1.)

§ 4133. Early removal.

(a) An individual who has been entered on the animal abuse offender list subject to a misdemeanor conviction may file a petition for removal 2 years after the date of conviction.

(b) An individual who has been entered on the animal abuse offender list subject to a felony conviction may file a petition for removal 7 years after the date of conviction.

(c) A petition for removal must be filed with the court that entered the conviction of the individual.

(d) The petitioner shall cause a copy of the petition for removal filed under this section to be served upon the Attorney General's Office, who may file an answer to the petition within 30 days thereafter.

(e) The court shall have the discretion to remove an individual from the animal abuse offender list. In making this determination, the court shall consider the following factors, including:

(1) The nature and circumstances of the original conviction.

(2) Any incidents of animal abuse or neglect while on the animal abuse offender list.

(3) The criminal history of the individual.

(4) Compliance with the terms of probation, if applicable.

(5) The risk, if any, the individual poses to animals.

(6) The rehabilitation, if any, of the individual, or successful completion of a program of evaluation and treatment.

(7) The adverse impact of registration on the individual and the rehabilitative process, including the impact on employment opportunities.

(f) An individual who obtains an expungement from the underlying conviction that placed them on the animal abuse offender list must be automatically removed from the animal abuse offender list and the public website maintained by the Office of Animal Welfare subject to § 4372(e) of Title 11.

(85 Del. Laws, c. 166, § 1.)

Part II
Criminal Procedure Generally
Chapter 42
Classification of Offenses; Sentences

§ 4201. Transition provisions.

(a) Felonies are classified, for the purpose of sentence, into 7 categories:

(1) Class A felonies;

(2) Class B felonies;

(3) Class C felonies;

(4) Class D felonies;

(5) Class E felonies;

(6) Class F felonies;

(7) Class G felonies.

(b) Any crime or offense which is designated as a felony but which is not specifically given a class shall be a class G felony and shall carry the sentence provided for said class felony.

(c) (1) The following felonies shall be designated as violent felonies:

Title 11, Section	Crime
513	Conspiracy First Degree
602	Aggravated Menacing
604	Reckless Endangering First Degree
605	Abuse of a Pregnant Female in the Second Degree
606	Abuse of a Pregnant Female in the First Degree
607	Strangulation
612	Assault in the Second Degree
613	Assault in the First Degree
614	Assault on a Sports Official
[Former] 615	Assault by Abuse
617	Criminal Youth Gangs
629	Vehicular Assault in the First Degree
630	Vehicular Homicide in the Second Degree
630A	Vehicular Homicide in the First Degree
631	Criminally Negligent Homicide
632	Manslaughter
633	Murder by Abuse or Neglect in the Second Degree
634	Murder by Abuse or Neglect in the First Degree
635	Murder in the Second Degree
636	Murder in the First Degree
645	Promoting Suicide
768	Unlawful Sexual Contact in the Second Degree
769	Unlawful Sexual Contact in the First Degree
770	Former Unlawful Sexual Penetration in the Third Degree or Rape in the Fourth Degree
771	Former Unlawful Sexual Penetration in the Second Degree or Rape in the Third Degree
772	Former Unlawful Sexual Penetration in the First Degree or Rape in the Second Degree
773	Former Unlawful Sexual Intercourse in the Third Degree or Rape in the First Degree
774	Sexual Extortion
775	Bestiality
776	Continuous Sexual Abuse of Child
777	Dangerous Crime Against a Child
777A	Sex Offender Unlawful Sexual Conduct Against a Child

778	Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the First Degree
778A	Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the Second Degree
782	Unlawful Imprisonment in the First Degree
783	Kidnapping in the Second Degree
783A	Kidnapping in the First Degree
787	Trafficking of an Individual, Forced Labor and Sexual Servitude
802	Arson in the Second Degree
803	Arson in the First Degree
825	Burglary in the Second Degree
826	Burglary in the First Degree
826A	Home Invasion
831	Robbery in the Second Degree
832	Robbery in the First Degree
835	Carjacking in the Second Degree
836	Carjacking in the First Degree
846	Extortion
1103B	Child Abuse in the Second Degree
1103C	Child Abuse in the First Degree
1108	Sexual Exploitation of a Child
1109	Unlawfully Dealing in Child Pornography
1112A	Sexual Solicitation of a Child
1112B	Promoting Sexual Solicitation of a Child
1250	Assault in the First Degree Against a Law-Enforcement Animal
1253	Escape After Conviction, if convicted as a Class C Felony or a Class B Felony
1254	Assault in a Detention Facility
1256	Promoting Prison Contraband (Deadly Weapon)
1257(a)	Resisting Arrest with Force or Violence
1302	Riot
1304	Hate Crimes
1312	Stalking
1338	Bombs, Incendiary Devices, Molotov Cocktails and Explosive Devices
1339	Adulteration (Causing Injury or Death)
1353	Promoting Prostitution in the First Degree
1442	Carrying a Concealed Deadly Weapon (Firearm Offense)
1444	Possessing a Destructive Weapon
1445	Unlawfully Dealing With a Dangerous Weapon
1447	Possessing a Deadly Weapon During the Commission of a Felony
1447A	Possessing a Firearm during the Commission of a Felony
1448(e)	Possession of a Deadly Weapon by Persons Prohibited (Firearm or Destructive Weapon Purchased, Owned, Possessed or Controlled by a Violent Felon).
1449	Wearing Body Armor During the Commission of a Felony
1455	Engaging in a Firearms Transaction on Behalf of Another (Subsequent Offense)
1503	Racketeering
3533	Aggravated Act of Intimidation

Title 16, Section	Crime
1136	Abuse/Mistreatment/Neglect of a Patient
4751	Former Manufacture/Delivery/Possession With Intent to Deliver a Controlled or Counterfeit Controlled Substance, Manufacture or Delivery Causing Death

4752	Former Manufacture/Delivery/Possession With Intent to Deliver a Controlled or Counterfeit Controlled Substance
4752A	Former Unlawful Delivery of a Noncontrolled Substance
4753A	Former Trafficking in Marijuana, Cocaine, Illegal Drugs, Methamphetamine, LSD, Designer Drugs or MDMA
4752	Drug Dealing — Aggravated Possession; Class B Felony
4753	Drug Dealing — Aggravated Possession; Class C Felony
4754(1)	Drug Dealing — Aggravated Possession; Class D Felony
4761	Former Distribution to Minors
4761(c) and (d)	Illegal Delivery of Prescription Drugs
4774	Delivery of Drug Paraphernalia to a Minor

Title 31, Section	Crime
3913	Abuse/Neglect/Exploit/Mistreat an Adult who is Impaired

(2) Any attempt to commit any felony designated in paragraph (c)(1) of this section as a violent felony shall also be designated as a violent felony.

(67 Del. Laws, c. 130, § 6; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 477, § 1; 71 Del. Laws, c. 285, § 14; 71 Del. Laws, c. 467, § 10; 72 Del. Laws, c. 34, § 5; 72 Del. Laws, c. 43, § 6; 72 Del. Laws, c. 197, § 7; 72 Del. Laws, c. 480, § 17; 74 Del. Laws, c. 106, § 8; 75 Del. Laws, c. 421, § 2; 76 Del. Laws, c. 66, § 3; 76 Del. Laws, c. 343, § 5; 77 Del. Laws, c. 313, § 2; 77 Del. Laws, c. 318, § 13; 78 Del. Laws, c. 13, §§ 8-10; 78 Del. Laws, c. 224, § 19; 78 Del. Laws, c. 252, § 9; 78 Del. Laws, c. 406, § 3; 79 Del. Laws, c. 276, § 3; 80 Del. Laws, c. 28, § 1; 80 Del. Laws, c. 173, § 1; 82 Del. Laws, c. 215, § 1; 82 Del. Laws, c. 216, § 1; 82 Del. Laws, c. 217, §§ 6-8; 84 Del. Laws, c. 126, § 10; 84 Del. Laws, c. 223, § 1.)

§ 4202. Classification of misdemeanors.

(a) Misdemeanors are classified for the purpose of sentence into 2 categories:

(1) Class A misdemeanors;

(2) Class B misdemeanors.

(b) Any offense defined by statute which is not specifically designated a felony, a class A misdemeanor, a class B misdemeanor or a violation shall be an unclassified misdemeanor or an environmental misdemeanor or environmental violation.

(67 Del. Laws, c. 130, § 6; 70 Del. Laws, c. 436, § 10; 79 Del. Laws, c. 421, § 13.)

§ 4203. Violations.

There shall be a class of offenses denominated violations. No offense is a violation unless expressly declared to be a violation in this Criminal Code or in the statute defining the offense.

(11 Del. C. 1953, § 4203; 58 Del. Laws, c. 497, § 2.)

§ 4204. Authorized disposition of convicted offenders.

(a) Every person convicted of an offense shall be sentenced in accordance with this Criminal Code, with the exception of an environmental misdemeanor as defined in § 1304 of Title 7. This section applies to all judgments of conviction, whether entered after a trial or upon a plea of guilty or nolo contendere.

(b) A person convicted of a class A felony may be sentenced to life imprisonment in accordance with § 4205 of this title, unless the conviction is for first-degree murder, in which event § 4209 of this title shall apply. Notwithstanding any other statute, a sentence under § 4209 of this title may not be suspended or reduced by the court.

(c) When a person is convicted of any offense other than a class A felony the court may take the following action:

(1) *Impose a sentence involving an Accountability Level I sanction.* — Such sanctions include imposition of a fine as provided by law for the offense or placement of the offender upon unsupervised probation with or without special conditions, or with or without the imposition of a fine as provided by law for the offense;

(2) *Impose a sentence involving an Accountability Level II sanction.* — Such a sanction includes a placement of the offender upon supervised probation amounting to field supervision rather than intensive supervision, with or without special conditions, or with or without the imposition of a fine as provided by law for the offense;

(3) *Impose a sentence involving an Accountability Level III sanction.* — Such sanctions include placement of the offender upon intensive supervision or placement of the offender upon community service, with or without special conditions, or with or without the imposition of a fine as provided by law for the offense. Such intensive supervision shall entail at least the equivalent of 1 hour of supervision per day and no more than 56 hours of supervision per week;

(4) *Impose a sentence involving an Accountability Level IV sanction.* — Such sanctions include placement of the offender upon partial confinement under house arrest under the supervision of the Department of Correction or commitment of the offender to the Department

of Correction under partial confinement to a half-way house or restitution center or placement of the offender in a residential treatment facility, all with or without special conditions, and all with or without the imposition of a fine as provided by law for the offense;

(5) *Impose a sentence involving an Accountability Level V sanction.* — Such a sentence consists of the commitment of the offender to the Department of Correction for a period of incarceration, with or without the imposition of a fine provided by law for the offense;

(6) Impose a period of incarceration, with or without the imposition of a fine provided by law for the offense, and placement of the offender in a less restrictive sanction, with or without special conditions, to commence when the offender is released from incarceration;

(7) Suspend the imposition or execution of sentence, or suspend a portion thereof;

(8) Impose any sentence as authorized in this subsection to include any special condition such as the payment of restitution to the victim or victims of the crime for which the offender is being sentenced and/or participation in a drug/alcohol outpatient treatment program, job training program, mental health treatment program, education program, community service program or other like programs. With regard to any such programs, the offender may be ordered to pay a fee covering, in whole or in part, the costs of such program and such fees shall be based upon the offender's ability to pay therefor;

(9) Wherever a victim of crime suffers a monetary loss as a result of the defendant's criminal conduct, the sentencing court shall impose as a special condition of the sentence that the defendant make payment of restitution to the victim in such amount as to make the victim whole, insofar as possible, for the loss sustained. Notwithstanding any law, rule or regulation to the contrary, for the purposes of ensuring the payment of restitution the court shall retain jurisdiction over the offender until the amount of restitution ordered has been paid in full;

(10) Whenever restitution is ordered pursuant to paragraph (c)(9) of this section or any other applicable statute or rule, and if deemed appropriate to ensure or facilitate the collection of restitution from the defendant or if otherwise required by statute, the court may impose a sentence involving an Accountability Level I—Restitution Only sanction. Such a sanction shall be limited to the placement of the offender upon unsupervised probation, and the conditions of such probation shall be limited to those that are necessary to ensure or facilitate the collection of restitution. No offender shall be found to be in violation of the conditions of such a sanction unless the offender is found to be in violation of an applicable restitution order.

(d) Notwithstanding anything in this Criminal Code to the contrary, probation or a suspended sentence shall not be substituted for imprisonment where the statute specifically indicates that a prison sentence is a mandatory sentence, a minimum sentence, a minimum mandatory sentence or a mandatory minimum sentence, or may not otherwise be suspended.

(e) The court may authorize the payment of a fine in installments. When imposing probation the court shall direct that the offender be subject to the supervision of the Department of Correction and the court order shall specify those conditions under which the offender may remain at liberty on probation.

(f) In committing an offender to the Department of Correction the court shall fix the maximum term of incarceration.

(g) Where modification of judgment is not provided by rule of court, the court may modify a judgment within 90 days after it is ordered. Dispositions other than commitment to the Department of Correction, and such commitments which are revoked, shall not entail the loss by the offender of any civil rights, except as provided in the state Constitution.

(h) The court may direct that a person placed on probation be released on entering into a recognizance, with or without surety, during such period as the court directs, to appear and receive sentence when called upon, and, in the meantime, to keep the peace and be of good behavior.

(i) The court may, if it thinks proper, direct that the offender pay the costs of the prosecution or some portion thereof, and may further impose terms and conditions to be complied with by the offender during any period which it deems proper.

(j) At any time within the period mentioned in the recognizance, but not afterwards, the court may, upon being satisfied by information on oath that the offender has failed to observe any of the conditions of recognizance, or any of the terms or conditions of probation, issue an order for the offender's apprehension and thereupon, after proper hearing, impose sentence upon the offender.

(k) (1) Except as provided in this subsection, notwithstanding any statute, rule, regulation or guideline to the contrary, the court may direct as a condition to a sentence of imprisonment to be served at Level V or otherwise that all or a specified portion of said sentence shall be served without benefit of any form of early release, good time, furlough, work release, supervised custody or any other form of reduction or diminution of sentence.

(2) For the purposes of this subsection, statutes which authorize early release, good time, furlough, work release, supervised custody, or reduction or diminution of sentence include §§ 4205(h) and (i), 4206(g) and (h), 4381, 6533, 6533A [repealed] and 6537-6539 of this title, but do not include § 4217 of this title.

(3) The provisions of this subsection shall be applicable only to sentences of imprisonment at Level V for 1 year or less, or to sentences of imprisonment at Level V which are equal to the statutory maximum Level V sentence available for the crime or offense.

(*l*) Except when the court imposes a life sentence or sentence of death, whenever a court imposes a period of incarceration at Level V custody for 1 or more offenses that totals 1 year or more, then that court must include as part of its sentence a period of custodial supervision at either Level IV, III or II for a period of not less than 6 months to facilitate the transition of the individual back into society. The 6-month transition period required by this subsection may, at the discretion of the court, be in addition to the maximum sentence of imprisonment established by the statute.

(m) As a condition of any sentence, and regardless of whether such sentence includes a period of probation or suspension of sentence, the court may order the offender to engage in a specified act or acts, or to refrain from engaging in a specified act or acts, as deemed necessary by the court to ensure the public peace, the safety of the victim or the public, the rehabilitation of the offender, the satisfaction of the offender's restitution obligation to the victim or the offender's financial obligations to the State, or for any other purpose consistent with the interests of justice. The duration of any order entered pursuant to this subsection shall not exceed the maximum term of commitment provided by law for the offense or 1 year, whichever is greater; provided that in all cases where no commitment is provided by law the duration of such order shall not exceed 1 year. A violation of any order issued pursuant to this subsection shall be prosecuted pursuant to § 1271 of this title. Any such prosecution pursuant to § 1271 of this title shall not preclude prosecution under any other provision of this Code.

(n) Whenever a court imposes a sentence inconsistent with the presumptive sentences adopted by the Sentencing Accountability Commission, such court shall set forth on the record its reasons for imposing such penalty.

(11 Del. C. 1953, § 4204; 58 Del. Laws, c. 497, § 2; 62 Del. Laws, c. 259, § 2; 66 Del. Laws, c. 134, §§ 1, 2; 67 Del. Laws, c. 130, §§ 6, 17, 18; 67 Del. Laws, c. 260, § 1; 67 Del. Laws, c. 350, §§ 1, 33; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 436, § 11; 71 Del. Laws, c. 32, § 1; 71 Del. Laws, c. 98, § 5; 71 Del. Laws, c. 154, § 1; 74 Del. Laws, c. 27, §§ 1-3; 85 Del. Laws, c. 76, § 3.)

§ 4204A. Youth convicted in Superior Court.

(a) [Repealed.]

(b) When a child who has not reached that child's eighteenth birthday is sentenced in Superior Court to a period of incarceration, such sentence shall initially be served in a juvenile facility upon imposition of the sentence and such child shall remain in the custody of or be transferred forthwith to the Division of Youth Rehabilitative Services until the child's eighteenth birthday, at which time such child shall be transferred forthwith to the Department of Correction to serve the remaining portion of said sentence.

(1) If a child has reached the child's sixteenth birthday has been sentenced in Superior Court, the Department of Services for Children, Youth and Their Families ("The Department") may file a motion in Superior Court to place the child in a secured detention facility other than a facility operated by the Department because the Department's secured detention facilities are at or beyond capacity or the child poses a security risk to self or other youth served by the Department in the facilities it operates. If a motion is filed, Superior Court shall conduct an evidentiary hearing unless the parties reach an agreement.

(2) After an evidentiary hearing, the Superior Court may order the child to be placed in a secured detention facility not operated by the Department if the Court finds by clear and convincing evidence that the Department's secured detention facilities are at or beyond capacity and the child's safety or health is at risk by remaining at a facility operated by the Department. If the Court makes such a finding, the Department shall thereafter provide the Court with a status on the capacity of the Department's secured detention facilities at least weekly, and no child may be held in a secured detention facility for adults for more than 30 days.

(3) After an evidentiary hearing, the Superior Court may order the child to be placed in a secured detention facility not operated by the Department if the Court finds by clear and convincing evidence that the child is a danger to self or other youth served by the Department in the facilities it operates and the child's needs would be better served at a facility not operated by the Department.

(c) [Repealed.]

(d) (1) Notwithstanding any provision of this title to the contrary, any offender sentenced to an aggregate term of incarceration in excess of 20 years for any offense or offenses other than murder first degree that were committed prior to the offender's eighteenth birthday shall be eligible to petition the Superior Court for sentence modification after the offender has served 20 years of the originally imposed Level V sentence.

(2) Notwithstanding any provision of this title to the contrary, any offender sentenced to a term of incarceration for murder first degree when said offense was committed prior to the offender's eighteenth birthday shall be eligible to petition the Superior Court for sentence modification after the offender has served 30 years of the originally imposed Level V sentence.

(3) Notwithstanding any provision of this subsection or title to the contrary, any offender who has petitioned the Superior Court for sentence modification pursuant to this subsection shall not be eligible to submit a second or subsequent petition until at least 5 years have elapsed since the date on which the Court ruled upon the offender's most recent petition. Further, the Superior Court shall have the discretion at the time of each sentence modification hearing to prohibit a subsequent sentence modification petition for a period of time in excess of 5 years if the Superior Court finds there to be no reasonable likelihood that the interests of justice will require another hearing within 5 years.

(4) Notwithstanding the provisions of § 4205 or § 4217 of this title, any court rule or any other provision of law to the contrary, a Superior Court Judge upon consideration of a petition filed pursuant to this subsection (d), may modify, reduce or suspend such petitioner's sentence, including any minimum or mandatory sentence, or a portion thereof, in the discretion of the Court. Nothing in this section, however, shall require the Court to grant such a petitioner a sentence modification pursuant to this section.

(5) The Superior Court shall have the authority to promulgate appropriate rules to regulate the filing and litigation of sentence modification petitions pursuant to this paragraph.

(69 Del. Laws, c. 353, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 597, § 2; 71 Del. Laws, c. 5, §§ 2-4; 72 Del. Laws, c. 149, § 2; 79 Del. Laws, c. 37, § 4; 83 Del. Laws, c. 40, § 2.)

§ 4205. Sentence for felonies.

(a) A sentence of incarceration for a felony shall be a definite sentence.

(b) The term of incarceration which the court may impose for a felony is fixed as follows:

(1) For a class A felony not less than 15 years up to life imprisonment to be served at Level V except for conviction of first degree murder in which event § 4209 of this title shall apply.

(2) For a class B felony not less than 2 years up to 25 years to be served at Level V.

(3) For a class C felony up to 15 years to be served at Level V.

(4) For a class D felony up to 8 years to be served at Level V.

(5) For a class E felony up to 5 years to be served at Level V.

(6) For a class F felony up to 3 years to be served at Level V.

(7) For a class G felony up to 2 years to be served at Level V.

(c) In the case of the conviction of any felony, the court shall impose a sentence of Level V incarceration where a minimum sentence is required by subsection (b) of this section and may impose a sentence of Level V incarceration up to the maximum stated in subsection (b) of this section for each class of felony.

(d) Where a minimum, mandatory, mandatory minimum or minimum mandatory sentence is required by subsection (b) of this section, such sentence shall not be subject to suspension by the court.

(e) Where no minimum sentence is required by subsection (b) of this section, or with regard to any sentence in excess of the minimum required sentence, the court may suspend that part of the sentence for probation or any other punishment set forth in § 4204 of this title.

(f) Any term of Level V incarceration imposed under this section must be served in its entirety at Level V, reduced only for earned "good time" as set forth in § 4381 of this title.

(g) No term of Level V incarceration imposed under this section shall be served in other than a full custodial Level V institutional setting unless such term is suspended by the court for such other level sanction.

(h) The Department of Correction, the remainder of this section notwithstanding, may house Level V inmates at a Level IV work release center or halfway house during the last 180 days of their sentence; provided, however, that the first 5 days of any sentence to Level V, not suspended by the court, must be served at Level V.

(i) The Department of Correction, the remainder of this section notwithstanding, may grant Level V inmates 48-hour furloughs during the last 120 days of their sentence to assist in their adjustment to the community.

(j) No sentence to Level V incarceration imposed pursuant to this section is subject to parole.

(k) In addition to the penalties set forth above, the court may impose such fines and penalties as it deems appropriate.

(l) In all sentences for less than 1 year the court may order that more than 5 days be served in Level V custodial setting before the Department may place the offender in Level IV custody.

(67 Del. Laws, c. 130, § 6; 67 Del. Laws, c. 260, § 1; 71 Del. Laws, c. 98, § 6; 74 Del. Laws, c. 106, §§ 9, 10.)

§ 4205A. Additional penalty for serious sex offenders or pedophile offenders.

(a) Notwithstanding any provision of this chapter or any other laws to the contrary, the Superior Court, upon the State's application, shall sentence a defendant convicted of any crime set forth in § 771(a)(2), § 772, § 773, § 776, § 777, § 777A, § 778(1) or (2) of this title to not less than 25 years up to life imprisonment to be served at Level V if 1 of the following apply:

(1) The defendant has previously been convicted or adjudicated delinquent of any sex offense set forth in this title and classified as a class A or B felony, or any similar offense under the laws of another state, the United States or any territory of the United States.

(2) The victim of the instant offense is a child less than 14 years of age.

(b) [Repealed.]

(c) Notwithstanding any provision of this chapter or any other laws to the contrary, the Superior Court, upon the State's application, shall sentence a defendant convicted of any crime set forth in subsection (a) of this section to an additional 5 years to be served at Level V for any sentence imposed under subsection (a) of this section if the victim of the crime set forth in subsection (a) of this section is a child less than 7 years of age.

(d) (1) Notwithstanding any provision of this chapter or any other laws to the contrary, the Superior Court, upon the State's application, shall sentence a defendant convicted of any crime set forth in § 769 or § 783(4) of this title to not less than 5 years to be served at Level V if the victim of the crime is a child less than 7 years of age.

(2) Notwithstanding any provision of this chapter or any other laws to the contrary, the Superior Court, upon the State's application, shall sentence a defendant convicted of a crime set forth in § 783A(4) of this title to not less than 10 years to be served at Level V if the victim of the crime is a child less than 7 years of age.

(75 Del. Laws, c. 438, § 1; 77 Del. Laws, c. 318, § 14; 80 Del. Laws, c. 26, § 3; 80 Del. Laws, c. 349, § 1; 81 Del. Laws, c. 297, § 1.)

§ 4206. Sentence for misdemeanors.

(a) The sentence for a class A misdemeanor may include up to 1 year incarceration at Level V and such fine up to $2,300, restitution or other conditions as the court deems appropriate.

(b) The sentence for a class B misdemeanor may include up to 6 months incarceration at Level V and such fine up to $1,150, restitution or other conditions as the court deems appropriate.

(c) The sentence for an unclassified misdemeanor shall be a definite sentence fixed by the court in accordance with the sentence specified in the law defining the offense. If no sentence is specified in such law, the sentence may include up to 30 days incarceration at Level V and such fine up to $575, restitution or other conditions as the court deems appropriate. Notwithstanding the foregoing, in any municipality with a population greater than 50,000 people, any offense under the building, housing, health or sanitation code which is classified therein as a misdemeanor, the sentence for any person convicted of such a misdemeanor offense shall include the following fines and may include restitution or such other conditions as the court deems appropriate:

(1) For the first conviction: no less than $250, nor more than $1,000;

(2) For the second conviction for the same offense; no less than $500, nor more than $2,500; and

(3) For all subsequent convictions for the same offense: no less than $1,000 nor more than $5,000.

In any municipality with a population greater than 50,000 people, a conviction for a misdemeanor offense, which is defined as a "continuing" or "ongoing" violation, shall be considered a single conviction for the purposes of paragraphs (c)(1)-(3) of this section. For all convictions subsequent to the second, the minimum fines required herein shall not be suspended, but such amounts imposed over the minimum may be suspended or subject to such other conditions as the court deems appropriate. The provisions of this subsection relating to municipalities with a population greater than 50,000 people shall not apply to offenses or convictions involving single family residences that are occupied by an owner of the property.

(d) The court may suspend any sentence imposed under this section for probation or any of the other sanctions set forth in § 4204 of this title.

(e) Any term of Level V incarceration imposed under this section must be served in its entirety at Level V, reduced only for earned "good time" as set forth in § 4381 of this title.

(f) No term of Level V incarceration imposed under this section shall be served in other than a full custodial Level V institutional setting unless such term is suspended by the court for such other level sanction.

(g) The Department of Correction, the remainder of this section notwithstanding, may house Level V inmates at a Level IV work release center or halfway house during the last 180 days of their sentence; provided, however, that the first 5 days of any sentence to Level V, not suspended by the court, must be served at Level V.

(h) The Department of Correction, the remainder of this section notwithstanding, may grant Level V inmates 48-hour furloughs during the last 120 days of their sentence to assist in their adjustment to the community.

(i) Any sentence for issuing a worthless check pursuant to § 900 of this title shall require restitution to the person to whom the check was given. For the purposes of this subsection, restitution shall mean the amount for which the check was written plus a service fee of $30 for processing a worthless check, or a fee of $50 if more than 1 check by same person was processed.

(j) In all sentences for less than 1 year the court may order that more than 5 days be served in Level V custodial setting before the Department may place the offender in Level IV custody.

(66 Del. Laws, c. 253, § 1; 67 Del. Laws, c. 130, § 6; 67 Del. Laws, c. 260, § 1; 67 Del. Laws, c. 350, § 2; 68 Del. Laws, c. 9, § 5; 74 Del. Laws, c. 153, § 1.)

§ 4207. Sentences for violations.

(a) The Court may impose a fine of up to $345 for the first offense of any violation, up to $690 for the second offense of that same violation and up to $1,150 for the third offense of the same violation; provided, that only violations which occurred within 5 years of the violation for which sentence is imposed shall be considered in determining sentence.

(b) The Court may impose a period of Level I probation up to 1 year for any violation.

(67 Del. Laws, c. 130, § 6; 67 Del. Laws, c. 260, § 1.)

§ 4208. Fines for organizations.

A sentence to pay a fine, when imposed on an organization, shall be the amount specified in the law setting forth the offense if a penalty is specified in that law, or, if there is no specific penalty defined in the law setting forth the offense, a sentence to pay a fine when imposed on an organization shall be as follows:

(1) For a felony or a misdemeanor resulting in death or serious physical injury, such fine as the court deems reasonable and appropriate;

(2) For a felony that does not result in death or serious physical injury, not more than $500,000;

(3) For a class A misdemeanor that results in physical injury, not more than $250,000;

(4) For a class A misdemeanor that does not result in physical injury, not more than $100,000;

(5) For a class B misdemeanor, class C or unclassified misdemeanor that results in physical injury, not more than $75,000;

(6) For a class B misdemeanor, class C or unclassified misdemeanor that does not result in physical injury, not more than $50,000; or

(7) For a violation, not more than $10,000.

If the defendant derives pecuniary gain from the offense, or if the offense results in pecuniary loss or damage to a person or organization other than the defendant, the defendant may be fined an amount equal to 3 times the amount of the pecuniary gain or 3 times the value of the pecuniary loss or damage incurred in lieu of the penalties set forth in paragraphs (1)-(7) of this section.

(11 Del. C. 1953, § 4208; 58 Del. Laws, c. 497, § 2; 68 Del. Laws, c. 9, §§ 3, 4; 74 Del. Laws, c. 71, § 6.)

§ 4209. Punishment for first-degree murder committed by adult offenders.

(a) Punishment for first-degree murder. —

Any person who is convicted of first-degree murder for an offense that was committed after the person had reached the person's eighteenth birthday shall be punished by imprisonment for the remainder of the person's natural life without benefit of probation or parole or any other reduction.

(b)-(h) [Repealed.]

(11 Del. C. 1953, § 4209; 58 Del. Laws, c. 497, § 2; 59 Del. Laws, c. 284, § 2; 61 Del. Laws, c. 41, § 1; 63 Del. Laws, c. 357, § 1; 65 Del. Laws, c. 281, § 1; 65 Del. Laws, c. 494, § 4; 66 Del. Laws, c. 269, § 29; 68 Del. Laws, c. 189, §§ 1-4; 69 Del. Laws, c. 206, § 1; 69 Del. Laws, c. 439, § 1; 70 Del. Laws, c. 33, § 1; 70 Del. Laws, c. 137, § 1; 70 Del. Laws, c. 182, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 430, § 2; 73 Del. Laws, c. 423, §§ 1, 2, 3, 4, 5; 73 Del. Laws, c. 424, § 1; 74 Del. Laws, c. 174, §§ 1, 2, 4; 75 Del. Laws, c. 166, § 1; 77 Del. Laws, c. 191, § 2; 78 Del. Laws, c. 224, §§ 20, 21; 78 Del. Laws, c. 252, § 10; 79 Del. Laws, c. 37, § 2; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 233, § 14; 84 Del. Laws, c. 433, § 1.)

§ 4209A. Punishment for first-degree murder committed by juvenile offenders.

Any person who is convicted of first-degree murder for an offense that was committed before the person had reached the person's eighteenth birthday shall be sentenced to term of incarceration not less than 25 years to be served at Level V up to a term of imprisonment for the remainder of the person's natural life to be served at Level V without benefit of probation or parole or any other reduction.

(79 Del. Laws, c. 37, § 3.)

§ 4210. Arrest and disposition of intoxicated persons.

(a) Any intoxicated person taken into custody for a violation of § 1315 of this title shall immediately be taken to a detoxification center where the person shall be admitted as a patient.

(1) The arresting officer shall leave a summons for such intoxicated person with the chief medical officer of the detoxification center ordering such intoxicated person to appear before a justice of the peace at a date not to exceed a period of 5 days from the date of admission to the center.

(2) The intoxicated person shall be given a physical examination to determine the possible existence of any disease or ailment which threatens the health or safety of such individual; and upon a finding of any such disease or ailment, the medical staff of the detoxification center shall give such treatment as it deems necessary and practicable.

(b) Upon regaining sobriety and being informed of the person's physical condition, the person in custody shall inform the chief medical officer of the detoxification center as to whether, until such time as the person is to appear for trial, the person wishes to remain a patient or be released from custody.

(c) Should the person in custody validly consent to remain as a patient and to undergo testing procedures, the person shall be tested to determine if the person is a chronic alcoholic. A diagnosis of chronic alcoholism shall serve as an affirmative defense to violations of § 1315 of this title.

(d) Should it be shown to the satisfaction of the court that the person accused of intoxication suffers from chronic alcoholism, the person shall be acquitted of the charge of drunkenness and:

(1) Released from custody; or

(2) Temporarily released from custody under such conditions of treatment as the court may prescribe; such period of temporary release shall not exceed 1 year after which defendant shall be unconditionally released.

(11 Del. C. 1953, § 4210; 58 Del. Laws, c. 497, § 2; 70 Del. Laws, c. 186, § 1.)

§ 4211. Payment of expenses.

Any person treated under § 4210 of this title shall, any law to the contrary notwithstanding, be responsible for the incurred expenses, and shall be billed for same by the Department of Mental Health.

(11 Del. C. 1953, § 4211; 58 Del. Laws, c. 497, § 2.)

§ 4212. Definitions relating to §§ 4210 and 4211.

For the purposes of §§ 4210 and 4211 of this title, the following words and phrases shall have the meanings respectively ascribed to them:

(1) "Chronic alcoholic" shall mean a person who compulsively and habitually uses alcoholic beverages to the extent that they injure the person's health and interfere with the person's social and economic functioning.

(2) “Detoxification center” shall mean a medical facility, approved by the Department of Health and Social Services, or its successor, which shall provide appropriate medical services for intoxicated persons, including initial examination, diagnosis and temporary treatment.

(3) “Intoxicated person” shall mean a person whose powers of self-control have been substantially impaired because of the consumption of alcohol.

(4) “Sobriety” shall mean an individual’s state of being when not under the influence of alcohol.

(5) “Valid consent” shall mean the voluntary giving of assent to testing procedures by a legally competent person; in the case of a minor or incompetent, such assent shall be obtained from a parent or guardian of the individual or in the absence of either, a person in loco parentis, to undergo testing.

(11 Del. C. 1953, § 4212; 58 Del. Laws, c. 497, § 2; 70 Del. Laws, c. 186, § 1.)

§ 4213. Arrest of persons under the influence of drugs; drug detoxification centers.

(a) For purposes of this section only, the following phrases shall have meanings respectively ascribed to them:

(1) “A person under the influence of drugs” shall mean a person whose powers of self-control have been substantially impaired because of the consumption of a drug described in Chapter 47 of Title 16.

(2) “Drug abuser” shall mean any person who compulsively and habitually uses drugs to the extent that they injure the person’s health and interfere with the person’s social and economic functioning.

(b) The Director of the Division of Substance Abuse and Mental Health (“Director”) shall designate certain hospital, clinic, or other treatment facilities as “drug detoxification centers.” The Director shall so designate such a facility only when the Director is satisfied that the facility has the medical and other staff, as well as the equipment, to diagnose and treat drug abusers as provided for in this section.

(c) Upon arrest for any crime which is not a felony under this title or Title 16, an arrestee who believes that the arrestee is under the influence of drugs as defined in subsection (a) of this section shall have the right to request immediate admission to a drug detoxification center. Upon such request, the arresting officer shall, as soon as transportation is available and as soon as conditions at the scene of the arrest permit, arrange to have the arrestee transported to the nearest available drug detoxification center.

(1) No expression of a desire to be admitted to a drug detoxification center shall be admissible in evidence in any criminal prosecution against the arrestee.

(2) Notwithstanding any provision of this Code to the contrary, no arrestee shall be heard to object in any court to failure to arraign the arrestee before a magistrate during the period of transportation to or stay in a drug detoxification center, or for a reasonable time not to exceed 24 hours after release.

(3) An arresting officer shall, when the officer suspects an arrestee of being under the influence of drugs, inform the arrestee of the rights under this section.

(4) No arrestee may revoke a request to be taken to a drug detoxification center after having made that request, and any drug detoxification center to which an arrestee is brought must consent to admission and testing of the arrestee, subject to limitations of facilities and staff.

(d) A drug detoxification center shall initially test admittees under this section to determine if they are under the influence of drugs or are drug abusers. If tests prove negative, the admittee shall be released forthwith to the custody of the arresting authorities. Any arrestee requesting admission to a drug detoxification center is deemed to consent to all medical and psychiatric tests considered necessary by the center to carry out its function under this section. The results of tests taken at a drug detoxification center or statements made by admittees under this section to drug detoxification center staff shall not be admissible as evidence in a criminal prosecution against the admittee.

(e) Admittees under this section whom the drug detoxification center determines to be drug abusers shall be asked if they wish to receive further treatment. Those consenting to further treatment shall remain until discharged by the drug detoxification center or until they wish to leave. No one admitted under this section shall be permitted to leave the drug detoxification center until the arresting police agency is notified.

(f) Upon a satisfactory showing to the court that a person is a drug abuser as defined in subsection (a) of this section and has completed treatment under this section in a manner satisfactory to the chairperson of the drug diagnostic team at the drug detoxification center to which the person was admitted, the charge of consumption or use of the drug, under Chapter 47 of Title 16, shall be dismissed.

(g) Whenever a police officer sees a person whom the officer believes to have taken drugs and needs medical treatment, the police officer may take that person into custody and arrange to have the person taken to a drug detoxification center or arrange to secure other medical help. This subsection shall apply whether or not the officer may under the circumstances lawfully arrest the person whom the officer believes to have taken drugs. No officer acting in good faith shall be subject to criminal or civil liability for any action under this subsection.

(h) To further the implementation of this section, the Director of the Division of Substance Abuse and Mental Health may prescribe regulations for the operation of drug detoxification centers and may assist such drug detoxification centers by distributing to them such funds as the General Assembly may from time to time appropriate to the Director for expenditure on their behalf.

(11 Del. C. 1953, § 4212A; 58 Del. Laws, c. 250, § 1; 58 Del. Laws, c. 497, § 3; 58 Del. Laws, c. 543; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 37, § 10.)

§ 4214. Habitual criminal; life sentence

(a) Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title, or any person who has been 3 times convicted of any felony under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony is declared to be an habitual criminal. The court, upon the State's petition, shall impose the applicable minimum sentence pursuant to subsection (b), (c) or (d) of this section and may, in its discretion, impose a sentence of up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment. Under no circumstances may the sentence imposed pursuant to this section be less than the minimum sentence provided for by the felony prompting the person's designation as a habitual offender.

(b) Any person who has been 3 times convicted of a felony under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony, which is the person's first Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title, shall receive a minimum sentence of ½ of the statutory maximum penalty provided elsewhere in this title, unless the maximum statutory penalty is life in which case the minimum sentence shall be 30 years, for the subsequent felony which forms the basis of the States petition to have the person declared to be an habitual criminal, up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment.

(c) Any person who has been 2 times convicted of a felony under the laws of this State, and/or any other state, United States or any territory of the United States, and 1 time convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent Title 11 violent felony, or attempt to commit such a violent felony, as defined by § 4201(c) of this title, shall receive a minimum sentence of the statutory maximum penalty provided elsewhere in this title for the fourth or subsequent felony which forms the basis of the State's petition to have the person declared to be an habitual criminal, up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment.

(d) Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a third or subsequent felony which is a Title 11 violent felony, or an attempt to commit such a violent felony, as defined in § 4201(c), shall receive a minimum sentence of the statutory maximum statutory penalty provided elsewhere in this title for the third or subsequent Title 11 violent felony which forms the basis of the State's petition to have the person declared to be an habitual criminal, up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment.

(e) Notwithstanding any provision of this title to the contrary, any minimum sentence required to be imposed pursuant to subsection (b), (c), or (d) of this section shall not be subject to suspension by the court, and shall be served in its entirety at full custodial Level V institutional setting without the benefit of probation or parole, except that any such sentence shall be subject to the provisions of §§ 4205(h), 4381 and 4382 of this title. For purposes of the computation of good time under § 4381 of this title, a life sentence imposed pursuant only to this section shall equate to a sentence of 45 years.

(f) Notwithstanding any statute, court rule or regulation to the contrary, beginning January 1, 2017, any person sentenced as an habitual criminal to a minimum sentence of not less than the statutory maximum penalty for a violent felony pursuant to subsection (a) of this section, or a life sentence pursuant to subsection (b) of this section prior to July 19, 2016, shall be eligible to petition the Superior Court for sentence modification after the person has served a sentence of incarceration equal to any applicable mandatory sentence otherwise required by this section or the statutes describing said offense or offenses, whichever is greater. Absent extraordinary circumstances, the petitioner may only file 1 application for sentence modification under this section. A Superior Court Judge upon consideration of a petition filed pursuant to this subsection may modify, reduce or suspend such petitioner's sentence, excepting any minimum or mandatory sentence required by this section or the statutes describing said offense or offenses. If a Superior Court Judge modifies such petitioner's sentence, the Judge may impose a suspended sentence that includes a probationary term. Nothing in this section, however, shall require the Court to grant such a petitioner a sentence modification pursuant to this section. For the purposes of this subsection, the "applicable mandatory sentence'' shall be calculated by reference to the penalties prescribed for the relevant offense or offenses by this Code as of July 19, 2016, unless said offense has been repealed, in which case the penalties prescribed by this Code at the time of the act repealing said offense shall be controlling. The Superior Court shall establish rules to implement this subsection which are consistent with the statute, and those rules shall also provide that all petitions filed pursuant to this subsection where the felony establishing an inmate as a habitual offender was a Title 16 offense are heard first, followed by all petitions filed pursuant to this subsection where the felony establishing an inmate as a habitual offender was a crime against property, followed by all other petitions. Nothing in the rules or this subsection shall prohibit the Superior Court from hearing any petition without regard to this preferred sequence when the Department of Justice, through the personal authorization of the Attorney General, Chief Deputy Attorney General, State Prosecutor, or the Chief Prosecutor of a particular county, in response to a request authorized by the Chief Defender, Chief Deputy Defender, or Chief Conflicts Counsel, or private counsel if a petitioner is not represented by the Office of Defense Services, consents to the hearing of that petition and the Superior Court determines it is in the interest of justice to do so. The rules shall also provide for an initial review, including

review of a formal response by the Department of Justice after consulting with the victim or victims, of sentence modification petitions involving crimes against persons or property, for the purpose of ensuring that victims are not inconvenienced by petitions that should be denied based upon the documents submitted; in cases not denied in this manner, all victims shall be given an opportunity to be heard. The Superior Court's review of any petitions filed pursuant to this subsection shall include a review of the applicant's prior criminal history, including arrests and convictions, a review of the applicant's conduct while incarcerated, and available evidence as to the likelihood that the applicant will reoffend if released, including a formal, recent risk assessment. The Superior Court shall articulate on the record the results of its review and its rationale for granting or denying a petition. In all cases where sentence modifications are granted, modified sentences should provide for step-down provisions to ensure successful reintegration of persons into the community. By January 1, 2017, the Department of Correction shall notify any criminal defendant whose Level V sentence was imposed under a statutory sentencing regimen which was subsequently changed in a manner that reduced the sentence applicable to the defendant's convictions, including any criminal defendant who received a minimum mandatory sentence that no longer exists by virtue of the enactment of 80 Del. Laws, c. 28. The Department of Correction shall similarly notify the attorney of record, and if the attorney of record is unavailable to receive notice, the Office of Defense Services.

(11 Del. C. 1953, § 4213; 58 Del. Laws, c. 497, § 2; 59 Del. Laws, c. 547, §§ 19-21; 65 Del. Laws, c. 159, § 1; 66 Del. Laws, c. 269, § 7; 67 Del. Laws, c. 350, § 37; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 477, § 2; 71 Del. Laws, c. 285, §§ 15, 16; 72 Del. Laws, c. 34, § 4; 72 Del. Laws, c. 43, § 7; 72 Del. Laws, c. 197, § 8; 74 Del. Laws, c. 346, § 1; 77 Del. Laws, c. 318, § 15; 78 Del. Laws, c. 13, §§ 11, 12; 78 Del. Laws, c. 252, § 11; 78 Del. Laws, c. 406, § 3; 79 Del. Laws, c. 89, § 1; 80 Del. Laws, c. 321, § 1; 81 Del. Laws, c. 6, §§ 1-3; 81 Del. Laws, c. 313, § 1.)

§ 4215. Sentence of greater punishment because of previous conviction.

(a) If at the time of sentence, it appears to the court that the conviction of a defendant constitutes a second or other conviction making the defendant liable to a punishment greater than the maximum which may be imposed upon a person not so previously convicted, the court shall fully inform the defendant as to such previous conviction or convictions and shall call upon the defendant to admit or deny such previous conviction or convictions. If the defendant shall admit the previous conviction or convictions, the court may impose the greater punishment. If the defendant shall stand silent or if the defendant shall deny the prior conviction or convictions, the defendant shall be tried upon the issue of previous conviction; provided, however, that the foregoing procedure shall not apply in cases of fourth offenders liable to sentence of life imprisonment under § 4214 of this title.

(b) If, at any time after conviction and before sentence, it shall appear to the Attorney General or to the Superior Court that, by reason of such conviction and prior convictions, a defendant should be subjected to § 4214 of this title, the Attorney General shall file a motion to have the defendant declared an habitual criminal under § 4214 of this title. If it shall appear to the satisfaction of the Court at a hearing on the motion that the defendant falls within § 4214 of this title, the Court shall enter an order declaring the defendant an habitual criminal and shall impose sentence accordingly.

(11 Del. C. 1953, § 4214; 58 Del. Laws, c. 497, § 2; 70 Del. Laws, c. 186, § 1.)

§ 4215A. Sentence of greater punishment because of previous conviction under prior law or the laws of other jurisdictions.

(a) Notwithstanding any provision of law to the contrary, if a previous conviction for a specified offense would make the defendant liable to a punishment greater than that which may be imposed upon a person not so convicted, that previous conviction shall make the defendant liable to the greater punishment if that previous conviction was:

(1) For an offense specified in the laws of this State or for an offense which is the same as, or equivalent to, such offense as the same existed and was defined under the laws of this State existing at the time of such conviction; or

(2) For an offense specified in the laws of any other state, local jurisdiction, the United States, any territory of the United States, any federal or military reservation, or the District of Columbia which is the same as, or equivalent to, an offense specified in the laws of this State.

(b) This section shall apply to any offense or sentencing provision defined in this Code unless the statute defining such offense or sentencing provision or a statute directly related thereto expressly provides that this section is not applicable to such offense or sentencing provision.

(74 Del. Laws, c. 62, § 1.)

§ 4216. Transition provisions.

(a) Where an inmate is serving a sentence to Level V (incarceration) imposed not under the Truth in Sentencing Act of 1989 and receives a subsequent sentence to Level V under the provisions of the Truth in Sentencing Act, serving of the earlier sentence shall be suspended and the inmate shall serve the new Level V sentence until it is completed and then resume serving the original sentence.

(b) Where an inmate is serving a "nonmandatory" Level V (incarceration) sentence and is subsequently sentenced to a mandatory term of incarceration, serving of the earlier sentence shall be suspended and the inmate shall serve the new mandatory Level V sentence until it is completed and then resume serving the earlier sentence.

(c) Where an inmate is serving Level V (incarceration) sentence or sentences imposed not under the Truth in Sentencing Act of 1989, and is subsequently sentenced to Level V under the provisions of the Truth in Sentencing Act and had less than an aggregate 3 years remaining on the prior sentence or sentences, the court at the time of sentencing under the Truth in Sentencing Act may in its discretion suspend the remainder of the prior non-Truth in Sentencing Level V sentence or sentences, unless such sentence was a statutory mandatory term.

(d) Any individual convicted of a crime on or after January 1, 1990, which crime occurred prior to June 30, 1990, may elect to be sentenced under the provisions of the Truth in Sentencing Act of 1989 rather than under the prior provisions of this title.

(67 Del. Laws, c. 130, § 14; 67 Del. Laws, c. 350, §§ 3, 28.)

§ 4217. Jurisdiction over sentence retained; sentence modification process.

(a) (1) For purposes of this section, "person" means an individual serving an aggregate sentence of incarceration at Level V in excess of 1 year.

(2) If a court imposes an aggregate sentence of incarceration at Level V in excess of 1 year, the court retains jurisdiction over the person to modify the sentence to reduce the level of custody or time to be served under this section.

(3) A person may apply for a sentence modification under this section if any of the following apply:

a. The application for a sentence modification is based solely on the person's serious medical illness or infirmity.

b. The person is 60 years of age or older, has served at least 15 years of the originally imposed Level V sentence, and the application for sentence modification is based solely on the person's rehabilitation.

c. The person has served at least 25 years of the originally imposed Level V sentence and the application for sentence modification is based solely on the person's rehabilitation.

(4) A person who is eligible to apply for a sentence modification under paragraph (a)(3) of this section may apply for the sentence modification even if the person is sentenced to a statutorily mandated term of incarceration at Level V that is imposed for a conviction of an offense under this or another title.

(5) Except as provided in paragraphs (a)(3) and (a)(4) of this section, a person is not eligible for a sentence modification under this section if any of the following apply:

a. The person is serving a sentence of incarceration at Level V imposed for a conviction of a Title 11 violent felony under § 4201(c) of this title and has not yet served ½ of the originally imposed Level V sentence.

b. The person is serving a statutorily mandated term of incarceration at Level V for a conviction of any offense under this title and has not yet served all of the statutorily mandated portion of the Level V sentence.

(b) (1) The court may modify the person's sentence if the court finds all of the following:

a. The court is authorized under subsection (a) of this section to consider the person for a sentence modification.

b. Good cause for a sentence modification.

c. The release of the person does not constitute a substantial risk to any of the following:

1. The community.

2. A victim of, or witness to, an offense that is the subject of the sentence modification.

3. The person's own self.

(2) An application for sentence modification may be filed under this section by any of the following:

a. The person, or the person's attorney, as provided under paragraph (a)(3) or (a)(5) of this section.

b. The Department of Correction ("Department"), the person, or the person's attorney, as provided under subsection (d) of this section.

c. The Department, the person, or the person's attorney, at any time other than as provided under subsection (d) of this section, if the basis for the application is the person's serious medical illness or infirmity.

(3) a. Except as provided under paragraph (b)(3)b. of this section, an application must include a copy of the Department's written statement required under paragraph (d)(2)b. or (d)(3)a. of this section.

b. An application filed under paragraph (a)(3)a. of this section is not required to include a copy of the Department's written statement required under paragraph (d)(2)b. or (d)(3)a. of this section.

(4) The court's review of an application for sentence modification filed under this section shall include the court's review of the facts of an offense that is the subject of the sentence modification, including the underlying circumstances and nature of the offense, the felony classification of the offense, the length of the underlying sentence, and the court's finding as to all of the following:

a. The person's present likelihood of posing, and ability to pose, a substantial risk to any of the following:

1. The community.

2. A victim of, or witness to, an offense that is the subject of the sentence modification.

3. The person's own self.

b. For an application for a sentence modification based on rehabilitation, the person's participation in programs during incarceration, including drug or alcohol counseling or treatment, education, or employment.

c. For an application for a sentence modification based on serious medical illness or infirmity, all of the following:

1. The person's diagnosis and likelihood of recovery.

2. The ability of the Department to meet the medical needs of the person.

3. The impact that the person's continued incarceration may have on the general provision of medical care within the Department.

(5) The court shall state on the record the court's findings under paragraphs (b)(1) and (b)(4) of this section and the court's rationale for granting or denying the application for sentence modification.

(6) The court may summarily dismiss an application for a sentence modification for any of the following reasons:

a. If the person is not eligible for a sentence modification under subsection (a) of this section.

b. If the person submits a subsequent application before the expiration of the period determined by the court under paragraph (e)(4) or (e)(5) of this section.

c. If the person's application does not include a copy of the Department's written statement, as required under paragraph (b)(3) of this section.

d. If the court determines summary dismissal is warranted.

(7) A person applying for sentence modification under this section has the right to counsel.

a. On the Department's completion of the eligibility review under paragraph (d)(1) of this section, the Department shall provide the person with information regarding the person's right to counsel under this section.

b. The person may retain a private attorney at the person's expense.

c. The person may request that the Court refer the person to the Office of Defense Services for representation. The Court shall refer the person to the Office of Defense Services if the Court does not summarily dismiss the person's application under paragraph (b)(6) of this section.

d. The person may proceed without an attorney only as provided under court rules.

(8) The Department shall provide the person, or the person's attorney of record, with access to any information in the possession of the Department reasonably necessary for the person's application for a sentence modification.

(9) The person, or the person's attorney of record, may supplement or amend an application for a sentence modification filed by the Department or the person.

(10) A party filing an application for sentence modification under this section must provide a copy of the application to the Department of Justice.

(11) The court may adopt rules to implement this section. The rules should provide for a person to proceed without an attorney with permission of the court.

(c) For purposes of this section:

(1) "Good cause" includes rehabilitation of the person, serious medical illness or infirmity of the person, and prison overcrowding.

(2) "Prison overcrowding" means the number of individuals who are incarcerated exceeds the operating capacity of a correctional facility that can be reasonably accommodated based on design, staffing, available programs, and services.

(3) "Rehabilitation" means the process of restoring a person to a useful and constructive place in society especially through some form of vocational, correctional, or therapeutic training.

(4) "Serious medical illness or infirmity" includes all of the following:

a. *Cognitively incapacitated. —*

As used in this paragraph (c)(4)a., "cognitively incapacitated" means suffering from a cognitive condition, such as dementia, that greatly impairs activities of daily living such as feeding, toileting, dressing, and bathing and renders incarceration of a person nonpunative and nonrehabilitative.

b. *Permanently physically incapacitated. —*

As used in this paragraph (c)(4)b., "permanently physically incapacitated" means suffering from any of the following:

1. A physical condition caused by injury, disease, or illness, such as a persistent vegetative state, that, to a reasonable degree of medical certainty, permanently and irreversibly physically incapacitates the person to the extent that the person needs help with most activities of daily living, such as feeding, toileting, dressing, and bathing, or that no significant physical activity is possible.

2. An incurable, progressive condition that substantially diminishes the person's capacity to function in a correctional setting.

c. *Severely ill. —*

As used in this paragraph (c)(4)c., "severely ill" means suffering from a significant and permanent or chronic physical or mental condition that meets all of the following:

1. Requires extensive medical or behavioral health treatment with little to no possibility of recovery.

2. Significantly impairs rehabilitation.

d. *Terminally ill. —*

As used in this paragraph (c)(4)d., "terminally ill" means suffering from a condition caused by disease, illness, or injury, except self-inflicted injury, which, to a reasonable degree of medical certainty will lead to profound functional, cognitive, or physical decline, and likely will result in death within 18 months.

(d) (1) For each person, the Department shall biennially determine all of the following:

a. If the person may apply for a sentence modification under paragraph (a)(3) of this section or is not ineligible for a sentence modification under paragraph (a)(5) of this section.

b. Whether the Department recommends the person for a sentence modification. For the Department to recommend a person for a sentence modification, the Department must find the requirements of paragraphs (b)(1)b. and (b)(1)c. of this section are met.

(2) If the Department recommends a sentence modification, the Department, with the consent of the person, shall do all of the following:

a. File an application for sentence modification with the court.

b. Include with the application filed under paragraph (d)(2)a. of this section a written statement of the satisfied requirements of this section that form the Department's basis for recommending the sentence modification.

c. Provide notice of the application filed under paragraph (d)(2)a. of this section to the person, the person's attorney of record, and, if the attorney of record is unavailable to receive notice, the Office of Defense Services.

(3) If the Department does not recommend a sentence modification, the Department shall do all of the following:

a. State in writing the Department's reasons for not recommending a sentence modification, including the unsatisfied requirements of this section that form the Department's basis for not recommending the sentence modification.

b. Provide the writing required under paragraph (d)(3)a. of this section to the person, the person's attorney of record, and, if the attorney of record is unavailable to receive notice, the Office of Defense Services.

(4) If the Department provides notice under paragraph (d)(3) of this section, the person or the person's attorney may file an application for sentence modification with the court on a form provided by the court if the person meets the eligibility criteria established under paragraph (a)(3) or (a)(5) of this section. The person or the person's attorney shall attach a copy of the Department's reasons for not recommending a sentence modification.

(e) (1) On receipt of an application for sentence modification, the court may grant or deny the application or may request additional information.

(2) If the application for sentence modification is based on the person's serious medical illness or infirmity, the court may require the Department to submit a medical release plan for the person. The medical release plan may include all of the following:

a. The proposed course of treatment.

b. The proposed site for treatment and post-treatment care.

c. The insurance program in place, which must include the person's eligibility for enrollment in commercial insurance, Medicare, or Medicaid, or the person's access to other adequate financial resources to cover the cost of care after release, including those under existing partnerships with agencies or organizations.

d. Any other information requested by the court.

(3) The court may not grant the application for sentence modification without first providing the Department of Justice and the victim of an offense that is the subject of the application with a reasonable period of time to be heard, in writing or in person, on the application.

(4) Except as provided under paragraph (e)(5) of this section, if the court denies an application for sentence modification because the court finds the person constitutes a substantial risk under paragraph (b)(1)c. of this section, or because the court finds that the application lacks good cause, the person who is the subject of the denied application may not be the subject of a subsequent application for sentence modification for a period determined by the court not to exceed 3 years from the date of the denial.

(5) If the court denies an application for sentence modification based on a person's serious medical illness or infirmity, the person may submit a subsequent application if at least 60 days have passed since the date of the court's denial and if the application demonstrates a material change in the person's circumstances.

(f) [Repealed.]

(g) This section may not be construed to limit the court's ability to modify a sentence within the scope of the court's duly adopted rules.

(h) The Department may adopt regulations to implement this section. The Department may not impose additional restrictions, exclusions, or eligibility requirements for persons seeking sentence modification under this section.

(i) *Reporting requirements.* —

(1) The Statistical Analysis Center shall annually prepare a report containing all of the following information provided to the Statistical Analysis Center by the following state agencies:

a. From the Department, aggregated information including all of the following:

1. The number of persons who the Department determines under paragraph (d)(1)a. of this section are eligible for a sentence modification, with demographic data including race or ethnicity, gender, age, and correctional facility.

2. The number of applications submitted to the court by the Department under paragraph (d)(2) of this section and the basis for the application, with demographic data including race or ethnicity, gender, age, and correctional facility.

3. The number of persons for whom the Department did not recommend a sentence modification under paragraph (d)(3) of this section and a general reason for the Department's decision, with demographic data including race or ethnicity, gender, age, and correctional facility.

4. The number of persons released from Level V custody under this section and the good cause on which the application is based, with demographic data including race or ethnicity, gender, age, and correctional facility.

5. Information on serious medical illness and infirmity experienced by persons incarcerated at the Department's correctional facilities, including all of the following:

A. The number of persons currently receiving full-time 1-on-1 medical care or assistance with activities of daily living within the Department's correctional facilities and whether that care is provided by a medical practitioner or another individual, along with the facilities at which the persons are incarcerated.

B. The number of persons who spent more than 1 month in outside hospital care during the previous year and the persons' home correctional facility.

C. Demographic data, including race or ethnicity, gender, age, and correctional facility, for each person under paragraphs (i)(1)a.5.A. and (i)(1)a.5.B of this section.

b. 1. From the courts, all of the following:

A. The number of persons granted a sentence modification under this section.

B. The number of persons denied a sentence modification on the merits under this section.

C. The number of persons whose application for sentence modification is summarily dismissed under paragraph (b)(6) of this section.

2. The Statistical Analysis Center shall report the data provided by the courts and use the data provided by the courts to report aggregated demographic data including race or ethnicity, gender, age, and correctional facility, and the good cause on which each application is based.

(2) The Statistical Analysis Center shall annually publish the report on the Statistical Analysis Center's website and submit the report to all of the following not later than October 1 of each year:

a. The Chair of the Senate Corrections and Public Safety Committee.

b. The Chair of the House of Representatives Corrections Committee.

c. The Chief Justice.

d. The Attorney General.

e. The Chief Defender.

f. The Director of the Division of Legislative Services.

g. The State Archivist.

h. The Governor.

(67 Del. Laws, c. 130, § 14; 67 Del. Laws, c. 350, §§ 4-6; 69 Del. Laws, c. 311, §§ 1-3; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 362, §§ 1, 2; 85 Del. Laws, c. 76, § 2; 85 Del. Laws, c. 235, § 1.)

§ 4218. Probation before judgment.

(a) Subject to the limitations set forth in this section, for a violation or misdemeanor offense under Title 4, 7, or this title, or for any violation or misdemeanor offense under Title 21 which is designated as a motor vehicle offense subject to voluntary assessment by § 709 of Title 21, or a violation of § 2702 of Title 14, or for violations of § 4166(d) of Title 21, or for violations of § 4172 of Title 21, or for a violation of a county or municipal code, or for a misdemeanor offense under § 4764, § 4771 or § 4774 of Title 16, or for a misdemeanor offense under § 4810(a) of Title 29, a court exercising criminal jurisdiction after accepting a guilty plea or nolo contendere plea may, with the consent of the defendant and the State, stay the entry of judgment, defer further proceedings, and place the defendant on "probation before judgment" subject to such reasonable terms and conditions as may be appropriate. The terms and conditions of any probation before judgment shall include the following requirements: (i) the defendant shall provide the court with that defendant's current address; (ii) the defendant shall promptly provide the court with written notice of any change of address; and (iii) the defendant shall appear if summoned at any hearing convened for the purpose of determining whether the defendant has violated or fulfilled the terms and conditions of probation before judgment. The terms and conditions may include any or all of the following:

(1) Ordering the defendant to pay a pecuniary penalty;

(2) Ordering the defendant to pay court costs to the State;

(3) Ordering the defendant to pay restitution;

(4) Ordering the defendant to perform community service;

(5) Ordering the defendant to refrain from contact with certain persons; and

(6) Ordering the defendant to conduct themselves in a specified manner.

The length of the period of probation before judgment shall be fixed by the court, but in no event shall the total period of probation before judgment exceed the maximum term of commitment provided by law for the offense or 1 year, whichever is greater.

(b) This section shall not apply to any of the following:

(1) Any Title 11 "domestic violence" offense as defined in § 1024(a) of Title 10. First offenders domestic violence diversion program.

(2) Section 900A of this title. Conditional discharge for issuing a bad check as first offense.

(3) Section 4177B of Title 21. First offenders; election in lieu of trial.

(c) (1) Notwithstanding any provision of this section to the contrary, no person shall be admitted to probation before judgment if:

a. The person is currently serving a sentence of incarceration, probation, parole or early release of any type imposed for another offense;

b. The person is charged with any offense set forth in this title, and has previously been convicted of any violent felony;

c. The person is charged with any offense set forth in this title, and has previously been convicted of any nonviolent felony within 10 years of the date of the commission of the alleged offense;

d. The person is charged with any offense set forth in this title, and has previously been convicted of any misdemeanor offense within 5 years of the date of the commission of the alleged offense;

e. The person is charged with any offense set forth in Title 4 or 7, and has been previously convicted of any offense set forth in Title 4 or 7 within 5 years of the date of the commission of the alleged offense;

f. The person is currently charged with any offense set forth in § 709 of Title 21, and has been previously convicted of any offense set forth in Title 21 within 5 years of the date of the commission of the alleged offense;

g. The person is currently charged with a violation of § 2702 of Title 14 and has been previously convicted of a violation of 2702 of Title 14 within 5 years of the date of the alleged offense; or

h. The person is charged with a violation of a county or municipal code provision and has previously been convicted of a violation of another county or municipal code provision within 5 years of the date of the commission of the alleged offense.

i. The person is charged with an offense involving a motor vehicle and holds a commercial driver license (CDL).

(2) For the purposes of this subsection, the following shall also constitute a previous conviction:

a. A conviction under the laws of another state, the United States, or any territory of the United States of any offense which is the same as, or equivalent to, any offense specified in paragraph (c)(1) of this section; or

b. [Repealed.]

c. Any adjudication, resolution, disposition or program set forth in § 4177B(e)(1) of Title 21.

(d) This section shall not be available to any person who has previously been admitted to probation before judgment for any offense involving the same title within 5 years of the current offense.

(e) Nothing in this section shall be construed to permit probation before judgment for a violation of a county or municipal code that would not be permitted for the corresponding state code offense.

(f) Upon a violation of a term or condition of the court's order of probation before judgment, the court may enter judgment and proceed with disposition of the person as if the person had not been placed on probation before judgment.

(g) Upon fulfillment of the terms and conditions of probation before judgment, the court shall enter an order discharging the person from probation. The burden shall be upon the defendant to demonstrate that the terms and conditions of probation have been fulfilled. The discharge is the final disposition of the matter. Discharge of a person under this section shall be without judgment of conviction and is not a conviction for purposes of any disqualification or disability imposed by law because of conviction of a crime.

(h) Notwithstanding any provision of this section to the contrary, the court shall not admit a defendant to probation before judgment nor otherwise apply any provision of this section unless the defendant first gives written consent to the court permitting any hearing or proceeding pursuant to this section to occur in the defendant's absence if:

(1) Timely notice of the hearing or proceeding is sent or delivered to the address provided by the defendant pursuant to subsection (a) of this section; and

(2) The defendant fails to appear at said proceeding.

In the event that a defendant fails to appear at any hearing or proceeding pursuant to this section, the court may proceed in the defendant's absence if it first finds that timely notice of the hearing or proceeding was sent or delivered to the address provided by the defendant pursuant to subsection (a) of this section. Nothing in this subsection shall limit the power of the court to hold a hearing to determine whether a defendant is in violation of the terms of that defendant's probation.

(i) Notwithstanding the provisions of subsection (a) of this section to the contrary, in any case in which the Delaware Department of Justice does not intend to enter its appearance, the consent of the State shall not be required prior to placing a defendant on "probation before judgment." In such cases, the defendant may be placed on probation before judgment only for charges arising from a single

arrest. Notwithstanding the foregoing, except for the offenses under Title 21 to which this section applies, the Attorney General or other prosecuting authority may advise the court of aggravating circumstances in opposition to placing a defendant on "probation before judgment."

(72 Del. Laws, c. 126, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 453, §§ 1-8; 73 Del. Laws, c. 301, §§ 3, 4; 75 Del. Laws, c. 184, § 1; 75 Del. Laws, c. 364, § 2; 76 Del. Laws, c. 251, § 2; 78 Del. Laws, c. 13, § 13; 78 Del. Laws, c. 230, § 2; 80 Del. Laws, c. 238, § 1; 80 Del. Laws, c. 415, § 1; 81 Del. Laws, c. 250, § 3; 83 Del. Laws, c. 12, § 1; 83 Del. Laws, c. 112, § 2.)

§ 4219. Continuous Remote Alcohol Monitoring Program.

(a) There is hereby established for sentencing and probation purposes a Continuous Remote Alcohol Monitoring Program which shall use technology to monitor offenders for alcohol use. The program shall be administered by the Department of Correction which shall have the sole authority to determine which offenders are accepted into the program.

(b) The Board of Parole or any Court of competent jurisdiction may request and recommend, as part of conditions of release or the sentence of any person convicted under § 4177(a) of Title 21 for a first offense where the first offender election is not available, or for a subsequent offense involving a blood alcohol content of .20 or higher, a period of continuous remote alcohol monitoring not to exceed 90 days for a first offense and 120 days for a second offense.

(c) Any inmate incarcerated for violations of § 4177 of Title 21 and selected for participation in the program shall be released on Level IV status, subject to the conditions of the program, and those conditions imposed by the sentencing judge. The remainder of the participant's sentence of incarceration shall be suspended upon completion of the program requirements. Participants failing to satisfactorily complete the program shall be returned to the Board of Parole or the sentencing authority for resentencing.

(d) Any offender considered for participation must agree to adhere to the conditions established for participation before being accepted into the program.

(e) The Department of Correction shall report annually on the use of the program, and its effectiveness as a supervision mechanism.

(75 Del. Laws, c. 143, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 381, §§ 1, 2; 76 Del. Laws, c. 134, § 1; 76 Del. Laws, c. 366, § 1.)

§ 4220. Modification, suspension or reduction of sentence for substantial assistance.

(a) The Attorney General may move the sentencing court to modify, reduce or suspend the sentence of any person who is convicted of any crime or offense specified in this Code, and who provides substantial assistance in the identification, arrest or prosecution of any other person for a crime or offense specified in this Code, in the laws of the United States, or any other state or territory of the United States.

(b) Upon good cause shown, any motion made pursuant to subsection (a) of this section may be filed and heard in camera.

(c) The provisions of § 4204(d) or § 4217 of this title, any court rule or any other provision of law to the contrary notwithstanding, a judge of the court that is imposing or that has imposed a sentence, upon hearing a motion filed pursuant to subsection (a) of this section, may modify, reduce or suspend that sentence, including any minimum or mandatory sentence, or a portion thereof, if the court finds that the person rendered such substantial assistance.

(77 Del. Laws, c. 46, § 1.)

§ 4221. Modification, deferral, suspension or reduction of sentence for serious physical illness, injury or infirmity.

Notwithstanding any provision of law to the contrary, a court may modify, defer, suspend or reduce a minimum or mandatory sentence of 1 year or less, or a portion thereof, where the court finds by clear and convincing evidence, or by stipulation of the State, that the person to be sentenced suffers from a serious physical illness, injury or infirmity with continuing treatment needs which make incarceration inappropriate and that such person does not constitute a substantial risk to the community.

(77 Del. Laws, c. 304, § 1.)

Part II
Criminal Procedure Generally

Chapter 43
Sentencing, Probation, Parole and Pardons

Subchapter I
Purposes, Construction and Definitions

§ 4301. Purposes and construction.

This chapter shall be construed to the end that the treatment of persons convicted of crime shall take into consideration their individual characteristics, circumstances, needs and potentialities as revealed by a case study, and that whenever it appears desirable in the light of the needs of public safety and their own welfare, such person shall be dealt with, at restricted liberty in the community, by a uniformly organized system of constructive rehabilitation, under probation or parole supervision instead of in a correctional institution.

(11 Del. C. 1953, § 4301; 54 Del. Laws, c. 349, § 7.)

§ 4302. Definitions.

As used in this chapter:

(1) "Board of Pardons" means that Board as established by the Constitution and laws.

(2) "Commissioner" or "Commissioner of the Department" means Commissioner of the Department of Correction.

(3) "Community service" means the performance of work or service for a nonprofit or other tax-supported entity by an offender without pay for a specified period of time. Such service is intended as a symbolic form of restitution meant to serve as an appropriate means of punishment and rehabilitation of the offender and as a means of addressing the community's need to be made whole.

(4) "Conditional release" means the release of an offender from incarceration to the community by reason of diminution of the period of confinement through merit and good behavior credits. A person so released shall be known as a releasee.

(5) "Court" means Superior Court, Family Court, Court of Common Pleas, or Justices of the Peace Courts.

(6) "Criminogenic needs" means the dynamic factors or conditions that, when addressed in an individualized manner with evidence-based interventions, can significantly reduce the likelihood of recidivism.

(7) "Department" means the Department of Correction.

(8) "Goals of supervision" means deterrence of criminal conduct, protection of the community, protection of victims, and rehabilitation of the individual on probation.

(9) "Judge" means any judge of any court as herein defined.

(10) "Law" means the laws of this State, including any ordinance of any subdivision or municipality.

(11) "Merit and good behavior credits" means that diminution of the period of confinement, as provided by law, by reason of industrious and cooperative conduct.

(12) "Offender" means any person who has been brought within the jurisdiction of the Superior Court, Family Court, or Court of Common Pleas or within the scope of duties of the Board of Parole or the Board of Pardons.

(13) "Parole" means the release by the Parole Board of an offender from incarceration to the community prior to the expiration of the offender's term, subject to the supervision and guidance of the Department. A person placed upon parole shall be known as a parolee.

(14) "Parole Board" means the duly established Board of Parole as the paroling authority of the State.

(15) "Presentence investigation" means the procedure by which the court, subsequent to conviction but prior to sentencing, obtains information concerning the offender sufficient to evaluate the offender's conduct and to determine the offender's potentialities for rehabilitation, with appropriate recommendations for judicial disposition. Said presentence investigation shall be embodied in a written report.

(16) "Probation" means the sentencing without imprisonment of an offender by judgment of the court following establishment of guilt, subject to the conditions imposed by the court, including the supervision and guidance of the Department's field services. A person placed upon probation or under suspended sentence under supervision shall be known as a probationer.

(17) "Probation and parole officer" means an employee of the Department with the qualifications, and having powers and responsibilities pertaining to investigation, supervision and otherwise, provided by law or determined by the Department within the scope of this chapter.

(11 Del. C. 1953, § 4302; 54 Del. Laws, c. 349, § 7; 57 Del. Laws, c. 591, §§ 44-46; 59 Del. Laws, c. 370, § 1; 60 Del. Laws, c. 251, §§ 7-9; 66 Del. Laws, c. 233, § 2; 67 Del. Laws, c. 316, § 1; 67 Del. Laws, c. 442, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 176, §§ 18, 19; 78 Del. Laws, c. 305, § 1; 85 Del. Laws, c. 67, § 1.)

Subchapter II
Probation and Parole Services

§ 4321. Probation and parole officers.

(a) The Department and its probation and parole officers shall conduct such preparole investigations or perform such other duties under this chapter as may be ordered by the court, Parole Board or Department; provided, however, that all presentence investigations and reports for the Superior Court and the Court of Common Pleas shall be prepared as provided in § 4335 of this title.

(b) (1) The Department shall furnish to each person released under the supervision of the Department a written statement of the conditions of the person's probation or parole and shall instruct the person regarding these conditions.

(2) The officers, under the supervision of the Department, shall evaluate each person in their charge under Supervision Accountability Level II, III or IV, using an objective risk and needs assessment instrument and shall create a case plan for those persons assessed to be moderate- to high-risk that targets the need factors identified by the assessment. The Department shall make efforts to provide treatment and services responsive to the person's needs and characteristics. Use of the objective risk assessment instrument and associated case plans shall commence by December 31, 2013.

(3) The officers shall keep informed of the conduct and condition of persons in their charge, shall aid them to secure employment, shall exercise supervision over them, shall see that they are in compliance with and fulfill the conditions of their release and shall use all suitable methods to aid and encourage them to bring about improvement in their conduct and conditions and to meet their probation or parole obligations.

(4) a. A special condition of supervision may be set by orders of the court, Board of Parole or the probation and parole officer acting under the authority of the court or Board of Parole.

b. Special conditions of supervision imposed or suspended by the probation and parole officer shall be in accordance with Department procedures and may be enforced or suspended in the interim period of final review by the court or Board of Parole.

c. Unless the offense for which the person is sentenced mandates specific conditions, the probation and parole officer shall use the least restrictive special conditions necessary to achieve the goals of supervision.

(c) The officer shall keep detailed records of their work, shall assist in the collection and dispersal of all moneys in accordance with the orders of the court and Department and shall make such reports in writing and perform such other duties which the rules and regulations of the Department require, or which the court, the Board of Parole or the Commissioner may require.

(d) Probation and parole officers shall exercise the same powers as constables under the laws of this State and may conduct searches of individuals under probation and parole supervision in accordance with Department procedures while in the performance of the lawful duties of their employment and shall execute lawful orders, warrants and other process as directed to the officer by any court, judge or Board of Parole of this State; however, a probation and parole officer shall only have such power and duties if the officer participates in and/or meets the minimum requirements of such training and education deemed necessary by the Department and Board of Examiners.

(e) Probation and parole officers may be tasked to participate in joint operations with federal authorities while in the performance of the lawful duties of their employment. Any contraband, property and/or money seized in the course of such joint operations shall be apportioned in accordance with federal distribution guidelines. Any distribution to probation and parole shall become the property of the Department of Correction, Bureau of Community Corrections. Any proceeds from the disposal of such property shall be used for the purchase of security equipment and technology necessary for the support of the employees of the Bureau.

(f) Specialized juvenile probation and parole officers, assigned to the Division of Youth Rehabilitative Services and as designated and sworn by the Secretary of the Department of Services for Children, Youth and Their Families, shall exercise the same powers as constables exercise under the laws of this State, and may conduct searches of individuals under the supervision of the Department of Services for Children, Youth and Their Families' Division of Youth Rehabilitative Services in accordance with agency procedure, while in the performance of the lawful duties of their employment, and shall execute lawful orders, warrants and other process as directed to such officer by any court or judge; however, a specialized juvenile probation and parole officer shall have such above-enumerated powers and duties only if the officer has met the minimum requirements of training and education deemed necessary by the Department of Services for Children, Youth and Their Families.

(g) The Department shall undertake an assessment of the availability of community resources to meet the treatment and rehabilitation needs of the supervised population every 3 years and endeavor to develop and support programs in accordance with identified needs. The first 3-year report shall be completed by December 31, 2013.

(h) The Department shall devise and adopt a body-worn camera policy that shall meet or exceed the standards established by the Police Officer Standards and Training Commission by regulation.

(11 Del. C. 1953, § 4321; 54 Del. Laws, c. 349, § 7; 67 Del. Laws, c. 442, § 3; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 108, § 1; 73 Del. Laws, c. 60, § 1; 77 Del. Laws, c. 443, § 1; 78 Del. Laws, c. 392, §§ 2, 3; 79 Del. Laws, c. 283, § 1; 83 Del. Laws, c. 83, § 1; 84 Del. Laws, c. 149, § 6; 85 Del. Laws, c. 67, § 2.)

§ 4322. Protection of records.

(a) (1) Except as provided under paragraph (a)(2) of this section, the presentence report, the preparole report, the supervision history, and all other case records obtained in the discharge of official duty by any member or employee of the Department shall be privileged and

shall only be disclosed to the courts, the Board of Parole, the Board of Pardons, the Attorney General and the Deputies Attorney General, or others entitled by this chapter to receive this information. The court or Board of Pardons may permit the inspection of the report or other information or parts of the report or other information by the individual who is the subject of the report or other information or the individual's attorney or other persons who in the judgment of the court or Board of Pardons have a proper interest in the report or other information, whenever the best interest of this State or welfare of the individual who is the subject of the report or other information or other person makes the action desirable or helpful.

(2) A presentence report prepared for the Superior Court or the Court of Common Pleas is under the control of the court for which the report is prepared.

(b) (1) The Commissioner or the Commissioner's designees may receive and use, for the purpose of aiding in the treatment of rehabilitation of an individual, the preparole report, the supervision history, and other Department of Correction case records, provided that the information or reports remain privileged for any other purpose.

(2) This subsection does not apply to the presentence reports of the Superior Court and the Court of Common Pleas which reports shall remain under the control of such Courts.

(c) An individual incarcerated in a correctional facility may not be provided a copy of the Department of Correction Policy and Procedures Manuals, the Bureau of Prisons Policy and Procedures Manuals, the Department of Correction Facilities Operational Procedures, Administrative Regulations, or Post Orders that could jeopardize the safety or security of a correctional facility, corrections staff, individuals incarcerated in a correctional facility, or the public.

(d) A Department of Correction policy or procedure which, in the judgement of the Commissioner, contains information that could jeopardize the safety or security of a correctional facility, corrections staff, individuals incarcerated in a correctional facility, or the public shall be confidential and subject to disclosure only upon written authority of the Commissioner. For purposes of this subsection, "Department of Correction policy or procedure" includes any policy, procedure, post order, facility operational procedure, or administrative regulation adopted by a bureau, facility, or division of the Department.

(e) The Department of Services for Children, Youth and Their Families may receive and use, for the purposes of investigating child abuse, neglect and dependency, providing services to prevent further child abuse, neglect and dependency or in aiding in reunification of families, information contained in Department records concerning offenders, providing that such information or reports remain privileged for any other purpose. This information may contain, but is not limited to, information concerning program participation in level IV and level V institutions, special conditions of probation or parole, compliance with those conditions and general supervision in the community.

(f) Any subpoena issued for any record of the Department of Correction, or for any record of its employees maintained in the course of their duties, shall comply with the following procedure:

(1) The subpoena shall be issued at least 30 days in advance of the date on which production of the records is due.

(2) A copy of the subpoena shall be served on the State Solicitor.

Any subpoena issued without compliance with the requirements of this section shall be deemed void ab initio. Any such subpoena shall be reasonably limited in quantity with regard to the purpose for production and the issuer of the subpoena shall tender payment for the cost of the photocopying as established by the Department.

(g) Any subpoena issued for any record of the Department of Correction, or for any record of its employees maintained in the course of their duties, in a civil action between private parties shall comply with the following procedure:

(1) Where the information sought may reasonably be expected to be in the possession of 1 of the parties to the litigation, as well as in the possession of the Department, the information shall first be sought from the party to the litigation having possession of the information.

(2) Prior to seeking criminal history records from the Department, the party seeking the information shall first attempt to obtain criminal history information through proper procedures at the State Bureau of Identification, pursuant to § 8513 of this title.

(3) Any subpoena issued under this subsection shall meet the requirements of subsection (f) of this section above.

(h) (1) Any subpoena or summons issued for testimony of any official or employee of the Department of Correction shall be issued at least 30 days in advance of the date on which the testimony is due, and a copy of the subpoena or summons shall be served on the State Solicitor.

(2) Any subpoena or summons issued for testimony of any official or employee of the Department of Correction, where the substance of the testimony would involve information contained in the records of the Department, shall comply with the requirements of subsection (f) of this section above, and the subpoena or summons shall be deemed a subpoena for the Department's records. The Department or its Deputy Attorney General shall notify the issuer when a subpoena or summons for testimony is deemed a subpoena for records and subsection (f) of this section applies.

(3) The requirements of this subsection apply to both criminal and civil actions and in all courts.

(i) Notwithstanding any language in this section or elsewhere to the contrary, the time requirements in this section regarding the issuance of subpoenas shall not apply to any subpoena issued in:

(1) [Repealed.]

(2) Any civil or criminal case where the issuing party has less than 45 days' notice of the trial date; or

(3) If the party issuing the subpoena can show that the late subpoena was issued as a result of information provided by the State less than 45 days prior to the trial date.

(j) An individual denied access to a document under subsection (c) or (d) of this section may seek relief under § 10005 of Title 29.

(11 Del. C. 1953, § 4322; 54 Del. Laws, c. 349, § 7; 56 Del. Laws, c. 149; 66 Del. Laws, c. 233, § 3; 69 Del. Laws, c. 226, § 1; 71 Del. Laws, c. 324, § 1; 72 Del. Laws, c. 17, § 1; 75 Del. Laws, c. 368, §§ 1-4; 83 Del. Laws, c. 467, § 2; 84 Del. Laws, c. 433, § 2; 85 Del. Laws, c. 67, § 3.)

Subchapter III

Probation and Sentencing Procedures

§ 4331. Presentence investigation; victim-impact statement.

(a) Upon conviction of any person for any crime and before sentencing, the court may, before fixing punishment or imposing sentence, direct an Investigative Services officer to thoroughly investigate and report upon the history of the accused and any and all other relevant facts, to the end that the court may be fully advised as to the appropriate and just sentence to be imposed; provided, however, that if the court orders such investigation for an offender convicted of murder in the first or second degree, rape in the first, second or third degree, unlawful sexual intercourse in the first or second degree, the manufacture, delivery or possession with intent to manufacture a narcotic drug, or trafficking under § 4753A of Title 16 [repealed], with respect to a narcotic drug, the offender shall immediately be remanded to the James T. Vaughn Correctional Center during the time such investigation is being conducted. All time spent by the offender in custody prior to completion of the presentence investigation and all other sentencing procedures shall be credited against the amount of time which the offender is sentenced to serve.

(b) Whenever an investigation by the Investigative Services Office is ordered by the court, the Investigative Services Office should inquire promptly into such things as the circumstances of the offense, the motivation of the offender, the criminal record, social history, behavior pattern and present condition of the offender. The presentence investigation should include administration of an objective risk and needs assessment instrument, and should note wherein the judicial alternatives of the court and appropriate conditions of supervision may play a role in the rehabilitation of the offender as a law-abiding citizen. All local and state agencies shall make available to the Investigative Services Office such records as the Investigative Services Office may request. The investigation should include physical and mental examination of the offender, when, in the opinion of the court, it is desirable. As soon as practicable or as ordered by the court, the presentence report shall be forwarded to the sentencing judge of the court in each case.

(c) The Investigative Services Office may conduct any additional investigations or perform any other investigative tasks, with the preparation of appropriate reports, as may be desirable to facilitate the appropriate sentencing of an offender or other court proceedings. In order to facilitate the appropriate sentencing of any offender or for any other court proceedings, the Investigative Services Office may be ordered by the court to administer an objective risk and needs assessment instrument and prepare an appropriate report thereof for the court.

(d) (1) Except for those offenses where no victim can be ascertained, a victim-impact statement must be presented to the court prior to the sentencing of a convicted person, if that person has been convicted of any of the following:

a. A felony.

b. An offense under subchapter V, Chapter 5 of this title or subpart D, subchapter II, Chapter 5 of this title.

c. A misdemeanor which resulted in physical injury or death.

(2) Notwithstanding paragraph (d)(1) of this section, the victim-impact statement is not required where an immediate sentence is rendered, except in cases of conviction by plea.

(e) A victim-impact statement must include all of the following:

(1) Identify, to such extent as can be reasonably ascertained, those victims, except persons involved in the commission of the offense, who received physical, psychological, or economic injury as a result of the offense.

(2) Describe, to the extent possible, such physical, psychological, or economic injury.

(3) Identify any physical injury suffered by the victim, together with a description of the seriousness and permanence of that injury.

(4) Contain a description of any change in the victim's personal welfare or familial relationships which can reasonably be attributed to the offense.

(5) Identify any request for psychological services or counselling services initiated by any person identified under paragraph (e)(1) of this section, if such request or need for such services can reasonably be determined to have resulted from the offense.

(6) Determine any fees or costs for psychological or counselling services.

(7) Any other information relating to the impact of the offense upon the victim or other person.

(f) If a victim or other person identified in subsection (e) of this section is deceased; is a child; is under a mental, physical or legal disability; or is otherwise unable to provide the information required under this section, such information may be obtained from the personal representative, guardian, committee, family member, treatment professional, child protection agency, Office of the Child Advocate, or such other involved state agency as the presentence officer may deem necessary.

(g) (1) a. The provisions of this section relating to victim-impact statements apply only to those victims who have cooperated with the court and with Investigative Services officers.

b. A victim's cooperation relating to a victim-impact statement under this section does not affect the victim's right to make a statement under § 9403(8) of this title.

(2) a. The provisions of this section relating to victim-impact statements apply to all courts having original jurisdiction to hear, try, and finally determine criminal offenses.

b. Notwithstanding paragraph (g)(2)a. of this section, the provisions of this section relating to victim-impact statements do not apply to Justices of the Peace Courts.

(h) Notwithstanding any statute, rule or regulation to the contrary, upon conviction of any person for any sexual offense, as defined in § 761 of this title, and upon request of either party, the court shall direct that a presentence report be prepared by a presentence officer.

(i) In any case involving a felony conviction for which a presentence investigation is being conducted, the person conducting the investigation shall (1) provide the convicted felon with a copy of § 1448 of this title and (2) attempt to determine if the convicted felon is in possession of a firearm or projectile weapon in violation of § 1448 of this title. This attempt shall include reasonable efforts to contact other persons in the convicted felon's household and the victim, and shall also include a check of the Superior Court's list of persons holding concealed weapons permits. If the person conducting the investigation believes that the convicted felon is in possession of a firearm or projectile weapon in violation of § 1448 of this title, the Attorney General shall be notified for appropriate enforcement action.

(11 Del. C. 1953, § 4331; 54 Del. Laws, c. 349, § 7; 59 Del. Laws, c. 94, § 1; 59 Del. Laws, c. 316, § 1; 60 Del. Laws, c. 114, § 1; 63 Del. Laws, c. 358, § 1; 64 Del. Laws, c. 352, §§ 1, 2; 66 Del. Laws, c. 269, § 8; 71 Del. Laws, c. 176, § 20; 71 Del. Laws, c. 285, §§ 17, 18; 73 Del. Laws, c. 60, §§ 2, 3, 4, 5; 73 Del. Laws, c. 151, § 1; 76 Del. Laws, c. 232, § 2; 78 Del. Laws, c. 392, §§ 4, 18; 84 Del. Laws, c. 250, § 1; 84 Del. Laws, c. 525, § 26; 85 Del. Laws, c. 142, § 6.)

§ 4332. Conditions of probation or suspension of sentence; house arrest.

(a) (1) The Department may adopt standards concerning the conditions of probation or suspension of sentence which the court may use in a given case.

(2) The standard conditions apply in the absence of any other specific or inconsistent conditions imposed by the court under this subsection.

(3) The presentence report may recommend conditions to be imposed by the court.

(4) Nothing in this chapter limits the authority of the court to impose or modify any standard or special conditions of probation or suspension of sentence.

(5) The Department may recommend and, by order, the court may impose and may at any time order modification of any conditions of probation or suspension of sentence. Before any conditions are modified, a report by the Department must be presented to and considered by the court.

(6) The court shall cause a copy of any order to be delivered to the Department and to the individual on probation.

(7) Unless the offense for which an individual on probation is sentenced mandates specific conditions, a court, Board of Parole, or probation and parole officer shall presumptively impose the least number of special conditions, and least restrictive special conditions of supervision, necessary to achieve the goals of supervision.

a. A special condition imposed may not be more restrictive than reasonably necessary to achieve the goals of supervision or address criminogenic needs.

b. Before imposing a special condition, the court, Board of Parole, or probation and parole officer must consider whether the special condition is more restrictive than reasonably necessary to achieve the goals of supervision.

c. A special condition must be reasonably related to the criminogenic needs of the individual on probation or goals of supervision.

d. For each special condition imposed, the court, Board of Parole, or probation and parole officer must state the reasonable relation to the criminogenic needs of the individual on probation or the goals of supervision.

e. Before imposing a special condition, the court, Board of Parole, or probation and parole officer must consider whether fewer special conditions or less restrictive special conditions do not achieve the goals of supervision.

(8) Unless the offense for which the person is sentenced mandates specific conditions, the court, Board of Parole, or probation and parole officer may not impose a special condition of supervision with which the individual on probation cannot reasonably comply. Unless the offense for which the person is sentenced mandates specific conditions, before imposing a special condition, the court, Board of Parole, or probation and parole officer must consider if the individual on probation has the necessary resources and ability to comply with the special condition.

(9) The Board of Parole or probation and parole officer shall ensure that reporting requirements are as minimally-intrusive as possible in order to address criminogenic needs or achieve the goals of supervision, and may provide an individual on probation with alternative reporting options, including the option of reporting remotely, when appropriate.

a. A probation and parole officer must set the required reporting times and locations for an individual on probation at times and locations reasonably designed to accommodate the verifiable work schedule of an individual on probation, as well as considerations related to education, childcare, healthcare, and transportation availability.

b. A probation and parole officer may utilize audio and visual communications, or audio-only communication, in lieu of requiring a face-to-face in-person reporting for an individual on probation.

c. A probation and parole officer may excuse an in-person probation visit as a graduated incentive for compliance with treatment program requirements.

(10) If a program is a requirement of supervision, the Board of Parole or probation and parole officer must facilitate a referral into the program.

a. If a required program is not available and a violation of probation is filed, the court must consider the totality of the circumstances when deciding whether to establish the alleged violation.

b. If the sentencing court determines on the record that the Board of Parole or probation and parole officer did not reasonably facilitate an individual on probation's referral into the program, a longer period of probation or suspension of sentence is prohibited.

c. The Department is not required to contract for or create a program that is a requirement of supervision.

(11) Before pursuing sanctions up to and including revocation for an alleged violation of probation, the probation and parole officer shall make reasonable efforts to inquire into why an individual on probation failed to abide by a condition, including by affirmatively attempting to re-engage an individual on probation who fails to report before deeming the individual on probation to have violated the individual on probation's conditions of supervision. The probation and parole officer shall make reasonable efforts to connect the individual on probation with needed services and resources before pursuing sanctions against the individual on probation.

(b) The Department may adopt standards governing any program of house arrest. The presentence report may recommend conditions to be imposed by the court. In addition to any conditions imposed by the Department or by the court, each program involving house arrest, regardless of the official or unofficial name of the program, must include all of the following:

(1) Clear and consistent incentives for compliance and sanctions for noncompliance with conditions of supervision.

(2) That the Department owns or leases all equipment.

(c) The Department may use electronic monitoring systems and any new or emerging monitoring technology that will assist in the supervision of an individual placed on house arrest, as reasonably necessary. A probation and parole officer may utilize audio and visual communications, or audio-only communication, in lieu of requiring a face-to-face in-person reporting for an individual placed on house arrest.

(d) The Department may supervise an individual placed on house arrest without the use of any specific electronic equipment, if sufficient and reasonable methods for ensuring compliance with the terms of house arrest are employed.

(11 Del. C. 1953, § 4333; 54 Del. Laws, c. 349, § 7; 66 Del. Laws, c. 29, § 1; 76 Del. Laws, c. 399, § 1; 83 Del. Laws, c. 35, § 1; 85 Del. Laws, c. 67, § 4.)

§ 4332A. Imposition of community service.

(a) A court may impose a period of community service, as defined in this chapter, either as a condition of probation or as the sole sanction imposed at sentencing.

(b) The specified number of hours of community service shall be fixed by the court, but in no case shall the total number of hours imposed exceed the maximum term of incarceration provided by law for the instant offense. In cases where no incarceration is provided by law, the number of hours of community service fixed by the court shall not exceed 100.

(c) In the event that community service is imposed by the court as a condition of probation, noncompliance with the community service order shall constitute a violation of the conditions of probation.

(d) In the event that community service is imposed as the sole sanction by the court, noncompliance with the community service order shall constitute criminal contempt.

(e) The Department shall, by the promulgation of regulations or other appropriate standards, administer and enforce the terms of all court orders involving the imposition of community service.

(67 Del. Laws, c. 316, § 2.)

§ 4333. Period of probation or suspension of sentence; termination.

(a) The period of probation or suspension of sentence shall be fixed by the court subject to the provisions of this section. Any probation or suspension of sentence may be terminated by the court at any time and upon such termination or upon termination by expiration of the term, an order to this effect shall be entered by the court.

(b) The length of any period of probation or suspension of sentence is limited to the following:

(1) Two years, for any violent felony in this title as designated in § 4201(c) of this title.

(2) Eighteen months, for any offense set forth in Title 16.

(3) One year, for any offense not otherwise specified in paragraph (b)(1) or (2) of this section.

(c) An individual who is serving more than 1 sentence imposed following convictions in more than 1 case must not serve a consecutive period of probation or suspension of sentence that is in excess of the limitations imposed by subsection (b) of this section. Any sentence

of probation or suspension of sentence, or any portion thereof, which, if served consecutively to another such sentence, would result in an aggregate sentence of probation or suspension of sentence in excess of the limitations imposed by subsection (b) of this section, is deemed to be concurrent to the other sentence. This subsection does not apply to a sentence imposed for a conviction involving an offense committed while the individual was serving a period of probation or suspension of sentence.

(d) The limitations set forth in subsections (b) and (c) of this section do not apply to any of the following:

(1) A sentence imposed for a conviction of any sexual offense, as defined in § 761 of this title, if the sentencing court determines on the record that a longer period of probation or suspension of sentence will substantially reduce the likelihood that the individual will commit a sexual offense or other violent offense in the future.

(2) A sentence imposed for any violent felony in this title as designated by § 4201(c) of this title, if the sentencing court determines on the record that public safety will be enhanced by a longer period of probation or suspension of sentence.

(3) A sentence imposed for any offense set forth in the Delaware Code, if the sentencing court determines on the record that a longer period of probation or suspension of sentence is necessary to ensure the collection of any restitution ordered.

a. Any period of probation ordered under this paragraph (d)(3) that is in excess of the limitations under subsections (b) and (c) of this section must be served at Accountability Level I — Restitution Only under the terms of § 4204(c)(10) of this title.

b. An individual sentenced to Accountability Level I - Restitution Only may not have the individual's probation level increased based on the individual's reasonable inability to pay the restitution ordered.

(e) The limitations set forth in subsections (b) and (c) of this section may be exceeded by up to 90 days by the sentencing court if the sentencing court determines that the individual has not yet completed a substance abuse treatment program ordered by the court, provided, that each extension of sentence ordered under this subsection must be preceded by a hearing, and by a finding on the record of all of the following:

(1) The extension of sentence is necessary to facilitate the completion of the substance abuse treatment program.

(2) The probation and parole officer made reasonable efforts to refer the individual to the appropriate program.

(3) Less-restrictive measures do not facilitate completion of the program.

(f) Except as provided by subsection (g) of this section, in no event shall the total period of probation or suspension of sentence exceed the maximum term of commitment provided by law for the offense or 1 year, whichever is greater; provided, that in all cases where no commitment is provided by law the period of probation or suspension of sentence shall not be more than 1 year.

(g) (1) Any period of custodial supervision imposed pursuant to § 4204(*l*) of this title shall not be subject to the limitations set forth by this section.

(2) As used in this section, the phrase "period of probation or suspension of sentence" shall not include any period of a sentence that is designated by the sentencing court to be served at Supervision Accountability Level IV as defined in § 4204(c)(4) of this title.

(h) Notwithstanding any provision of this Code or court rule to the contrary, any superior court judge who is presiding over any proceeding at which an offender is sentenced or found to have violated any condition or term of an imposed period of probation or suspension of sentence shall be deemed to have jurisdiction over any sentence to a period of probation or suspension of sentence currently being served by the offender regardless of the court or county in which such sentence was originally imposed, and may modify, revoke or terminate any such period of probation or suspension of sentence.

(i) The Department shall have the authority without leave of the court to reclassify any offender sentenced to probation at Accountability Levels I, II or III, provided that the Department shall first evaluate the offender using an objective classification tool designed to assist in the determination of the appropriate level of probation. Offenders shall be reevaluated and reclassified periodically as the Department deems necessary and appropriate.

(j) Notwithstanding any other provision to the contrary, the provisions of subsections (b), (c), (d) and (e) of this section shall be applicable to sentences imposed prior to June 1, 2003, only upon an order of the Court entered for good cause shown after its consideration of an application for sentence modification filed by the Department of Correction.

(11 Del. C. 1953, § 4334; 54 Del. Laws, c. 349, § 7; 74 Del. Laws, c. 27, § 4; 74 Del. Laws, c. 88, §§ 1-4; 74 Del. Laws, c. 345, § 1; 78 Del. Laws, c. 392, § 5; 85 Del. Laws, c. 67, § 5.)

§ 4334. Arrest for violation of conditions; subsequent disposition [Effective until July 1, 2026].

(a) The court may issue a warrant for the arrest of a probationer for violation of any of the conditions of probation or suspension of sentence, or a notice to appear to answer to a charge of violation. Such notice shall be personally served upon the probationer. The warrant shall authorize officers to return the probationer to the custody of the court or to the Department.

(b) The Commissioner, or any probation officer, when in the Commissioner's or probation officer's judgment there has been a violation of any condition of probation or suspension of sentence, may arrest such probationer without a warrant, or may deputize any other officer with power of arrest to do so by giving that officer a written statement setting forth that the probationer has, in the judgment of the Commissioner or probation officer, violated the conditions of probation or suspended sentence. The written statement delivered with the probationer by the arresting officer to the official in charge of the place of detention shall be sufficient warrant for the detention of the probationer. When an arrest is made by a probation officer, the Department shall present to the detaining authority a written statement of

the circumstances of violation. Provisions regarding release on bail of persons charged with crime shall be applicable to the probationers arrested under these provisions.

(c) Upon such arrest and detention, the Department shall immediately notify the court and shall submit in writing a report showing in what manner the probationer has violated the conditions of probation or suspension of sentence. Thereupon, or upon arrest by warrant as provided in subsection (b) of this section, the court shall cause the probationer to be brought before it without unnecessary delay, for a hearing on the violation charge. The hearing may be informal or summary. If the violation is established, the court may continue or revoke the probation or suspension of sentence, and may require the probation violator to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

(d) Notwithstanding any provision of subsection (c) of this section or any other law, rule or regulation to the contrary, the Department is authorized to administratively resolve technical and minor violations of the conditions of probation or supervision at Accountability Levels I, II, III or IV when a sanction less restrictive than Level V is being sought by the Department as a result of the violation, and is further authorized to administratively resolve technical and minor violations of conditions of probation at Accountability Levels I, II, III, or IV by placing the probationer at Accountability Level IV for a period of not more than 5 days consecutively, and not more than 10 days in any 1 calendar year, or on home confinement for a period of not more than 10 days consecutively, and not more than 20 days per calendar year. The Department shall adopt written procedures providing for administrative review for all cases in which an offender is placed at Level IV or home confinement pursuant to this subsection. All administrative dispositions imposed pursuant to this subsection shall be documented in the offender's record and shall be made available to the court in the event of a subsequent violation which is considered by the court. For the purposes of this subsection, the term "technical and minor violations of the conditions of probation or supervision" shall not include arrests or convictions for new criminal offenses. Under this section, the purpose of home confinement is to reduce the number of persons held at Level V and Level IV facilities by substituting home confinement when appropriate. The Department shall develop guidelines for probation officers to assist them in providing consistent and appropriate responses to compliance and violations of the conditions of probation or supervision.

(e) A probationer for whose return a warrant cannot be served, shall be deemed a fugitive from justice or to have fled from justice. If it shall appear that probationer has violated probation or suspended sentence, the court shall determine whether the time from issuing of the warrant to the date of the probationer's arrest, or any part of it, shall be counted as time served on probation or suspended sentence.

(f) The Justice of the Peace Court shall have jurisdiction over violations of probation where such probation or suspension of sentence was pursuant to an order of the Justice of the Peace Court.

(11 Del. C. 1953, § 4335; 54 Del. Laws, c. 349, § 7; 66 Del. Laws, c. 133, § 1; 67 Del. Laws, c. 442, § 2; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 27, § 5; 74 Del. Laws, c. 322, § 4; 78 Del. Laws, c. 392, § 6.)

§ 4334. Arrest for violation of conditions; subsequent disposition [Effective July 1, 2026].

(a) The court may issue a warrant for the arrest of a probationer for violation of any of the conditions of probation or suspension of sentence, or a notice to appear to answer to a charge of violation. Such notice shall be personally served upon the probationer. The warrant shall authorize officers to return the probationer to the custody of the court or to the Department.

(b) The Commissioner, or any probation officer, when in the Commissioner's or probation officer's judgment there has been a violation of any condition of probation or suspension of sentence, may arrest such probationer without a warrant, or may deputize any other officer with power of arrest to do so by giving that officer a written statement setting forth that the probationer has, in the judgment of the Commissioner or probation officer, violated the conditions of probation or suspended sentence. The written statement delivered with the probationer by the arresting officer to the official in charge of the place of detention shall be sufficient warrant for the detention of the probationer. When an arrest is made by a probation officer, the Department shall present to the detaining authority a written statement of the circumstances of violation.

(c) Upon such arrest and detention, the Department shall immediately notify the court and shall submit in writing a report showing in what manner the probationer has violated the conditions of probation or suspension of sentence. Thereupon, or upon arrest by warrant as provided in subsection (b) of this section, the court shall cause the probationer to be brought before it without unnecessary delay, for a hearing on the violation charge. The hearing may be informal or summary. If the violation is established, the court may continue or revoke the probation or suspension of sentence, and may require the probation violator to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

(d) Notwithstanding any provision of subsection (c) of this section or any other law, rule or regulation to the contrary, the Department is authorized to administratively resolve technical and minor violations of the conditions of probation or supervision at Accountability Levels I, II, III or IV when a sanction less restrictive than Level V is being sought by the Department as a result of the violation, and is further authorized to administratively resolve technical and minor violations of conditions of probation at Accountability Levels I, II, III, or IV by placing the probationer at Accountability Level IV for a period of not more than 5 days consecutively, and not more than 10 days in any 1 calendar year, or on home confinement for a period of not more than 10 days consecutively, and not more than 20 days per calendar year. The Department shall adopt written procedures providing for administrative review for all cases in which an offender is placed at Level IV or home confinement pursuant to this subsection. All administrative dispositions imposed pursuant to this subsection shall be documented in the offender's record and shall be made available to the court in the event of a subsequent violation which is

considered by the court. For the purposes of this subsection, the term "technical and minor violations of the conditions of probation or supervision" shall not include arrests or convictions for new criminal offenses. Under this section, the purpose of home confinement is to reduce the number of persons held at Level V and Level IV facilities by substituting home confinement when appropriate. The Department shall develop guidelines for probation officers to assist them in providing consistent and appropriate responses to compliance and violations of the conditions of probation or supervision.

(e) A probationer for whose return a warrant cannot be served, shall be deemed a fugitive from justice or to have fled from justice. If it shall appear that probationer has violated probation or suspended sentence, the court shall determine whether the time from issuing of the warrant to the date of the probationer's arrest, or any part of it, shall be counted as time served on probation or suspended sentence.

(f) The Justice of the Peace Court shall have jurisdiction over violations of probation where such probation or suspension of sentence was pursuant to an order of the Justice of the Peace Court.

(11 Del. C. 1953, § 4335; 54 Del. Laws, c. 349, § 7; 66 Del. Laws, c. 133, § 1; 67 Del. Laws, c. 442, § 2; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 27, § 5; 74 Del. Laws, c. 322, § 4; 78 Del. Laws, c. 392, § 6; 84 Del. Laws, c. 473, § 15; 85 Del. Laws, c. 61, § 1; 85 Del. Laws, c. 62, § 106.)

§ 4335. Presentence investigations; Superior Court; Court of Common Pleas; Investigative Services Officers.

(a) (1) *Chief Investigative Services Officer.* — The Superior Court and the Court of Common Pleas may appoint a suitable person in each of the counties of the State to conduct such presentence investigations and to perform such other duties, within or without the county of the person's residence, as the Court may direct. Each person so appointed shall be a resident of this State and shall hold office at the pleasure of the Court. Each of such persons shall be the Chief Investigative Services Officer and shall be an officer of the Court.

(2) *Investigative Services Officer.* — The Superior Court and the Court of Common Pleas may also appoint an appropriate number of Investigative Services Officers in each county who shall have powers and responsibilities to conduct presentence investigations, as well as other types of investigations and investigative tasks, as directed by the Court and under the supervision of the Chief Investigative Services Officer.

(3) *Support staff.* — The Court may also appoint appropriate support staff in each county to ensure the proper functioning of each Investigative Services Office.

(b) *Badges and identification.* — Each Chief Investigative Services Officer and Investigative Services Officer shall be provided by the Court with an appropriate badge and identification.

(c) *Presentence investigations for Superior Court.* — Each Investigative Services Officer shall conduct such presentence investigations for the Superior Court as it shall direct, including an inquiry into such things as the circumstances of the offense, the motivation of the offender, and the criminal record, social history, behavior pattern and present condition of the offender. The report thereof shall be in such form and over such subjects as the Superior Court shall direct.

(d) *Presentence investigations for the Court of Common Pleas.* — Each Investigative Services Officer for the Court of Common Pleas shall conduct such presentence investigations for the Court of Common Pleas as it shall direct, including inquiring into such things as the circumstances of the offense, the motivations of the offender, and the criminal record, social history, behavior pattern and the present condition of the offender. The report thereof shall be in such form and cover such subjects as the Court of Common Pleas shall direct. In any county where a Court of Common Pleas Investigative Services Office does not exist, each Superior Court Investigative Services Officer shall, with the approval of the Superior Court, conduct such presentence investigations for the Court of Common Pleas as said Court shall order. The report thereof shall be in such form and cover such subjects as the Court of Common Pleas shall direct.

(e) "*Investigative Services Officer" definition.* — An "Investigative Services Officer" is a person selected by the Court through such person's training and experience to produce reports as identified above to assist the Court in determining restitution, costs and recommendations for sentences for a person convicted of an offense under the Delaware Code.

(11 Del. C. 1953, § 4336; 54 Del. Laws, c. 349, § 7; 57 Del. Laws, c. 184; 57 Del. Laws, c. 228, §§ 11-35; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 60, § 6; 78 Del. Laws, c. 227, § 1.)

§ 4336. Community notice of offenders on probation, parole, conditional release, or release from confinement.

(a) Notwithstanding any other provision of law to the contrary, the Department of Correction or the Department of Services to Children, Youth and Their Families (DSCYF) as the case may be, shall provide written notice to the Attorney General, to the chief law-enforcement officer of the jurisdiction which made the original arrest, to the chief law-enforcement officer where the prisoner intends to reside and to the Superintendent of State Police, of the release from incarceration of any person who has been convicted of:

(1) a. Any of the offenses specified in §§ 764 through 777 of this title;

b. Any of the offenses specified in §§ 1108 through 1111 of this title; or

c. Attempt to commit any of the foregoing offenses, or of the release of any juvenile adjudicated delinquent on the basis of an offense which, if committed by an adult, would constitute:

(2) a. Any of the offenses specified in §§ 764 through 777 of this title;

b. Any of the offenses specified in §§ 1108 through 1111 of this title; or

c. Attempt to commit any of the foregoing offenses.

(b) Notwithstanding any other provision of law to the contrary, the official in charge of any other institution where an inmate is confined because of the commission or attempt to commit any of the offenses specified subsection (a) of this section, or the official in charge of a state hospital to which a person is committed as a result of having been convicted or adjudged guilty but mentally ill or adjudged not guilty by reason of insanity of 1 of the offenses specified in subsection (a) of this section, shall provide written notice to the Attorney General, to the chief law-enforcement officer of the jurisdiction which made the original arrest, to the chief law-enforcement officer where the prisoner intends to reside and to the Superintendent of State Police of the release from such institution or state hospital of any such inmate or person.

(c) Any notice required pursuant to subsection (a) or subsection (b) of this section shall be given no more than 90 days, and no less than 45 days, prior to such person's release. The notice shall include, without limitation, the legal name, any alias or nicknames, age, sex, race, fingerprints, all known identifying factors, offense history, anticipated future residence and a photo of the released person supplied by the Department of Correction or the DSCYF, as the case may be, and taken not more than 90 days prior to release. No person shall be released from incarceration or confinement unless and until the person cooperates with the appropriate authorities pursuant to this section.

(d) Notwithstanding any other provision of law to the contrary, the court, where a person convicted of any of the offenses specified in subsection (a) of this section is released by a state court on probation or discharged by a state court upon payment of a fine, shall provide written notice to the Attorney General, to the chief law-enforcement officer of the jurisdiction which made the original arrest, to the chief law-enforcement officer where the convicted person intends to reside and to the Superintendent of State Police of the release from such court.

(e) Any notice pursuant to subsection (d) of this section shall be given no more than 5 working days after the person's release. The notice shall include, without limitation, the following information as it is available to the court or notation as to the repository for said information: the legal name, any alias or nicknames, age, sex, race, fingerprints, all known identifying factors, offense history, anticipated future residence and a photo taken not more than 90 days prior to release.

(f) The Attorney General shall use any reasonable means to notify the victim of the anticipated release unless the victim has requested not to be notified.

(g) The Attorney General shall, within 10 days after receiving notification of a pending release pursuant to subsection (a) or subsection (b) of this section, or notification of release pursuant to subsection (d) of this section, assess the offender in accordance with the Registrant Risk Assessment Scale, the form of which and a manual for which are attached hereto as Exhibit A. The Attorney General shall notify the Delaware State Police and the chief law-enforcement officer of the jurisdiction where the offender intends to reside as to the resulting score on the Registrant Risk Assessment Scale, and shall forward a copy of the completed Registrant Risk Assessment Scale to the Superintendent of the Delaware State Police and to the chief law-enforcement officer of the jurisdiction where the registrant offender intends to reside.

(h) The chief law-enforcement officer of the jurisdiction where the inmate intends to reside, or the Superintendent of State Police if no local agency exists, shall provide notification of the convicted sex offender's release in accordance with the following guidelines:

(1) Those persons receiving a "Low Risk" score on the Registrant Risk Assessment Scale shall be considered a Tier One offender. The release of Tier One offenders will require notification to all law-enforcement agencies with jurisdiction over the area where the offender intends to reside.

(2) Those persons receiving a "Moderate Risk" score on the Registrant Risk Assessment Scale shall be considered a Tier Two offender. In addition to law-enforcement notification, the release of a Tier Two offender shall require a Community Organization Alert pursuant to this paragraph. Such Community Organization Alert may include a photograph of the offender if deemed appropriate by the notifying agency. In order to be a community organization entitled to Tier Two notification, such organizations must register with the local law-enforcement agency, or where the community has no local law-enforcement agency, with the Superintendent of State Police. Organizations may only be included on the notification list if they operate an establishment where children gather under their care or where women are cared for. The State Board of Education shall provide all law-enforcement agencies within the State a list of all educational institutions within the Board's administration. Every law-enforcement agency shall automatically register each institution on the Board's list located within its jurisdiction. Notification will go to those organizations which, at any specific time, are likely to encounter the released offender. "Likely to encounter" for the purposes of this section means that the location of any organization is such that they are in close geographic proximity to a location where the released offender resides or visits or can be presumed to visit on a regular basis.

(3) Those persons receiving a "High Risk" score on the Registrant Risk Assessment Scale shall be considered a Tier Three offender. In addition to law-enforcement notification and a Community Organization Alert, the release of a Tier Three offender shall require community notification pursuant to this paragraph. Community notification shall be conducted by door-to-door appearances or by mail or by other methods devised specifically to notify members of the public likely to encounter the offender. Community notification should be targeted to a defined community. Such community notification may include a photograph of the offender if deemed appropriate by the notifying agency.

(i) A complete register of all persons convicted after June 27, 1994, of any of the offenses specified in subsection (a) of this section, or of attempt to commit any of such offenses shall be created, maintained and routinely updated by the Delaware State Police for immediate accessibility by the Delaware Justice Information System (DelJIS) computer to all law-enforcement agencies. Such register shall be accessible by the name of each offender or by county of residence of each offender. The register required by this subsection shall be established by the Delaware State Police no later than 6 months after June 21, 1996.

(j) All elected public officials, public employees and public agencies are immune from civil liability for any discretionary decision to release relevant information unless it is shown that the official, employee or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public.

(k) There shall be no civil legal remedies available as a cause of action against any public official, public employee or public agency for failing to release information as authorized in this section.

(l) In addition to those circumstances enumerated in this section, law-enforcement agencies shall notify any member of the public of the release of a person described in subsection (a), subsection (b) or subsection (d) of this section where such released person may pose a particular threat or danger to a member of the public.

(m) The Court in which any person described in subsection (a) of this section is sentenced shall designate for the Department of Correction or the DSCYF, as the case may be, at the time of sentencing that notice in accordance with this section shall be required.

(n) The Court in which any person described in subsection (b) of this section is sentenced shall designate for the official in charge of the institution of confinement or state hospital at the time of sentencing that notice in accordance with this section shall be required.

(o) The Court in which any person described in subsection (d) of this section is sentenced shall determine, at the time of sentencing, that notice in accordance with this section shall be required.

(p) The Department of Technology and Information shall provide public notification of the name of every person designated by the Attorney General as a Tier Three sex offender pursuant to paragraph (h)(3) of this section (including any known alias), the last verified address of the offender, the title of any sex offense for which the offender has been convicted and the date of conviction. Such information shall be searchable by the name of the sex offender and by geographic criteria, and shall be made available to the public by the Internet, and by printed copy that shall be available on request at any state or local police agency and all public libraries within the State. Such information shall be updated as often as practicable, but not less than every 3 months, and shall be maintained by the Superintendent of the Delaware State Police, as set forth in § 4120 of this title, and elsewhere in this section.

(q) This section shall apply with respect to persons convicted after June 21, 1996, but before March 1, 1999.

(69 Del. Laws, c. 469, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 373, § 1; 71 Del. Laws, c. 428, § 1; 71 Del. Laws, c. 429, § 3; 74 Del. Laws, c. 128, § 1; 77 Del. Laws, c. 318, § 6.)

Subchapter IV

Parole

§ 4341. Selection, appointment and removal of Board of Parole.

(a) The Board of Parole shall consist of a Chairperson and 4 other members, all of whom shall be appointed by the Governor and confirmed by a majority of the members elected to the Senate. One member shall be from each county and 1 additional member shall be from the City of Wilmington. Appointed members may include, but not be limited to, those who have a demonstrated interest in correctional treatment, social welfare, or victim advocacy.

(b) The Chairperson shall be paid a salary which shall be fixed by the Governor.

(c) The Chairperson shall be experienced in the area or areas of probation, parole and/or other related areas of corrections.

(d) The Chairperson shall serve at the pleasure of the Governor, and all other members shall serve a 4-year term, provided that no more than 1 member's term shall expire annually. The Governor may appoint members for terms of less than 4 years to ensure that the Board members' terms expire on a staggered basis. A member shall hold office until a successor has been appointed and qualified.

(e) The Governor may remove a member of the Board only for disability, inefficiency, neglect of duty or malfeasance in office. A member may be deemed in neglect of duty if he or she is absent from 3 consecutive Board meetings without adequate reason or if they attend less than 50% of Board meetings in a calendar year. Before such removal the Governor shall give the member a written copy of the charges against such member and shall fix the time when such member can be heard in such member's defense, which shall not be less than 10 days thereafter.

(11 Del. C. 1953, § 4341; 54 Del. Laws, c. 349, § 7; 57 Del. Laws, c. 597, § 1; 59 Del. Laws, c. 172, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 299, § 1; 79 Del. Laws, c. 366, § 1.)

§ 4342. Adequate quarters; personnel; seal.

(a) The Board shall obtain and maintain suitable and adequate quarters and shall employ those persons necessary to carry out its functions. For administrative and budgetary purposes, the Board shall be placed within the Criminal Justice Council. Fiscal oversight shall be provided by the Criminal Justice Council as determined by the Executive Director of the Criminal Justice Council.

(b) The Board shall adopt an official seal of which the courts shall take judicial notice.

(11 Del. C. 1953, § 4342; 54 Del. Laws, c. 349, § 7; 57 Del. Laws, c. 591, § 52; 57 Del. Laws, c. 597, § 2; 79 Del. Laws, c. 366, § 1.)

§ 4343. Duties.

The Board shall:

(1) Be the paroling authority for the State;

(2) Establish rules and regulations for the conduct of its own proceedings, and rules of procedure for the effective enforcement of this chapter. Copies of said rules and regulations shall be published and may be obtained upon request;

(3) Determine the salary of any employee within the total appropriation in addition to proper expenses;

(4) Meet at least once a month, for the transaction of business, and a sufficient other number of times as shall be necessary adequately to perform its duties under this chapter;

(5) Keep a record of its acts and notify each applicant for parole, and the Department of its decisions;

(6) Consult with the Department in the formulation and establishment of policies and procedures, fully to carry out the objectives of parole and correctional treatment in the best interests of the public;

(7) Cooperate with the Department in preparing the annual report of the Board to be submitted to the Governor and make available and submit to the Department all statistical and other data of its work and compilation and analysis of dispositions as it shall require. The Board may make a separate statement or include such statement in the report of the Department to the Governor;

(8) Act as advisory board to the Board of Pardons. When a person in legal custody of the Department of Correction applies to the Board of Pardons for recommendation for a pardon or commutation of sentence, the Parole Board, upon request, shall furnish to each member of the Board of Pardons and to the Governor a report of the record of such person, which shall include its opinion as to the state of rehabilitation of such person.

(11 Del. C. 1953, § 4343; 54 Del. Laws, c. 349, § 7; 57 Del. Laws, c. 597, § 3; 60 Del. Laws, c. 251, § 10; 78 Del. Laws, c. 305, § 1.)

§ 4344. Compensation and expenses.

(a) Each member of the Board except the Chairperson shall receive $300 per day, for services when attending a meeting of the Board. The meetings of the Board shall not exceed 50 in any year; however, the Governor may, in the Governor's discretion, give written authorization to the Board to hold as many meetings in excess of 50 in any year as the business of the Board may require.

(b) In addition, each member shall receive mileage incurred attending such meetings and performing such duties.

(11 Del. C. 1953, § 4344; 54 Del. Laws, c. 349, § 7; 57 Del. Laws, c. 597, § 4; 58 Del. Laws, c. 145; 59 Del. Laws, c. 172, § 3; 62 Del. Laws, c. 68, § 138; 62 Del. Laws, c. 86, § 40; 65 Del. Laws, c. 348, § 89; 69 Del. Laws, c. 459, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 329, § 1.)

§ 4345. Information on applications for parole and review to be provided by Chairperson.

At least 14 days before any meeting of the Board, the Chairperson shall provide all the members of the Board with copies of all pertinent information and materials at the Chairperson's disposal concerning all applications for parole coming before the Board at that meeting, or concerning any reviews which shall be undertaken at that meeting.

(11 Del. C. 1953, § 4345; 57 Del. Laws, c. 597, § 5; 70 Del. Laws, c. 186, § 1.)

§ 4346. Eligibility for parole.

(a) A person confined to any correctional facility administered by the Department may be released on parole by the Board if the person has served $^1/_3$ of the term imposed by the court, such term to be reduced by such merit and good behavior credits as have been earned, or 120 days, whichever is greater. For the purpose of this subchapter, "court" shall include any court committing an offender to the Department.

(b) Consistent with law, the Board, upon written recommendation of the court which imposed the sentence, or the Department, may reduce the minimum term of eligibility when the Board is satisfied that the best interest of the public and the welfare of the person will be served by such reduction. Such reduction in the minimum term of eligibility for parole shall be by order of the Board stating the specific date when said person shall become eligible for parole; but such reduction of the minimum term of eligibility for parole shall have no effect on the maximum limits of the sentence. The order of reduction by the Board shall be made in open hearing.

(c) The Board shall have authority to act where the maximum term has been commuted by the Governor. For all purposes of this section, a person sentenced to imprisonment for life shall be considered as having been sentenced to a fixed term of 45 years.

(d) Consistent with law, the Board may adopt such other rules as it deems proper or necessary with respect to the eligibility of persons for parole, the conduct of parole hearings or conditions to be imposed upon parolees.

(e) If good cause for release on the grounds of serious medical illness or infirmity would exist under § 4217 of this title, the Department shall recommend, or the person seeking release may request, that the person's case be considered by the Board of Parole at a regular or special meeting. When the case is so considered, the Board of Parole, if satisfied that good cause exists and that the release of the person

does not constitute a substantial risk under § 4217(b)(1)c. of this title, may order the release of the person on parole without regard to the time already served by the person. The Board of Parole may impose any conditions of parole on the person and may revoke the person's parole without hearing at any time and for any cause and order the return of the person to the Department.

(11 Del. C. 1953, § 4346; 54 Del. Laws, c. 349, § 7; 85 Del. Laws, c. 76, § 4.)

§ 4347. Parole authority and procedure.

(a) A person committed to the custody of the Department who will be eligible for parole within 180 days may apply for a parole hearing on forms promulgated by the Board. Upon receipt of such application, the Board shall notify the Bureau Chief of Prisons of said application and request verification of parole eligibility and the information required in subsection (d) of this section which shall be provided the Board within 30 days. Upon receipt of the foregoing information, the Board shall determine within 30 days if a parole hearing will be scheduled. If the hearing is denied or if the hearing is held and the parole denied the applicant and the Department shall be advised in writing by the Board of the earliest date, not sooner than 6 months for an applicant with a good-time release date of 3 years or less and not sooner than 1 year for an applicant with a good-time release date of more than 3 years, upon which the applicant shall be eligible to again apply for a parole hearing in accordance within this section.

(b) If any person eligible for parole fails to make an application as specified in subsection (a) of this section, the Department shall have no duty to such person to provide the Board with the information otherwise required by this chapter and the Board shall have no duty to such person to consider such person for parole. Notwithstanding the failure of a person to apply for parole, the Department is permitted to provide the Board with the information otherwise required by this chapter and the Board may, in turn, consider such person for parole.

(c) A parole may be granted when in the opinion of the Board there is reasonable probability that the person can be released without detriment to the community or to person, and where, in the Board's opinion, parole supervision would be in the best interest of society and an aid to rehabilitation of the offender as a law-abiding citizen. A parole shall be ordered only in the best interest of society, not as an award of clemency, and shall not be considered as a reduction of sentence or a pardon. A person shall be placed on parole only when the Board believes that the person is able and willing to fulfill the obligations of a law-abiding citizen. Among the factors the Board shall consider when determining if a defendant shall be placed on parole are as follows: job skills, progress towards or achievement of a general equivalency diploma, substance abuse treatment and anger management and conflict resolution.

(d) Within 1 month prior to the time an offender is scheduled for a parole hearing, the Department shall submit a progress report with parole recommendations to the Parole Board, and the Department shall submit a carefully evaluated parole plan with recommendations. At the same time a copy of the progress report and the parole plan and recommendations shall also be submitted to the Delaware State Police and to the arresting public police organization, along with the date and location of the scheduled parole hearing. Moreover, whenever possible and feasible, the Department shall notify the aggrieved party of the crime or crimes for which the offender was sentenced and the date and location of the scheduled parole hearing.

(e) The Board shall have no obligation to allow a person eligible for parole to appear before it, and the Board may deny a parole application without having interviewed the applicant. In no case, however, shall the Board grant a parole without having first had the applicant personally appear before the Board and be interviewed by it.

(f) All paroles shall issue upon order of the Board duly adopted by a majority of those present and voting; provided, however, no person who has been convicted of and imprisoned for murder in the first or second degree, rape in the first, second or third degree, unlawful sexual intercourse in the first or second degree, kidnapping or any offense relating to the sale, attempt to sell, delivery or possession with intent to sell or deliver a narcotic drug shall be granted a parole except by order of the Board duly adopted by at least 4 of the 5 members of the Board. A quorum shall be a minimum of 3 members.

No parole shall be issued to any prisoner who has been convicted in a court of law and sentenced for committing or attempting to commit the offense of "escape after conviction" as set forth in § 1253 of this title until such time as that prisoner has served the amount of time equivalent to and commensurate with that imposed in the sentence set forth by the court for said escape or attempt to escape.

No parole shall be issued to any prisoner who has been convicted and sentenced in a court of law for the offense of "conspiracy in the second degree" as defined in § 512 of this title with respect to directly and actively aiding or abetting an escape as defined in § 1253 of this title until such time as an equivalent amount of time commensurate with that which has been imposed under the sentence set forth by the court for said conspiracy has been served.

(g) Every person while on parole shall remain in the legal custody of the Department but shall be subject to the orders of the Board of Parole.

(h) Where civil rights would otherwise be forfeited, they shall be forfeited only during any period of incarceration.

(i) The period served on parole or conditional release shall be deemed service of the term of imprisonment, and subject to the provisions contained in § 4352 of this title, relating to a person who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. When a person on parole or conditional release has performed the obligations of that person's release for such time as shall satisfy the Board that the person's final release is not incompatible with the best interest of society and the welfare of the individual, the Board may make a final order of discharge and issue a certificate of discharge to the person; but no such order of discharge shall be made within 1 year after the date of release except where the sentence expires earlier thereto. Such discharge, and the discharge of a person who has served person's term of imprisonment, shall have the effect of restoring all civil rights lost by operation

of law upon commitment. Except when discharged herein a person on parole or conditional release shall be on parole until the expiration of the maximum term for which the person is sentenced.

(j) Each person who is eligible for parole or conditional release under this subchapter is eligible to be a candidate for appointment to the house arrest program for nonviolent offenders. A person shall be eligible for consideration to participate in the house arrest program if such person meets all of the requirements of subsection (c) of this section and in addition:

(1) Makes regular payments, per month, toward the costs incurred by the State in maintaining the program;

(2) Performs such stipulated number of hours of public service work as are directed by the court or by the Department;

(3) Makes restitution to any victim or victims in such amounts as the court shall determine. Full or partial restitution, in such manner as the court determines, is a requirement for participation, or continued participation, in the program.

(k) *Notification of parole eligibility.* — (1) a. At least 30 days before a scheduled parole hearing for an inmate convicted of a felony offense, the Board shall notify the victim or member of the victim's family of the date, time, and place of the scheduled hearing. A copy of any rules developed under § 4350(a) of this title must be included with the notice.

b. Notwithstanding paragraph (k)(1)a. of this section, the victim or member of the victim's family can request not to receive notification under § 9414(a)(3) of this title.

(2) At least 30 days prior to a scheduled parole hearing for an inmate convicted of a felony offense, the Board shall send a notice of the date, time and place of the scheduled hearing to the attorney general.

(3) At least 30 days prior to a scheduled parole hearing for an inmate convicted of a felony offense, the Board shall cause notice of the date, time and place of the scheduled hearing to be published in a newspaper with an average daily statewide circulation of at least 15,000 copies, of which at least 5,000 copies shall be in the county in which the offense occurred.

(*l*) *Notification of parole decision.* — (1) At the same time as the Board sends notice of its decision to the inmate, the Board shall send notice of its decision to individuals notified under paragraphs (k)(1) or (k)(2) of this section.

(2) No later than 10 days after a parole hearing resulting in parole of an applicant, the Board shall cause notice of its decision to be published in the same newspaper in which the notice of the hearing was published.

(m) Before a parole hearing, a party to whom the Board failed to notify as required in paragraphs (k)(1) or (2) of this section may request that the Board postpone the scheduled hearing in order to provide a reasonable opportunity for the party to attend the hearing or submit a written statement, or do both. However, in no event may the hearing be postponed more than 45 days from the original scheduled date.

(n) A notice under this section must be provided to the victim or to a member of the victim's family under § 9414(a) of this title.

(11 Del. C. 1953, § 4347; 54 Del. Laws, c. 349, § 7; 57 Del. Laws, c. 584; 59 Del. Laws, c. 125, § 1; 60 Del. Laws, c. 707, § 1; 63 Del. Laws, c. 331, § 1; 64 Del. Laws, c. 22, §§ 1-5; 64 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 29, § 2; 66 Del. Laws, c. 269, § 31; 67 Del. Laws, c. 355, § 1; 68 Del. Laws, c. 373, §§ 1, 2; 70 Del. Laws, c. 168, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 285, § 17; 75 Del. Laws, c. 102, § 1; 78 Del. Laws, c. 305, § 1; 85 Del. Laws, c. 142, § 7.)

§ 4348. Release upon merit and good behavior credits.

A person released on or after August 8, 2012, having served that person's term or terms in incarceration, less such merit and good behavior credits as have been earned, shall, upon release, be deemed as released on probation until the expiration of the maximum term or terms for which the person is sentenced. A person may waive the right to conditional release, in which case the person shall serve the remainder of the term or terms in prison. Such waiver shall be in writing.

(11 Del. C. 1953, § 4348; 54 Del. Laws, c. 349, § 7; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 392, § 7; 79 Del. Laws, c. 187, § 3.)

§ 4349. Information from the Department and others.

The Department shall grant to the Board or its representatives access to any person over whom the Board has jurisdiction under this chapter, and shall provide facilities for communicating with and observing such person, and make available to the Board such reports as the Board shall require concerning the conduct and character of any person in the custody of the Department, the institutional plan of treatment for such person or any other facts deemed by the Board pertinent in determining whether the person shall be paroled. The Department shall furnish to the Board such reports as the Board shall require concerning casework performed in the community with relatives or others connected with the person, investigations of parole plans or other reports or facts deemed by the Board pertinent in determining whether or not the person shall be paroled. All police agencies of this State, upon request, shall furnish the Board with any information at their disposal in regard to any person to be considered for parole.

(11 Del. C. 1953, § 4349; 54 Del. Laws, c. 349, § 7.)

§ 4350. Conduct of hearings on applications for parole.

(a) The Board shall adopt rules for hearing oral statements or arguments by persons not connected with the Department of Correction when hearing applications for parole. In developing those rules, the Board shall reserve for itself the right to:

(1) Limit the length of each statement;

(2) Restrict the number of individuals allowed to attend parole hearings in accordance with physical limitations or security requirements of the hearing facilities; and

(3) Deny admission or continued attendance to individuals who threaten or present a danger to the attendees or participants or who disrupt the hearing.

The Board shall also accept written statements.

(b) The Board may take formal action to close their proceedings upon a majority vote of members present for the following reasons:

(1) To protect ongoing law-enforcement investigations, upon written request of the attorney general or law-enforcement agency;

(2) To deliberate upon oral or written arguments received;

(3) To provide opportunity for applicants to challenge confidential information which they believe is detrimental to their applications; or

(4) At the request of the victim or, in the case of first-degree murder, the immediate family of the victim.

(c) The Department of Correction may appear personally before the Board to advise and be heard by the Board with respect to any application for parole being considered.

(d) When the Board is hearing an application for parole made by an offender, the victim or immediate family of the victim of such crime or their duly appointed representatives may make oral statements or arguments before the Board with respect to the application for parole being considered. Victims or their representatives shall have priority in making statements before the Board.

(e) As used in this section, the phrase “immediate family” shall mean widow, widower, parents, children, brothers and sisters of the victim.

(11 Del. C. 1953, § 4350; 54 Del. Laws, c. 349, § 7; 60 Del. Laws, c. 64, § 1; 70 Del. Laws, c. 168, § 1.)

§ 4351. Witnesses; production of records.

The Board may issue subpoenas requiring the attendance of such witnesses and the production of such records, books, papers and documents necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by any member of the Board. Subpoenas so issued may be served by Department employees or by any person authorized to serve subpoenas by the Rules of Civil Procedure of the Superior Court and shall be served and returned as provided by said Rules. The fees of witnesses shall be the same as allowed in the Superior Court and shall be paid by the State Treasurer from any moneys in the Treasury of the State not otherwise appropriated, upon a warrant signed by a member of the Board and its Secretary. Any person who testifies falsely or fails to appear when subpoenaed, or refuses to produce such material pursuant to the subpoena, shall be subject to the same orders and penalties to which a person before said Court is subject. The Superior Court, upon application of the Board, may in its discretion compel the attendance of witnesses, the production of such material and the giving of testimony before the Board, by an attachment for contempt or otherwise in the same manner as production of evidence may be compelled before such Superior Court.

(11 Del. C. 1953, § 4351; 54 Del. Laws, c. 349, § 7.)

§ 4352. Return of violator of parole; procedure and action on violation.

(a) At any time during release on parole the Board or any member thereof may issue a warrant for the arrest of a released person for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the person. The warrant shall authorize any officer authorized to serve process in this State to return the person to the actual custody of the correctional facility from which the person was released, or to any other suitable detention facility designated by the Board or Department. When, in the judgment of the Commissioner or of any probation and parole officer, there has been a violation of the conditions of release, the Commissioner or the probation and parole officer may arrest such parolee without a warrant, or the Commissioner or the probation and parole officer may deputize any other officer with power of arrest to do so by giving officer a written statement setting forth that the parolee has, in the judgment of the Commissioner or probation and parole officer, violated the conditions of parolee’s release. The written statement delivered with the person by the arresting officers to the official in charge of the facility to which the person is brought for detention shall be sufficient warrant for detaining the parolee.

(b) After making an arrest the Department shall present to the detaining authorities a statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation, the person shall remain incarcerated in the institution.

(c) Upon such arrest and detention, the Department shall immediately notify the Board and shall submit a report showing in what manner the person had violated the conditions of release. The Board shall cause the person to be brought promptly before it for a hearing on the violation charge, under such rules and regulations as the Board may adopt.

(d) If the violation is established by the hearing, the Board may continue or revoke the parole, or enter such other order as it may see fit.

(e) A person for whose return a warrant has been issued by the Board shall, if it is found that the warrant cannot be served, be deemed to be a fugitive from justice or to have fled from justice.

(f) If it shall appear that the person has violated the provisions of the person’s release, the Board shall determine whether the time from the issuing of the warrant to the date of the person’s arrest, or any part of it, shall be counted as time under the sentence.

(g) Any person who commits a crime while at large on parole and is convicted and sentenced therefor shall serve the unexpired portion of the term under which the person was released consecutively after any new sentence for the new offense.

(11 Del. C. 1953, § 4352; 54 Del. Laws, c. 349, § 7; 59 Del. Laws, c. 546, § 1; 67 Del. Laws, c. 442, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 392, § 8.)

§ 4353. Mental health evaluations required prior to parole.

(a) No person who has been convicted of and imprisoned for any class A felony, felony sex offense or any felony wherein death or assault to a victim occurred shall be released from incarceration by the Parole Board until the Parole Board has considered a mental health evaluation of such person. The Parole Board, in its discretion, may request mental health evaluations on persons convicted and imprisoned for any offense not enumerated above.

(b) The Department of Correction shall ensure that mental health evaluations required by subsection (a) of this section are available to the Parole Board at the time of the hearing in those cases wherein a favorable recommendation is made by the Department to the Board.

In cases wherein a favorable recommendation is not made by the Department but the Parole Board has determined that the person is otherwise suitable for release on parole, the Parole Board must request a mental health evaluation, pursuant to this section.

(c) The Parole Board may consider any mental health evaluation conducted within 12 months prior to the person's parole hearing in lieu of requesting a new mental health evaluation. However, for persons convicted and imprisoned for any of the offenses listed in subsection (a) of this section, the Parole Board may determine that it requires additional information. In such case as additional information is required, no person shall be released from incarceration until such additional information has been considered by the Parole Board.

(d) Mental health evaluations conducted pursuant to this section will be administered by a person with professional education and training. The mental health evaluation to the Parole Board shall consist of:

(1) Background information or historical information about the person's mental health;

(2) Information about the person's functioning in the prison or institutional setting;

(3) A description of the person's current mental health; and

(4) A summary with a prognosis of expected behavior if the person were paroled, including any specific recommendations for mental health care.

(e) Any mental health evaluations prepared pursuant to this section will be provided to each member of the Parole Board for their consideration in determining whether the person should be released from prison.

(f) Nothing in this section shall preclude the parole of a person for treatment to another institution because of a physical or mental condition, as provided in § 4346 of this title.

(11 Del. C. 1953, § 4353; 57 Del. Laws, c. 596, § 1; 66 Del. Laws, c. 269, § 9; 67 Del. Laws, c. 315, § 1; 68 Del. Laws, c. 372, § 1; 69 Del. Laws, c. 336, § 1.)

§ 4354. Applicability to sentences imposed pursuant to truth in sentencing.

No sentence imposed pursuant to the provisions of the Truth and Sentencing Act of 1989, including sentences imposed for felonies under § 4177 of Title 21, shall be subject to parole under the provisions of this subchapter.

(67 Del. Laws, c. 130, § 7; 80 Del. Laws, c. 120, § 2.)

Subchapter V

Interstate Compact For The Supervision Of Adult Offenders

§ 4358. Terms of the compact between the states.

The Governor shall execute a compact on behalf of the State with any of the United States legally joining therein in the form substantially as follows:

INTERSTATE COMPACT FOR THE SUPERVISION OF ADULT OFFENDERS

PREAMBLE

* WHEREAS, the interstate compact for the supervision of Parolees and Probationers was established in 1937, it is the earliest corrections "compact" established among the states and has not been amended since its adoption over 62 years ago; and

* WHEREAS, this compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines, and it currently has jurisdiction over more than a quarter of a million offenders; and

* WHEREAS, the complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as victim input, victim notification requirements and sex offender registration; and

* WHEREAS, after hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns and offender accountability; and

* WHEREAS, upon the adoption of this Interstate Compact for Adult Offender Supervision, it is the intention of the legislature to repeal the previous Interstate Compact for the Supervision of Parolees and Probationers on the effective date of this Compact.

ARTICLE I PURPOSE

The compacting states to this Interstate Compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the Bylaws and Rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner,

and when necessary return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. § 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime. It is the purpose of this compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compacting states: to provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits and obligations of the compact among the compacting states. In addition, this compact will: create an Interstate Commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of Compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct non-compliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

The compacting states recognize that there is no “right” of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and are therefore public business.

ARTICLE II DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

* “Adult” means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law;

* “By-laws” mean those by-laws established by the Interstate Commission for its governance, or for directing or controlling the Interstate Commission’s actions or conduct;

* “Compact Administrator” means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state’s supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact;

* “Compacting State” means any state, which has enacted the enabling legislation for this compact;

* “Commissioner” means the voting representative of each compacting state appointed pursuant to Article III of this compact;

* “Interstate Commission” means the Interstate Commission for Adult Offender Supervision established by this compact;

* “Member” means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner;

* “Non-Compacting State” means any state, which has not enacted the enabling legislation for this compact;

* “Offender” means an adult placed under, or subject, to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies;

* “Person” means any individual, corporation, business enterprise, or other legal entity, either public or private;

* “Rules” means acts of the Interstate Commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the Interstate Commission, which shall have the force and effect of law in the compacting states;

* “State” means a state of the United States, the District of Columbia and any other territorial possessions of the United States; and

* “State Council” means the resident members of the State Council for Interstate Adult Offender Supervision created by each state under Article III of this compact.

ARTICLE III THE COMPACT COMMISSION

The compacting states hereby create the “Interstate Commission for Adult Offender Supervision”. The Interstate Commission shall be a body corporate and joint agency of the compacting states. The Interstate Commission shall have all the responsibilities, powers and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

The Interstate Commission shall consist of Commissioners selected and appointed by resident members of a State Council for Interstate Adult Offender Supervision for each state. In addition to the Commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners but who are members of interested organizations; such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All non-commissioner members of the Interstate Commission shall be ex-officio (non-voting) members. The Interstate Commission may provide in its by-laws for such additional, ex-officio, non-voting members, as it deems necessary.

Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by-laws of the Interstate Commission. The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and,

upon the request of 27 or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

The Interstate Commission shall establish an Executive Committee which shall include commission officers, members and others as shall be determined by the By-laws. The Executive Committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the Compact. The Executive Committee oversees the day-to-day activities managed by the Executive Director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its by-laws and as directed by the Interstate Commission and performs other duties as directed by Commission or set forth in the By-laws.

ARTICLE IV THE STATE COUNCIL

Each member state shall create a State Council for Interstate Adult Offender Supervision which shall be responsible for the appointment of the commissioner who shall serve on the Interstate Commission from that state. Each state council shall appoint as its commissioner the Compact Administrator from that state to serve on the Interstate Commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups and compact administrators. Each compacting state retains the right to determine the qualifications of the Compact Administrator who shall be appointed by the state council or by the Governor in consultation with the Legislature and the Judiciary. In addition to appointment of its commissioner to the National Interstate Commission, each state council shall exercise oversight and advocacy concerning its participation in Interstate Commission activities and other duties as may be determined by each member state including but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE V POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall have the following powers:

* To adopt a seal and suitable by-laws governing the management and operation of the Interstate Commission;

* To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

* To oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any by-laws adopted and rules promulgated by the compact commission;

* To enforce compliance with compact provisions, Interstate Commission rules, and by-laws, using all necessary and proper means, including but not limited to, the use of judicial process;

* To establish and maintain offices;

* To purchase and maintain insurance and bonds;

* To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs;

* To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder;

* To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission’s personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

* To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same;

* To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;

* To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed;

* To establish a budget and make expenditures and levy dues as provided in Article X of this compact;

* To sue and be sued;

* To provide for dispute resolution among Compacting States;

* To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

* To report annually to the legislatures, governors, judiciaries, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission;

* To co-ordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity; and

* To establish uniform standards for the reporting, collecting, and exchanging of data.

ARTICLE VI ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. By-laws.

The Interstate Commission shall, by a majority of the Members, within twelve months of the first Interstate Commission meeting, adopt By-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the Compact, including, but not limited to:

Establishing the fiscal year of the Interstate Commission;

Establishing an executive committee and such other committees as may be necessary;

Providing reasonable standards and procedures:

(i) For the establishment of committees; and

(ii) Governing any general or specific delegation of any authority or function of the Interstate Commission;

Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

Establishing the titles and responsibilities of the officers of the Interstate Commission;

Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Interstate Commission. Notwithstanding any civil service or other similar laws of any Compacting State, the By-laws shall exclusively govern the personnel policies and programs of the Interstate Commission; and

Providing a mechanism for winding up the operations of the Interstate Commission and the equitable return of any surplus funds that may exist upon the termination of the Compact after the payment and/or reserving of all of its debts and obligations;

Providing transition rules for “start-up” administration of the compact;

Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

B. Officers and Staff.

The Interstate Commission shall, by a majority of the Members, elect from among its Members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the By-laws. The chairperson or, in his or her absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The Officers so elected shall serve without compensation or remuneration from the Interstate Commission; PROVIDED THAT, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, and hire and supervise such other staff as may be authorized by the Interstate Commission, but shall not be a member.

C. Corporate Records of the Interstate Commission.

The Interstate Commission shall maintain its corporate books and records in accordance with the By-laws;

D. Qualified Immunity, Defense and Indemnification.

The Members, officers, executive director and employees of the Interstate Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities; PROVIDED, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or wilful and wanton misconduct of any such person.

The Interstate Commission shall defend the Commissioner of a Compacting State, or his or her representatives or employees, or the Interstate Commission’s representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties or responsibilities; PROVIDED, that the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of such person.

The Interstate Commission shall indemnify and hold the Commissioner of a Compacting State, the appointed designee or employees, or the Interstate Commission’s representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties or responsibilities, provided, that the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII ACTIVITIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall meet and take such actions as are consistent with the provisions of this Compact.

Except as otherwise provided in this Compact and unless a greater percentage is required by the By-laws, in order to constitute an act of the Interstate Commission, such act shall have been taken at a meeting of the Interstate Commission and shall have received an affirmative vote of a majority of the members present.

Each Member of the Interstate Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Interstate Commission. A Member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a State Council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The By-laws may provide for Members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

The Interstate Commission shall meet at least once during each calendar year. The chairperson of the Interstate Commission may call additional meetings at any time and, upon the request of a majority of the Members, shall call additional meetings.

The Interstate Commission's By-laws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official record to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such Rules, the Interstate Commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in the Compact. The Interstate Commission shall promulgate Rules consistent with the principles contained in the "Government in Sunshine Act", 5 U.S.C. § 552(b), as may be amended. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

* Relate solely to the Interstate Commission's internal personnel practices and procedures;

* Disclose matters specifically exempted from disclosure by statute;

* Disclosure trade secrets or commercial or financial information which is privileged or confidential;

* Involve accusing any person of a crime, or formally censuring any person;

* Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

* Disclose investigatory records compiled for law enforcement purposes;

* Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

* Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity;

* Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or proceeding.

For every meeting closed pursuant to this provision, the Interstate Commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll-call vote (reflected in the vote of each Member on the question). All documents considered in connection with any action shall be identified in such minutes.

The Interstate Commission shall collect standardized data concerning the interstate movement of offenders as directed through its By-laws and Rules which shall specify the data to be collected, the means of collection and data exchange and report requirements.

ARTICLE VIII RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

The Interstate Commission shall promulgate Rules in order to effectively and efficiently achieve the purposes of the Compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states;

Rulemaking shall occur pursuant to the criteria set forth in this Article and the By-laws and Rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the Federal Administrative Procedure Act, 5 U.S.C. § 551 et seq., and the Federal Advisory Committee Act, 5 U.S.C. app. 2, § 1 et seq., as may be amended (hereinafter "APA"). All Rules and amendments shall become binding as of the date specified in each Rule or amendment.

If a majority of the legislatures of the Compacting States rejects a Rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such Rule shall have no further force and effect in any Compacting State.

When promulgating a Rule, the Interstate Commission shall:

* Publish the proposed Rule stating with particularity the text of the Rule which is proposed and the reason for the proposed Rule;

* Allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available;

* Provide an opportunity for an informal hearing; and

* Promulgate a final Rule and its effective date, if appropriate, based on the rulemaking record.

Not later than 60 days after a Rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of

such Rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence, (as defined in the APA), in the rulemaking record, the court shall hold the Rule unlawful and set it aside.

Subjects to be addressed within 12 months after the first meeting must at a minimum include:

* Notice to victims and opportunity to be heard;

* Offender registration and compliance;

* Violations/returns;

* Transfer procedures and forms;

* Eligibility for transfer;

* Collection of restitution and fees from offenders;

* Data collection and reporting;

* The level of supervision to be provided by the receiving state;

* Transition rules governing the operation of the Compact and the Interstate Commission during all or part of the period between the effective date of the Compact and the date on which the last eligible state adopts the Compact;

* Mediation, arbitration and dispute resolution.

The existing rules governing the operation of the previous Compact superseded by this Act shall be null and void 12 months after the first meeting of the Interstate Commission created hereunder.

Upon determination by the Interstate Commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule.

ARTICLE IX OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

A. Oversight.

The Interstate Commission shall oversee the interstate movement of adult offenders in the Compacting States and shall monitor such activities being administered in Non-Compacting States which may significantly affect Compacting States.

The courts and executive agencies in each Compacting State shall enforce this Compact and shall take all actions necessary and appropriate to effectuate the Compact's purposes and intent. In any judicial or administrative proceeding in a Compacting State pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Interstate Commission, the Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

B. Dispute Resolution.

The Compacting States shall report to the Interstate Commission on issues or activities of concern to them, and cooperate with and support the Interstate Commission in the discharge of its duties and responsibilities.

The Interstate Commission shall attempt to resolve any disputes or other issues which are subject to the Compact and which may arise among Compacting States and Non-Compacting States.

The Interstate Commission shall enact a By-law or promulgate a Rule providing for both mediation and binding dispute resolution for disputes among the Compacting States.

C. Enforcement.

The Interstate Commission, in the reasonable exercise of its' discretion, shall enforce the provisions of this Compact using any or all means set forth in Article XII, Section B, of this Compact.

ARTICLE X FINANCE

The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

The Interstate Commission shall levy on and collect an annual assessment from each Compacting State to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each Compacting State and shall promulgate a Rule binding upon all Compacting States which governs said assessment.

The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the Compacting States, except by and with the authority of the Compacting State.

The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its By-laws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XI COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

Any state, as defined in Article II of this compact, is eligible to become a Compacting State. The Compact shall become effective and binding upon legislative enactment of the Compact into law by no less than 35 of the States. The initial effective date shall be the later of July 1, 2001, or upon enactment into law of the Compact into law by that State. The governors of Non-Member states or their designees will be invited to participate in Interstate Commission activities on a non-voting basis prior to adoption of the compact by all states and territories of the United States.

Amendments to the Compact may be proposed by the Interstate Commission for enactment by the Compacting States. No amendment shall become effective and binding upon the Interstate Commission and the Compacting States unless and until it is enacted into law by unanimous consent of the Compacting States.

ARTICLE XII WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

A. Withdrawal.

Once effective, the Compact shall continue in force and remain binding upon each and every Compacting State; PROVIDED, that a Compacting State may withdraw from the Compact ("Withdrawing State") by enacting a statute specifically repealing the statute which enacted the Compact into law.

The effective date of withdrawal is the effective date of the repeal.

The Withdrawing State shall immediately notify the Chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this Compact in the Withdrawing State. The Interstate Commission shall notify the other Compacting States of the Withdrawing State's intent to withdraw within sixty days of its receipt thereof.

The Withdrawing State is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

Reinstatement following withdrawal of any Compacting State shall occur upon the Withdrawing State re-enacting the Compact or upon such later date as determined by the Interstate Commission.

B. Default.

If the Interstate Commission determines that any Compacting State has at any time defaulted ("Defaulting State") in the performance of any of its obligations or responsibilities under this Compact, the By-laws or any duly promulgated Rules the Interstate Commission may impose any or all of the following penalties:

* Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission;

* Remedial training and technical assistance as directed by the Interstate Commission;

* Suspension and termination of membership in the compact;

* Suspension shall be imposed only after all other reasonable means of securing compliance under the By-laws and Rules have been exhausted.

Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or Chief Judicial Officer of the state; the majority and minority leaders of the defaulting state's legislature, and the State Council.

The grounds for default include, but are not limited to, failure of a Compacting State to perform such obligations or responsibilities imposed upon it by this Compact, Interstate Commission By-laws, or duly promulgated Rules. The Interstate Commission shall immediately notify the Defaulting State in writing of the penalty imposed by the Interstate Commission on the Defaulting State pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the Defaulting State must cure its default. If the Defaulting State fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the Defaulting State may be terminated from the Compact upon an affirmative vote of a majority of the Compacting States and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of suspension. Within 60 days of the effective date of termination of a Defaulting State, the Interstate Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer and the Majority and Minority Leaders of the Defaulting State's legislature and the state council of such termination.

The Defaulting State is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

The Interstate Commission shall not bear any costs relating to the Defaulting State unless otherwise mutually agreed upon between the Interstate Commission and the Defaulting State. Reinstatement following termination of any Compacting State requires both a re-enactment of the Compact by the Defaulting State and the approval of the Interstate Commission pursuant to the Rules.

C. Judicial Enforcement.

The Interstate Commission may, by majority vote of the Members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the Federal District where the Interstate Commission has its offices to enforce compliance with the provisions of the Compact, its duly promulgated Rules and By-laws, against any Compacting State in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

D. Dissolution of Compact.

The Compact dissolves effective upon the date of the withdrawal or default of the Compacting State which reduces membership in the Compact to one Compacting State.

Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be wound up and any surplus funds shall be distributed in accordance with the By-laws.

ARTICLE XIII SEVERABILITY AND CONSTRUCTION

The provisions of this Compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.

The provisions of this Compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIV BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other Laws.

Nothing herein prevents the enforcement of any other law of a Compacting State that is not inconsistent with this Compact.

All Compacting States' laws conflicting with this Compact are superseded to the extent of the conflict.

B. Binding Effect of the Compact.

All lawful actions of the Interstate Commission, including all Rules and By-laws promulgated by the Interstate Commission, are binding upon the Compacting States.

All agreements between the Interstate Commission and the Compacting States are binding in accordance with their terms.

Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the Compacting States, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the Compacting State and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective.

(11 Del. C. 1953, § 4358; 54 Del. Laws, c. 349, § 7; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 91, § 1.)

§ 4359. Short title.

This subchapter may be cited as the "Interstate Compact for Adult Offender Supervision."

(11 Del. C. 1953, § 4359; 54 Del. Laws, c. 349, § 7; 74 Del. Laws, c. 91, § 1; 84 Del. Laws, c. 360, § 2.)

§ 4359A. State Council for Interstate Adult Offender Supervision.

(a) The State Council for Interstate Adult Offender Supervision is hereby established and shall consist of 7 members as follows:

(1) The Commissioner of Correction, or the Commissioner's designee.

(2) The Director of Probation and Parole, or the Director's designee.

(3) A member of the Delaware Senate appointed by the President Pro Tempore of the Senate to serve at the pleasure of the President Pro Tempore.

(4) A member of the Delaware House of Representatives appointed by the Speaker of the House to serve at the pleasure of the Speaker of the House.

(5) A member of the state judiciary appointed by the Chief Justice of the Delaware Supreme Court to serve at the pleasure of the Chief Justice.

(6) Two members appointed by the Governor who shall serve at the pleasure of the Governor. At least 1 of these appointments must be a representative of a victims' assistance or advocacy organization.

(b) By majority vote of the members, the State Council for Interstate Adult Offender Supervision shall select a chairperson who shall serve as the Compact Commissioner and Administrator to the Interstate Commission for Adult Offender Supervision.

(c) The State Council shall exercise oversight and advocacy concerning the State's participation in Interstate Commission activities and other duties including, but not limited to, the development of policy concerning operations and procedures of the Compact within the State.

(d) The State Council shall meet at least twice each year.

(77 Del. Laws, c. 178, § 1.)

Subchapter VI

Clemency

§ 4361. Board of Pardons; attendance of victims and witnesses.

(a) The Board of Pardons as constituted by article VII of the Constitution of this State shall have power to issue subpoenas requiring the attendance of such witnesses and the production of such records, books, papers and documents necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by any member of the Board. Subpoenas so issued may be

served by Department employees or by any person authorized to serve subpoenas by the Rules of Civil Procedure of the Superior Court and shall be served and returned as provided by said Rules.

(b) The fees of witnesses shall be the same as allowed in the Superior Court and shall be paid by the State Treasurer from any moneys in the Treasury of the State not otherwise appropriated, upon a warrant signed by a member of the Board and its secretary.

(c) Any person who testifies falsely or fails to appear when subpoenaed, or refuses to produce such material pursuant to the subpoena, shall be subject to the same orders and penalties to which a person before the Superior Court is subject.

(d) (1) Upon the application for a pardon, the Board shall notify the Superior Court and the Department of Justice of the application.

(2) The Department of Justice, in cooperation with the Superior Court, shall send notice of the application for a pardon to each person who was a victim or witness of the offense that is the basis for the application for the pardon. For purposes of this section:

a. "Offense" means a "crime" as defined in § 9401 of this title.

b. "Representative of the victim" and "victim" mean as defined in § 9401 of this title.

c. "Witness" means an individual who testified for the prosecution at the trial which is the basis for the application for the pardon. "Witness" does not include a law enforcement officer, an individual who testified merely as an expert witness, or any person who was merely a custodian of the evidence, with no knowledge of the circumstances of the offense.

(3) The notice under paragraph (d)(2) of this section must contain the time, date, and place where the matter will be heard by the Board.

a. If a victim or witness is known to be deceased, a child, or an individual who is unable to meaningfully understand or participate in the proceeding because of a physical, psychological, or mental impairment, a good faith effort must be made to send the notice required under paragraph (d)(2) of this section as follows:

1. To the representative of the victim.

2. To the parent, guardian, or custodian of the witness.

b. Notice required under this section must be provided under § 9414(a) of this title.

(4) Each victim or witness under paragraph (d)(2) of this section must be permitted to testify at the pardons hearing. A victim or witness may, in lieu of appearing before the Board, submit a written statement to the Board at any time before the hearing.

(e) The Superior Court, upon application of the Board, may in its discretion compel the attendance of witnesses, the production of such material and the giving of testimony before the Board, by an attachment for contempt or otherwise in the same manner as production of evidence may be compelled before the Superior Court.

(f) Upon the request of the Board of Pardons, the Department, to the extent authorized by the Commissioner, shall make investigations and recommendations and report thereon with respect to any application before the Board of Pardons.

(11 Del. C. 1953, § 4361; 54 Del. Laws, c. 349, § 7; 67 Del. Laws, c. 242, §§ 1-3; 70 Del. Laws, c. 186, § 1; 85 Del. Laws, c. 142, § 8.)

§ 4362. Mental health examinations.

(a) When the Board of Pardons considers for recommendation to the Governor, for pardon or commutation of sentence, any person who has been convicted of an act causing death (subpart B of subchapter II of Chapter 5 of this title); sexual offenses (subpart D of subchapter II of Chapter 5 of this title); kidnapping and related offenses (subpart E of subchapter II of Chapter 5 of this title); arson and related offenses (subpart A of subchapter III of Chapter 5 of this title); home invasion; burglary in the first degree; burglary in the second degree; robbery (subpart C of subchapter III of Chapter 5 of this title); offenses relating to children and vulnerable adults (subchapter V of Chapter 5 of this title); cruelty to animals; abusing a corpse; unlawful use of an incendiary device, bomb or other explosive device; abuse of children (Chapter 9 of Title 16); and distribution of a controlled substance to a person under age 18 (former § 4761 of Title 16 (repealed)); or for an attempt as provided by statute to commit any of these crimes, there shall be furnished to each member of the Board of Pardons and to the Governor, in case recommendation for a pardon or commutation of sentence be made, a copy of the report of the mental health examiner who has examined such person, as provided in subsection (b) of this section.

(b) Prior to consideration by the Board of Pardons of any application for a pardon or a commutation of sentence made by any person who has been incarcerated for any of the crimes stated in subsection (a) of this section, such person shall be examined by a mental health examiner within a 12-month period immediately preceding consideration of such person's case by the Board of Pardons. The Commissioner of the Department of Correction or the Commissioner's designee may request the Director of the Delaware Psychiatric Center to cause examination and studies to be made.

(c) Any mental health examiner who, pursuant to subsection (b) of this section, examines any applicant for a pardon or a commutation of sentence shall furnish to each member of the Board of Pardons a report containing their respective findings, opinions as to the mental and emotional health of the applicant, and opinions as to the probability of the applicant again committing any crime if released. If the Board of Pardons recommends a pardon or a commutation of sentence, a copy of any report submitted to the Board by any mental health examiner shall be provided to the Governor.

(d) If examination and clinical studies as provided in this section cannot be made at the correctional institution, the prisoner may be transferred, under adequate security safeguards, to the Delaware Psychiatric Center for such examination and studies.

(e) For the purposes of this section, a "mental health examiner" may be a psychiatrist, psychologist, licensed clinical social worker, psychiatric/mental health nurse practitioner, or licensed professional counselor of mental health.

(11 Del. C. 1953, § 4362; 57 Del. Laws, c. 594, § 1; 59 Del. Laws, c. 528, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, § 1; 72 Del. Laws, c. 429, §§ 1-3; 76 Del. Laws, c. 344, §§ 1, 2; 78 Del. Laws, c. 224, § 14; 78 Del. Laws, c. 252, § 12; 83 Del. Laws, c. 524, § 1.)

§ 4363. Request for advice from Board of Parole.

Whenever the Board of Pardons receives an application for recommendation of pardon or commutation of sentence from a person who is in legal custody of the Department of Correction, the Board shall request from the Board of Parole a report summarizing the complete record of such person, which shall include an opinion as to the state of rehabilitation of such person. The report shall be furnished by the Parole Board as provided in § 4343(8) of this title.

(11 Del. C. 1953, § 4363; 57 Del. Laws, c. 595, § 1; 80 Del. Laws, c. 51, § 2.)

§ 4364. Effect of pardon; restoration of civil rights.

Except as otherwise provided by the Delaware Constitution, or expressly by any provision of the Delaware Code or any court rule, the granting of an unconditional pardon by the Governor shall have the effect of fully restoring all civil rights to the person pardoned. Such civil rights include, but are not limited to, the right to vote, the right to serve on a jury if selected, the right to purchase or possess deadly weapons and the right to seek and hold public office provided however, that this section shall not limit or affect the Governor's authority to place lawful conditions upon the granting of a pardon. Notwithstanding the granting of a pardon or any provision of this section, no person who shall be convicted of embezzlement of the public money, bribery, perjury or other infamous crime, shall be eligible to a seat in either House of the General Assembly, or capable of holding any office of trust, honor or profit under this State.

(74 Del. Laws, c. 156, § 1.)

Subchapter VII

Expungement of Criminal Records

§ 4371. Statement of policy.

The General Assembly finds that a criminal history is a hindrance to a person's present and future ability to obtain employment, housing, education, or credit. This subchapter is intended to protect persons from unwarranted damage which may occur when the existence of a criminal history continues indefinitely.

(62 Del. Laws, c. 317, § 2; 82 Del. Laws, c. 83, § 1.)

§ 4372. Applicability; definitions; effect of expungement.

(a) This subchapter applies to all criminal cases brought and convictions entered in a court in this State.

(b) For the purposes of this subchapter, a case is "terminated in favor of the accused" only if 1 or more of the following occurs:

(1) The accused is acquitted of all charges related to the case.

(2) A nolle prosequi is entered on all charges related to the case.

(3) The accused is placed on probation before judgment, fulfills the terms and conditions of probation, and the court enters an order discharging the person from probation.

(4) All charges related to the case are otherwise dismissed.

(5) The accused is acquitted of 1 or more charges related to the case, and the other charges are dismissed by the entry of a nolle prosequi or otherwise.

(6) The accused is arrested for the commission of 1 or more crimes and no charges related to the matter for which the person was arrested are filed in any court within 1 year of the arrest.

(7) Where a case is 7 or more years old and contains a charge or charges without a disposition or the disposition is listed as unknown, unobtainable, or pending. This paragraph (b)(7) does not apply if there is an active warrant in the case, if there is documented case activity within the last 12 months, or if there are charges in the case that were not terminated in favor of the accused.

(c) For the purposes of this subchapter:

(1) "Case" means a charge or set of charges related to a complaint or incident that are or could be properly joined for prosecution.

(2) a. "Conviction" means as defined under § 222 of this title.

b. "Conviction" does not include a case in which a person is adjudicated delinquent under § 1002 of Title 10.

(3) "Criminal justice agencies" means as defined under § 8502 of this title.

(4) "Expungement" means that all law-enforcement agency records and court records relating to a case in which an expungement is granted, including any electronic records, are destroyed, segregated, or placed in the custody of the State Bureau of Identification, and are not released in conjunction with any inquiry beyond those specifically authorized under this subchapter.

(d) Except as otherwise provided under § 4376(a) of this title, a person is not required to disclose, nor should the person be asked to disclose, to anyone for any purpose that the person was arrested for, charged with, or convicted of an offense for which records have been expunged under this subchapter or any other provision of this Code.

(e) (1) If a court issues an order expunging records, all the criminal records relating to a case specified in the order must, within 60 days of the order, be removed from the court's files and placed in the control of the Supervisor of the State Bureau of Identification or otherwise segregated and kept in a manner that ensures that they are not open to public inspection or disclosure. The court may retain a nonpublic record of expungement orders. The court shall send a copy of its order of expungement to the Bureau, and shall consult with the Bureau to develop a standard form of order for expungements. Except as otherwise provided under § 4376 of this title, the Supervisor of the Bureau shall retain control over all expunged records and shall ensure that the records or information contained in the records are not released for any reason.

(2) If the State Bureau of Identification determines that expungement is mandated under this subchapter, or receives an expungement order from a court, it shall promptly notify all courts and law-enforcement agencies where records pertaining to the case are located or maintained, and any court where the case was terminated, disposed of, or concluded. A court or law-enforcement agency which receives a notice of expungement from the Bureau shall provide the Bureau with written confirmation of the completion of the expungement. Where an expungement of a conviction is granted, all arrest records associated with any charge in that case must also be expunged.

(3) If a court orders expungement, the State Bureau of Identification shall provide the court that entered the order with written confirmation of the execution of the order. The Bureau shall promptly notify the court if it is unable to comply with any order issued under this subchapter and state the reasons why it is unable to comply.

(4) In response to a request from a non-law-enforcement officer for information or records on the person who received an expungement, all law-enforcement officers, law-enforcement agencies, and courts shall reply, with respect to the proceedings which are the subject of the order, that there is no record.

(f) *Exclusions. —*

Except as otherwise provided under § 4375 of this title, the following exclusions apply:

(1) Except as otherwise provided under paragraph (b)(6) of this section, a person is not eligible for an expungement while the person has pending criminal charges. For purposes of this paragraph (f)(1), "pending criminal charges" does not include an alleged violation of any of the following:

a. Section 904(e) or (f) of Title 4.

b. Section 4764(c) of Title 16.

c. A Title 21 offense.

(2) Except as otherwise provided under § 4374(i) of this title, offenses under Title 21, or their equivalent, are not eligible for expungement.

(3) A conviction for any of the following may not be expunged:

a. Vehicular assault in the second degree under § 628A of this title.

b. Incest under § 766 of this title.

c. Unlawful sexual contact in the third degree under § 767 of this title.

d. Coercion under § 791 of this title.

e. Unlawfully dealing with a child under § 1106 of this title.

(4) a. A person is not eligible for an expungement of a felony conviction if the person is convicted of the felony after the date an expungement of a prior felony conviction was granted.

b. For an expungement of a conviction other than in the circumstances under paragraph (f)(4)a. of this section, a person is not eligible if the person has been granted an expungement of a prior conviction in the previous 10 years. This paragraph (f)(4)b. applies to a person who is granted an expungement after December 27, 2019.

c. This paragraph (f)(4) does not apply to a person seeking an expungement under § 4373(a)(1) or (a)(2) of this title.

(5) A person is not eligible for expungement if that person is currently serving a term of incarceration, parole, or probation.

(g) A prior or subsequent conviction does not operate as a bar to eligibility for discretionary or mandatory expungement under this subchapter if the conviction is under any of the following:

(1) Underage possession or consumption of alcohol under § 904(e) or (f) of Title 4.

(2) Possession of a personal use quantity of marijuana under § 4764 of Title 16.

(3) Possession of drug paraphernalia under § 4771 of Title 16.

(h) A prior or subsequent conviction of a Title 21 offense does not operate as a bar to eligibility for discretionary or mandatory expungement under this subchapter.

(i) Nothing in this subchapter is intended to operate to expand or limit the availability of expungement under any other part of the Code.

(j) The grant of an expungement under this subchapter does not nullify any provision of an active protection from abuse order.

(k) The grant of an expungement under this subchapter does not result in the automatic removal of an individual from the Child Protection Registry, established under subchapter II of Chapter 9 of Title 16, or the Adult Abuse Registry, established under § 8564 of this title. The fact an expungement has been granted may be considered with other relevant evidence as part of a petition for removal from the Child Protection Registry under § 929 of Title 16 or the Adult Abuse Registry under regulations adopted under § 8564(f) of this title.

(*l*) For a conviction to be eligible for an expungement under this subchapter, all fines, fees, and restitution associated with the conviction must be paid. However, if an outstanding fine or fee is not yet satisfied due to reasons other than wilful noncompliance, but the person is otherwise eligible for an expungement, the court may grant the expungement and waive the fines or fees or convert outstanding financial obligations to a civil judgement.

(62 Del. Laws, c. 317, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 150, § 5; 76 Del. Laws, c. 392, § 1; 79 Del. Laws, c. 211, § 2; 82 Del. Laws, c. 83, § 2; 83 Del. Laws, c. 263, § 1; 83 Del. Laws, c. 266, § 6; 83 Del. Laws, c. 418, § 1.)

§ 4373. Mandatory expungement; application through SBI.

(a) Eligibility. —

(1) On an appropriate request to the State Bureau of Identification under this section, the Bureau shall expunge all charges relating to a case, even if a person has prior or subsequent convictions that are ineligible for expungement, if all other charges in the case are eligible for expungement under this subchapter, and 1 or more of the following apply:

a. The person was arrested or charged with the commission of 1 or more crimes and the case is terminated in favor of the accused.

b. The person was convicted of 1 or more violations relating to the same case and 3 years have passed since the date of conviction.

c. The person was convicted of possession of marijuana under § 4764 of Title 16 or possession of drug paraphernalia under § 4771 of Title 16, or both in the same case.

d. The person was convicted of underage possession or consumption of alcohol under § 904(e) or (f) of Title 4.

(2) On an appropriate request to the State Bureau of Identification under this section, the Bureau shall expunge all charges relating to a case if the person has no prior or subsequent convictions that bar eligibility for expungement under this subchapter, all charges in the case are eligible for expungement under this subchapter, and 1 of the following applies:

a. The person was convicted of 1 or more misdemeanors, or a combination of 1 or more misdemeanors and 1 or more violations, relating to the same case, 5 years have passed since the date of conviction.

b. The person was convicted of drug possession under § 4756 of Title 16 and 5 years have passed since the date of conviction.

c. The person was convicted of any of the following felonies and 10 years have passed since the date of conviction or the date of release from incarceration, whichever is later:

1. Miscellaneous drug crimes under § 4757 of Title 16.

2. Unlawful dealing in a counterfeit or purported controlled substance under § 4758 of Title 16.

3. Maintaining a drug property under § 4760 of Title 16.

4. Possession of burglar’s tools or instruments facilitating theft under § 828 of this title.

5. Forgery in the second degree under § 861(b)(2) of this title.

6. Unlawful use of payment card under § 903 of this title.

(3) For purposes of determining eligibility for expungement under this subsection, any charge that is 7 or more years old and for which there is no disposition indicated or the disposition is listed as unknown, unobtainable, or pending shall be considered dismissed and shall not negatively affect expungement eligibility. This subsection does not apply if there is an active warrant in the case or if there is documented case activity within the last 12 months.

(b) *Exclusions.* —

In addition to the exclusions under § 4372(f) of this title, a conviction for any of the following is not eligible for mandatory expungement under this section:

(1) A crime of domestic violence. For purposes of this section, a “crime of domestic violence”, means an offense that meets both of the following:

a. Was committed by any of the following:

1. A member of the victim’s family, as “family” is defined under § 901 of Title 10, regardless, however, of the state of residence of the parties.

2. A former spouse of the victim.

3. A person who cohabited with the victim at the time of or within 3 years before the offense.

4. A person with a child in common with the victim.

5. A person with whom the victim had a substantive dating relationship, as defined under § 1041 of Title 10, at the time of or within 3 years before the offense.

b. Is an offense under any of the following sections: § 601, § 602, § 603, § 611, § 614, § 621, § 625, § 628A, § 781, § 785, § 791, § 804, § 811, § 821, § 822, § 823, § 1271(3), § 1271A, § 1311, or § 2113 of this title.

(2) Offenses where the victim is a child.

(3) Offenses where the victim is a "vulnerable adult", as defined under § 1105 of this title.

(4) Any misdemeanor set forth in subparts A, B, C, or F of subchapter VI of Chapter 5 of this title.

(5) Any of the following misdemeanors:

a. Unlawfully administering drugs, under § 625 of this title, when the charged in conjunction with a sexual offense, as defined in § 761(f) of this title.

b. Sexual harassment, under § 763 of this title.

c. Indecent exposure in the second degree, under § 764 of this title.

d. Indecent exposure in the first degree, under § 765 of this title.

e. Trespassing with intent to peer or peep into a window or door of another, under § 820 of this title.

f. Organized retail crime, under § 841B of this title.

g. Home improvement fraud, under § 916 of this title.

h. New home construction fraud, under § 917 of this title.

i. Official misconduct under § 1211 of this title.

j. Offenses against law-enforcement animals, under § 1250 of this title.

k. Promoting prison contraband, under § 1256 of this title.

l. Resisting arrest, under § 1257 of this title.

m. Use of an animal to avoid capture, under § 1257A of this title.

n. Hate crime, under § 1304 of this title.

o. Malicious interference with emergency communication, under § 1313 of this title.

p. Abusing a corpse, under § 1332 of this title.

q. Violation of privacy, under § 1335 of this title.

r. Lewdness, under § 1341 of this title.

s. Patronizing a prostitute, under § 1343 of this title.

t. Permitting prostitution, under § 1355 of this title.

u. Carrying a concealed dangerous instrument, under § 1443 of this title.

v. Unlawfully dealing with a dangerous weapon, under § 1445 of this title.

w. Unlawfully permitting a minor access to a firearm, under § 1456 of this title.

x. Possession of a weapon in a Safe School and Recreation Zone, under § 1457 of this title.

(6) A felony conviction under paragraph (a)(2)c. of this section where the victim is an individual included under paragraphs (b)(1) through (b)(3) of this section.

(c) If more than 1 case or arrest is eligible for expungement under this section, it may be combined into a single application for expungement.

(d) The State Bureau of Identification shall promulgate procedures and forms relating to the implementation of this section.

(e) The State Bureau of Identification may promulgate reasonable regulations and a reasonable fee schedule to accomplish the purposes of this section.

(f) [Repealed.]

(62 Del. Laws, c. 317, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 150, § 6; 76 Del. Laws, c. 392, § 2; 77 Del. Laws, c. 156, § 1; 77 Del. Laws, c. 348, § 1; 77 Del. Laws, c. 416, § 1; 78 Del. Laws, c. 256, §§ 1, 2; 82 Del. Laws, c. 83, § 3; 83 Del. Laws, c. 37, § 11; 83 Del. Laws, c. 263, § 2; 83 Del. Laws, c. 266, § 9; 83 Del. Laws, c. 283, § 14; 83 Del. Laws, c. 418, § 1.)

§ 4373A. Mandatory expungement; automatic.

(a) A case that is eligible for mandatory expungement under § 4373 of this title is eligible for automatic expungement under this section.

(b) Beginning August 1, 2024, on a monthly basis, the State Bureau of Identification shall identify cases that are eligible for mandatory expungement and proceed under § 4372(e)(2) of this title to expunge the eligible records.

(c) The Department of Safety and Homeland Security may promulgate reasonable regulations necessary for the State Bureau of Identification to accomplish the purposes of this section.

(d) Nothing in this section precludes an individual from filing a petition for expungement of records under § 4373(a) of this title that are eligible for automatic expungement under this section if an automatic expungement has not occurred.

(e) An individual does not have a cause of action for damages as a result of the failure to identify an individual's case as eligible for automatic expungement.

(83 Del. Laws, c. 265, § 3.)

§ 4374. Discretionary expungement; application to court.

(a) *Eligibility. —*

Upon petition to the appropriate court designated in subsection (c) of this section, an expungement may be granted if the applicant meets 1 of the following:

(1) Was convicted of 1 or more misdemeanors other than those listed in § 4373(b) of this title relating to the same case and at least 3 years have passed since the date of conviction or the date of release from incarceration, whichever is later, and the person has no prior or subsequent convictions.

(2) Was convicted of 1 or more misdemeanors listed in § 4373(b) of this title relating to the same case and at least 7 years have passed since the date of conviction or the date of release from incarceration, whichever is later, and the person has no prior or subsequent convictions.

(3) Subject to subsection (b) of this section, was convicted of a felony and at least 7 years have passed since the date of conviction or the date of release from incarceration, whichever is later, and the person has no prior or subsequent convictions.

(4) Was convicted of 1 or more violations or misdemeanors other than those listed in § 4373(b) of this title in more than 1 case and at least 5 years have passed since the date of the most recent conviction or the date of release from incarceration, whichever is later, and the person has no other prior or subsequent convictions that would not be eligible for a mandatory expungement under § 4373 of this title standing alone. For eligibility under this paragraph, the entire case in which each conviction appears must be eligible for expungement.

(b) *Exclusions. —*

In addition to the exclusions under § 4372(f) of this title, a person is not eligible for discretionary expungement under this section if the person was convicted of any of the following crimes:

(1) A Title 11 felony listed in § 4201(c) of this title.

(2) Section 1136 of Title 16.

(3) Section 3913 of Title 31.

(4) A "felony conviction involving physical or sexual assault crimes" as defined in § 309 of Title 31 (regarding the Beau Biden Child Protection Act).

(c) *Venue. —*

If all of the charges and convictions sought to be expunged were disposed of in Family Court, a petition under this section must be filed in the Family Court for the county where the most recent case was terminated. If any of the charges or convictions were not disposed of in Family Court, a petition under this section must be filed in the Superior Court for the county where the most recent case was terminated.

(d) *Jurisdiction and authority. —*

(1) Where an expungement petition properly before the Family or Superior Court is granted, the expungement order applies to any record, including arrest records, relating to any charge in that case held by any court or law-enforcement agency in this State.

(2) A person may file a petition for discretionary expungement under this section and include in the petition a case that is eligible for mandatory expungement under § 4373 of this title. The Family Court or Superior Court may address both the mandatory and discretionary expungement requests when a mandatory expungement is filed with a discretionary expungement petition.

(e) After the petition requesting expungement is filed with the Superior or Family Court, the petitioner shall cause a copy of the petition to be served upon the Attorney General, who may file an objection or answer to the petition within 120 days after it is served on the Attorney General. The petitioner shall attach a copy of that petitioner's criminal history as maintained by the State Bureau of Identification to any petition requesting expungement filed under this section. The Court shall summarily reject any petition for expungement that does not include the petitioner's criminal history. Upon receipt of any petition, the Attorney General shall contact a victim of the crime under § 9414(a) of Title 11 to ascertain the victim's position on the petition. The Attorney General shall provide the victim's position, if known, in the Attorney General's answer to the petition. The Attorney General shall promptly orally inform the victim of the court's decision. The Attorney General may not provide the victim with a copy of the expungement order. For purposes of this subsection, "victim" means as defined in § 9401 of this title.

(f) Unless the Court believes a hearing is necessary, petitions are to be disposed of without a hearing. If the Court finds that the continued existence and possible dissemination of information relating to the arrest or conviction of the petitioner causes, or may cause, circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the law-enforcement and court records relating to the charge or case. Otherwise, it shall deny the petition. The burden is on the petitioner to allege specific facts in support of that petitioner's allegation of manifest injustice, and the burden is on the petitioner to prove such manifest injustice by a preponderance of the evidence. A petition filed by the Attorney General or the Attorney General's designee under subsection (h) of this section must be granted by the Court.

(g) The State is made party defendant to the proceeding. Any party aggrieved by the decision of the Court may appeal, as provided by law in civil cases.

(h) Notwithstanding any provision of this subchapter or any other statute or rule to the contrary, the Attorney General or the Attorney General's designee responsible for prosecuting a criminal action may petition the Court to expunge the instant arrest record of a defendant

if at the time of a state motion to dismiss or entry a nolle prosequi in the case, the prosecutor has determined that the continued existence and possible dissemination of information relating to the arrest of the defendant for the matter dismissed or for which a nolle prosequi was entered may cause circumstances which constitute a manifest injustice to the defendant.

(i) (1) Notwithstanding any provision of this subchapter or any other law to the contrary, the law-enforcement agency records and the court records relating to any charge under Title 21, or in any county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any Title 21 offense, may not be expunged under this subchapter unless the charge is one of those specifically enumerated in paragraph (i)(2) of this section.

(2) Discretionary expungement under this section is applicable when otherwise appropriate for the following Title 21 offenses, or any county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any of the following Title 21 offenses:

a. Driving after judgment prohibited, under § 2810 of Title 21.

b. Reckless driving, under § 4175 of Title 21.

c. Operation of a motor vehicle causing death, under § 4176A of Title 21.

d., e. [Repealed.]

(j) The Superior Court and Family Court shall establish a reasonable fee schedule for the filing of a petition of expungement under this section.

(k) For purposes of determining eligibility for expungement under this section, any charge that is 7 or more years old and for which there is no disposition indicated or the disposition is listed as unknown, unobtainable, or pending shall be considered dismissed and shall not negatively affect expungement eligibility in any case. This subsection does not apply if there is an active warrant in the case or if there is documented case activity within the last 12 months.

(76 Del. Laws, c. 392, § 3; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 348, § 2; 78 Del. Laws, c. 256, §§ 3-5; 82 Del. Laws, c. 83, § 4; 83 Del. Laws, c. 263, § 3; 83 Del. Laws, c. 418, § 1; 85 Del. Laws, c. 142, § 10.)

§ 4375. Discretionary expungement following a pardon.

(a) Notwithstanding any provision of this subchapter or any other law to the contrary, a person who was convicted of a crime, other than those specifically excluded under subsection (b) of this section, who is thereafter unconditionally pardoned by the Governor may request a discretionary expungement under the procedures under § 4374(c) through (h) and (j) of this title.

(b) *Exclusions. —*

Convictions of the following crimes are not eligible for expungement after a pardon under this section:

(1) Manslaughter, under § 632 of this title.

(2) Murder in the second degree, under § 635 of this title.

(3) Murder in the first degree, under § 636 of this title.

(4) Rape in the second degree, under § 772 of this title.

(5) Rape in the first degree, under § 773 of this title.

(6) Sexual abuse of a child by a person in a position of trust, authority, or supervision in the first degree, under § 778(1), (2), or (3) of this title.

(76 Del. Laws, c. 392, § 3; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 156, § 2; 78 Del. Laws, c. 256, § 6; 82 Del. Laws, c. 83, § 5; 83 Del. Laws, c. 263, § 4.)

§ 4376. Disclosure of expunged records.

(a) (1) Except for disclosure to law-enforcement officers acting in the lawful performance of their duties in investigating criminal activity or for the purpose of an employment application as an employee of a law-enforcement agency, it is unlawful for any person having or acquiring access to an expunged court or law-enforcement agency record to open or review it or to disclose to another person any information from it without an order from the court which ordered the record expunged.

(2) In addition to such other lawful purposes as may be prescribed by law or otherwise, criminal justice agencies shall have access to the following:

a. Records of expunged probations before judgment and past participation in the First Offenders Controlled Substance Diversion Program, First Offenders Domestic Violence Diversion Program, or a court-supervised drug diversion program for the purpose of determining whether a person is eligible for a probation before judgment, under § 4218 of this title; participation in the First Offenders Controlled Substance Diversion Program, under § 4767 of Title 16; participation in the First Offenders Domestic Violence Diversion Program, under § 1024 of Title 10; or participation in a court-supervised drug diversion program.

b. For criminal justice agencies involved in the licensing of individuals to carry a concealed deadly weapon under § 1441 of this title, records of expunged cases for the purpose of determining whether an individual meets the requirements to be granted a license to carry a concealed deadly weapon.

(b) Where disclosure to law-enforcement officers in the lawful performance of their duties in investigating criminal activity is permitted by subsection (a) of this section, such disclosure applies for the purpose of investigating particular criminal activity in which the person,

whose records have been expunged, is considered a suspect or pursuant to an investigation of an employment application as an employee of a law-enforcement agency.

(c) Nothing contained in this subchapter requires the destruction of photographs or fingerprints taken in connection with any felony arrest, or DNA taken under § 4713 of Title 29, and which are utilized solely by law-enforcement officers in the lawful performance of their duties in investigating criminal activity.

(d) Nothing contained in this subchapter requires the destruction of court records or records of the Department of Justice. However, all such records, including docket books, relating to a charge or conviction which has been the subject of a destruction order must be so handled to ensure that they are not open to public inspection or disclosure.

(e) An offense for which records have been expunged under this subchapter does not have to be disclosed by the person for any reason.

(f) Any person who violates subsection (a) of this section is guilty of a class B misdemeanor, and must be punished accordingly.

(g) The State Bureau of Identification shall make available to criminal justice agencies such electronic records as will enable criminal justice agencies to determine whether a person who seeks to participate in the First Offenders Controlled Substance Diversion Program, participate in the First Offenders Domestic Violence Diversion Program, obtain a probation before judgment disposition, or participate in a court-supervised drug diversion program has done so before and had the record expunged.

(h) Notwithstanding subsection (a) of this section, if a defendant is convicted of an offense after an expungement is granted under this subchapter, the Supervisor of the State Bureau of Identification shall, upon request, provide all of the following with expunged records for the following purposes:

(1) A court, the Attorney General, and the defendant, for use or consideration during the defendant's sentencing.

(2) The Governor or the Board of Pardons, for use or consideration if the defendant applies for a pardon for the subsequent offense.

(62 Del. Laws, c. 317, § 2; 76 Del. Laws, c. 392, § 3; 77 Del. Laws, c. 348, §§ 3-6; 78 Del. Laws, c. 13, § 14; 78 Del. Laws, c. 256, §§ 7-12; 82 Del. Laws, c. 83, § 6.)

§ 4377. Notification to federal government.

Upon the granting by the court of an order for the expungement of records under this subchapter, the State Bureau of Identification shall provide notice of the order of expungement to federal law-enforcement.

(62 Del. Laws, c. 317, § 2; 76 Del. Laws, c. 392, § 3; 82 Del. Laws, c. 83, § 7.)

§ 4378. Expungement of offenses resolved by probation before judgment and the first offenders controlled substances diversion program [Repealed].

Repealed by 77 Del. Laws, c. 348, § 7, effective Oct. 10, 2010.

Subchapter VIII

Diminution of Confinement

§ 4381. Earned good time.

(a) Subject to the limitations set forth in subsection (b) of this section, all sentences, other than a life sentence, imposed for any offense pursuant to any provision of this title, Title 16 and/or Title 21 may be reduced by good time credit under the provisions of this subchapter and rules and regulations adopted by the Commissioner of Corrections. This provision will apply regardless of any previously imposed statutory limitations set forth in this title, Title 16 or Title 21.

(b) The awarding of good time credit set forth in subsection (a) of this section above will not apply to sentences imposed pursuant to § 4214 or § 4204(k) of this title or sentences imposed prior to the enactment of this statute.

(c) "Good time" may be earned for good behavior while in the custody of the Department of Correction when the person has not been guilty of any violation of discipline, rules of the Department or any criminal activity and has labored with diligence toward rehabilitation according to the following conditions:

(1) During the first year of any sentence, good time may be awarded at the rate of 2 days per month beginning on the first day of confinement.

(2) After completing 365 days of any sentence, good time may be awarded at the rate of 3 days per month.

(3) No person shall be awarded more than 36 days of good time under this subsection for good behavior in any 1 year consisting of 365 calendar days actually served.

(d) "Good time" may be earned by participation in education, rehabilitation, work, or other programs as designated by the Commissioner. Good time may be awarded for satisfactory participation in approved programs at a rate of up to 10 days per calendar month. For offenders sentenced on or after August 8, 2012, up to 60 days of additional good time may be awarded for successful completion of an approved program designed to reduce recidivism.

(e) No more than a total of 180 days of "good time" may be earned in any 1 year consisting of 365 days actually served. Good time credits shall be applied such that the resulting release date is not prior to the effective completion date of the offender's approved program.

For offenders serving multiple sentences, good time shall be credited to the consolidated time being served, rather than individually to each sentence.

(f) Each person serving a sentence in the custody of the Department shall be provided a copy of all rules, policies, and procedures relating to the accrual and forfeiture of good time, notwithstanding § 4322 of this title, at the person's initial classification and upon transfer to a different facility. The rules, policies, and procedures shall also be made available upon request of a person in custody.

(g) The Department shall provide each person in its custody with a quarterly accounting of that inmate's good time, including the good time accrued each month, total good time accrued, and any good time forfeited, together with the reason therefor. If the inmate believes the accounting is incorrect, the Department shall provide the inmate with an in-person meeting with a correctional counselor or designee to discuss and resolve any alleged discrepancy.

(67 Del. Laws, c. 130, § 5; 74 Del. Laws, c. 346, § 2; 76 Del. Laws, c. 351, §§ 1-3; 77 Del. Laws, c. 406, § 1; 78 Del. Laws, c. 392, §§ 9, 10; 79 Del. Laws, c. 187, § 1; 83 Del. Laws, c. 82, § 2; 83 Del. Laws, c. 467, § 1.)

§ 4382. Forfeiture of good time.

(a) Any person subject to the custody of the Department at Level IV or V shall, upon the conviction of any felony during the term of the sentence, forfeit all good time accumulated to the date of the criminal act; this forfeiture is not subject to suspension.

(b) Any person subject to the custody of the Department of Correction at Level IV or V who has been found guilty of a Class-I disciplinary violation may, under the rules and procedures of the Department, forfeit all or part of that person's accrued good time. Forfeiture under this subsection may be suspended by the Department for the purposes of encouraging rehabilitation or compliance with discipline.

(c) Any person subject to the custody of the Department who is determined to have physically assaulted any correctional officer or employee of the Department shall, in addition to any criminal or civil penalties which may be imposed, forfeit all good time accumulated to date of the assault; this forfeiture is not subject to suspension.

(d) When good time is actually ordered forfeit, it may not be recovered by the incarcerated person.

(e) Any person subject to the custody of the Department at Level IV or Level V, who is found by a court or a federal court to have filed a factually frivolous claim, malicious claim or legally frivolous claim and sanctioned by the court or federal court pursuant to § 8805(a) or (b) of Title 10, shall be deemed to have failed to earn behavior good time credits within the meaning of § 4381(c) of this title and shall have a portion of that person's good time credits accumulated pursuant to § 4381(c) of this title forfeited to the extent and in accordance with the order issued pursuant to § 8805 of Title 10.

(67 Del. Laws, c. 130, § 5; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 411, § 3; 70 Del. Laws, c. 581, § 1; 77 Del. Laws, c. 406, § 1; 83 Del. Laws, c. 467, § 1.)

§ 4383. Earned compliance credit for probation.

(a) Any periods of probation sentenced to or released to probation on or after August 8, 2012, may be reduced by earned compliance credit under the provisions of this chapter and rules and regulations adopted by the Department.

(b) (1) Persons under supervision may earn up to 30 days of credit for 30 days of compliance with conditions of supervision.

(2) Earned compliance credit is forfeited on conviction of a new crime and may be forfeited on revocation of probation.

(c) For any individual released on or after August 8, 2012, a period of conditional release must be served concurrently with the probationary period.

(d) Earned compliance credit does not apply to any period of probation imposed for any of the following:

(1) A sexual offense as defined in § 761 of this title.

(2) A violent felony in this title as designated by § 4201(c) of this title.

(3) An offense set forth in the Delaware Code, if the period of probation is imposed to ensure the collection of any restitution ordered and the individual is sentenced to Accountability Level I—Restitution Only.

(4) Such other categories of offenses as set forth in the rules and regulations adopted by the Department.

(e) If an individual on probation is eligible to receive earned compliance credits, the Department shall notify the individual in writing that the individual is eligible to receive earned compliance credits. The Department shall notify an individual on probation of the individual's earned compliance credit eligibility date when the Department calculates the date.

(78 Del. Laws, c. 392, § 11; 79 Del. Laws, c. 187, § 2; 85 Del. Laws, c. 67, § 6.)

§ 4384. [Reserved.]

Subchapter IX
House Arrest

§ 4391. Definitions.

The following words, terms and phrases, when used in this subchapter, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) “Crime of violence” means any crime which involves the use or threat of physical force or violence against any individual. For purposes of this subchapter, no motor vehicle offense is a crime of violence where it is not a part of an additional crime.

(2) “Good standing” means that an offender participating in the house arrest program has, at the time such person entered the program and continuously thereafter, met the following qualifications:

a. No pending warrants or charges.

b. No major violations during the immediately preceding 45 days.

c. Adherence to all conditions of probation, work-release and case plans.

(3) “House arrest” or “house arrest program” means a form of intensive supervised custody in the community, including surveillance on weekends, administered by intensive supervision officers. The house arrest program shall be an individual program in which the freedom of the offender is restricted within the stable, approved place of residence of the offender or within the stable, approved place of residence of a host, parent, sibling or child of the offender and in which specific sanctions are imposed and enforced.

(4) “Public service” means that work which is required of an offender participating in the house arrest program and shall include work which the offender is ordered to perform, without payment, for the benefit of the community, separate and apart from any paid employment which the offender may be permitted to obtain. All public service work shall be performed for designated tax-supported or tax-exempt entities which have entered into an informal agreement with the Department to administer the work performed by the offender. The words “public service” include any of the following:

a. Work on any property or building owned or leased by the State, by any county or by a municipality or by any nonprofit organization or agency or work for any program under the control or sponsorship of a charitable enterprise.

b. Work on a state, county or municipally-owned road or highway.

c. Landscaping, maintenance or service work in any state, county or municipal park or recreation areas.

d. Work in a state, county or municipal hospital or for any nonprofit health or medical center or facility.

(66 Del. Laws, c. 29, § 3; 83 Del. Laws, c. 35, § 2.)

§ 4392. Identification and selection of participants.

(a) An offender sentenced to supervision Level I, II or III is not eligible for house arrest placement unless specifically ordered by the sentencing judge, or as a result of administrative detention under § 4334(d) of this title.

(b) Any person committed to the corrections center to serve a short-term sentence for a crime shall be identified by the classification officer before or upon arrival at the corrections center if the person has not already been identified prior to transportation to the corrections center.

(c) The sentencing judge, in sentencing an offender, may impose a house arrest sentence as an alternative to imprisonment.

(66 Del. Laws, c. 29, § 3; 76 Del. Laws, c. 399, § 2; 78 Del. Laws, c. 392, § 13; 83 Del. Laws, c. 35, § 3.)

§ 4393. Requirements for participation.

(a) No person shall be eligible for the house arrest program unless the person meets the following requirements:

(1) Participation shall be; voluntary.

(2) Participation shall be limited to the following types of offenders:

a. Individuals found guilty of crimes who, due to the characteristics of the crime and/or the offender’s background, would not be placed on regular probation.

b. Probation violators charged with technical or misdemeanor violations.

c. Parole violators charged with technical or misdemeanor violations.

(b) The supervision of offenders assigned to home confinement and the use of the electronic monitoring devices shall be restricted to the area within the geographical boundaries of the State unless otherwise determined by the Commissioner of the Department of Correction.

(66 Del. Laws, c. 29, § 3; 73 Del. Laws, c. 320, § 3; 83 Del. Laws, c. 35, § 4.)

§ 4394. Requirements for continued participation.

No person shall remain in the house arrest program if such person fails to meet any of the following conditions:

(1) Each participant shall perform whatever community service work is assigned by the court or by the Department;

(2) Each participant shall remain confined to the residence approved by the program, except for approved employment, public service work or other special activities approved by the program;

(3) Each participant shall make such regular restitution payments to each victim or victims of the crime as are determined by the court;

(4) Each participant shall have an approved, stable residence;

(5) Each participant shall have stable employment as defined by Department rules and regulations;

(6) Each participant shall remain in good standing as a condition of continued participation in the program;

(7) Each person in a house arrest program shall participate in all counselling activities and requirements, including such group programs and meetings as are directed by the court or by the Department;

(8) Each participant shall report to a designated officer as directed by the court or by the Department.

(66 Del. Laws, c. 29, § 3; 67 Del. Laws, c. 442, § 2.)

Part II
Criminal Procedure Generally

Chapter 45
Appeal; Stay of Execution; Postconviction Remedy

§ 4501. Formal defects and clerical errors.

In a criminal case, judgment shall not be reversed for any clerical misprision or formal defect, if the record contains substantial ground for judgment.

The omission of the words "with force and arms" shall be deemed a defect in form merely.

(Code 1852, § 2968; Code 1915, § 4835; Code 1935, § 5326; 11 Del. C. 1953, § 4501.)

§ 4502. Stay of execution on writ of error or certiorari; requirements.

No writ of error or writ of certiorari issuing from the Supreme Court in any criminal cause shall operate as a stay of execution of the sentence of the trial court unless such writ of error or writ of certiorari be sued out within 30 days from the date of final judgment in the court below, and unless the plaintiff in error obtains from the trial court (or, if the trial court refuses, then from 1 of the Justices of the Supreme Court) a certificate that there is reasonable ground to believe that there is error in the record which might require a reversal of the judgment below, or that the record presents an important question of substantive law which ought to be decided by the Supreme Court, and unless the plaintiff in error furnishes bond to the State, with surety to be approved and in an amount to be fixed by 1 of the Justices of the Supreme Court, conditioned as prescribed by rule of court. In cases where sentence of life imprisonment has been imposed, there shall be no stay of execution, and no supersedeas bond taken or allowed. In cases where sentence of death has been imposed, the trial court, if the certificate provided for in this section has been granted, may stay the execution of the death penalty pending the determination of the cause by the Supreme Court, but the defendant below shall not be released from custody.

(Code 1915, § 4847B; 35 Del. Laws, c. 231; Code 1935, § 5327; 11 Del. C. 1953, § 4502.)

§ 4503. Convictions before alderman or mayor; advising accused of right to trial by Court of Common Pleas.

(a) Excepting those cases in which the sentence for the conviction of a crime was imprisonment not exceeding 1 month, or a fine not exceeding $100, any person convicted before any alderman or mayor of any incorporated city or town in this State for the violation of any city or town ordinance may appeal from such conviction to the Court of Common Pleas of the county in which the person has been so convicted, upon giving bond to the State with surety satisfactory to the alderman or mayor before whom such person was convicted, binding the person taking the appeal to appear before the Court. Notice of such an appeal shall be given to such alderman or mayor within 15 days from the time of conviction, counting the date of conviction as 1, and the bond with surety shall be filed within 15 days. Such appeal shall be prosecuted and the proceedings therein shall be had as in an appeal from a conviction before a justice of the peace in the case of a violation of the laws relating to the operation of motor vehicles.

(b) In all criminal cases in all incorporated cities or towns where a mayor or alderman has jurisdiction to hear and determine the matter and the accused has the right to elect to have the case tried by the Court of Common Pleas, every mayor or alderman shall advise such accused of the right to so elect, before the mayor or alderman shall have jurisdiction to try the case.

(46 Del. Laws, c. 107; 11 Del. C. 1953, § 4503; 58 Del. Laws, c. 62; 61 Del. Laws, c. 206, § 1; 69 Del. Laws, c. 423, § 15; 70 Del. Laws, c. 186, § 1.)

§ 4504. Postconviction remedy.

(a) Except at a time when direct appellate review is available, and subject to the time limitations set forth in this subsection, a person convicted of a crime may file in the court that entered the judgment of conviction a motion requesting the performance of forensic DNA testing to demonstrate the person's actual innocence. Any such motion may not be filed more than 3 years after the judgment of conviction is final. The motion may be granted if:

(1) The testing is to be performed on evidence secured in relation to the trial which resulted in the conviction;

(2) The evidence was not previously subject to testing because the technology for testing was not available at the time of the trial;

(3) The movant presents a prima facie case that identity was an issue in the trial;

(4) The movant presents a prima facie case that the evidence to be tested has been subject to a chain of custody sufficient to establish that the evidence has not been substituted, tampered with, degraded, contaminated, altered or replaced in any material aspect;

(5) The requested testing has the scientific potential to produce new, noncumulative evidence materially relevant to the person's assertion of actual innocence; and

(6) The requested testing employs a scientific method which is generally accepted within the relevant scientific community, and which satisfies the pertinent Delaware Rules of Evidence concerning the admission of scientific testimony or evidence.

(b) Except at a time when direct appellate review is available, a person convicted of a crime who claims that DNA evidence not available at trial establishes the petitioner's actual innocence may commence a proceeding to secure relief by filing a motion for a new trial in the court that entered the judgment of conviction. The court may grant a new trial if the person establishes by clear and convincing evidence that no reasonable trier of fact, considering the evidence presented at trial, evidence that was available at trial but was not presented or was excluded, and the evidence obtained pursuant to subsection (a) of this section would have convicted the person.

(c) The court shall impose reasonable conditions on the testing designed to protect the state's interests in the integrity of the evidence and the testing process.

(d) Any motion filed pursuant to this section shall be served upon the State. The State shall have an absolute right to appeal to an appellate court any order granting a motion for a new trial pursuant to this section.

(e) The cost of DNA testing ordered under subsection (a) of this section shall be borne by the State or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the means to pay.

(72 Del. Laws, c. 320, § 3.)

Part III
Procedure in Particular Courts

Chapter 51
Superior Court

Subchapter I
General Provisions

§ 5101. Writs or precepts to take persons indicted.

The Superior Court may issue writs or precepts, under the seal of the Court, to any sheriff, or other officer, of any county in the State, to take any person indicted.

(Code 1852, § 1931; Code 1915, § 3800; Code 1935, § 4312; 11 Del. C. 1953, § 5101.)

§ 5102. Subpoenas and warrants generally; enforcement.

The Superior Court, in the exercise of its criminal jurisdiction, may issue subpoenas and other warrants into any county in the State, for summoning or bringing any person to give evidence in any matter triable before it and may enforce obedience by fine or imprisonment. Such subpoenas and warrants shall be in such form as may be prescribed by the Rules of the Court.

(Code 1852, § 1931; Code 1915, § 3800; Code 1935, § 4312; 11 Del. C. 1953, § 5102.)

§ 5103. Assignment of counsel.

(a) The Superior Court shall assign counsel to any person on trial for murder, manslaughter or any offense punishable by death, or the offense of being an accomplice or accessory to any such crime, if such person is unable to obtain counsel.

(b) The Court may assign counsel to any person in any criminal prosecution as provided by the Rules of Criminal Procedure for the Superior Court.

(Code 1852, §§ 1925, 1926, 1929; 11 Del. Laws, c. 225, § 1; Code 1915, §§ 3793, 3794, 3798; Code 1935, §§ 4305, 4306, 4310; 11 Del. C. 1953, § 5103.)

§ 5104. Composition of Court in cases tried without jury; concurrence of all Judges sitting.

In a criminal case tried without a jury, the Superior Court shall consist of either 1, 2 or 3 Judges, as the Court shall determine; but if more than 1 Judge shall try such case, the concurrence of all the Judges sitting shall be required for a verdict.

(Code 1915, § 4847C; 35 Del. Laws, c. 233; Code 1935, § 5310; 11 Del. C. 1953, § 5104.)

§ 5105. Legal counsel for public officers and employees.

Any public officer or employee, in any criminal action against such officer or employee arising from the officer's or employee's state employment, shall be entitled to petition the Court for a Court-appointed attorney to represent the officer's or employee's interests in the matter. If the Judge, after consideration of the petition, examination of the petitioner and receipt of such further evidence as the Judge may require, determines that the petition has merit, the Judge shall appoint an attorney to represent the interests of such public officer or employee. The Court-appointed attorney shall continue such representation until the final determination of the matter, even if the case is transferred to another court, unless such attorney is earlier released by such person or by the Court. This section shall also apply to all federal courts within this State.

(60 Del. Laws, c. 474, § 2; 60 Del. Laws, c. 676, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5106. Plea negotiations by the State.

(a) In every criminal case in the Superior Court involving a felony wherein the Department of Justice agrees to accept a plea of guilty to less than the original most serious charge indicted by the county grand jury or originally filed by information, the prosecuting attorney shall state on the record:

(1) That the prosecuting attorney notified and discussed the plea agreement with the victim prior to its entry; or

(2) If notification was not reasonably possible, what steps were taken to give such information to the victim.

(b) In any case where the victim is deceased, the information required by subsection (a) of this section shall be given to any known next of kin. If the victim is an organization, such information shall be given to a responsible officer. If the victim is a minor child, such information shall be given to the parent or guardian of said child.

(c) For purposes of this section, "victim" is one who was injured or killed as the result of a criminal offense or who suffered monetary loss as a result of such an offense.

(d) No violation of this section shall be considered as a basis for setting aside a guilty plea entered by a defendant or for any other relief.

(67 Del. Laws, c. 317, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 71, § 2.)

Subchapter II
Rules of Criminal Procedure

§ 5121. Adoption; scope.

(a) The Superior Court may, from time to time, adopt and promulgate general rules which prescribe and regulate the form and manner of process, pleading, practice and procedure governing criminal proceedings in the Superior Court from their inception to their termination, including such proceedings before inferior courts and justices of the peace as are preliminary to indictment or information filed in the Superior Court.

(b) Such rules shall not abridge, enlarge or modify the substantive rights of any person, and shall preserve the right of trial by jury as at common law and as declared by the statutes and Constitution of this State.

(c) The Rules of Criminal Procedure for the Superior Court adopted and promulgated by the Supreme Court prior to the enactment of this Code shall take effect upon the enactment of this Code. Any amendments of or supplements to such Rules which the Superior Court may hereafter adopt and promulgate shall take effect upon such date as the Superior Court shall fix in its order adopting and promulgating such amendments or supplements. After the effective date of any rule adopted and promulgated under this section, all laws inconsistent or in conflict therewith shall be of no further force or effect.

(d) Nothing in this title, anything therein to the contrary notwithstanding, shall in any way limit, supersede or repeal any such rules heretofore prescribed under authority of law.

(48 Del. Laws, c. 209; 11 Del. C. 1953, § 5121.)

§ 5122. Conflict between rules and statutes.

Any inconsistency or conflict between any rule of court promulgated under the authority of § 5121 of this title, or prior law, and any of the provisions of this Code or other statute of this State, dealing with practice and procedure in criminal actions in the Superior Court, shall be resolved in favor of such rule of court.

(11 Del. C. 1953, § 5122.)

Subchapter III
Child Victims and Witnesses

§ 5131. Legislative intent.

The General Assembly finds that it is necessary to provide child victims and witnesses with additional consideration and different treatment than that usually required for adults. It is therefore the intent of the General Assembly to provide each child who is involved in a criminal proceeding within the Superior Court with certain fundamental rights and protections.

(65 Del. Laws, c. 158, § 1.)

§ 5132. Definitions.

The following words, terms and phrases, when used in this subchapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) “Child” shall mean a person who has not yet reached their eighteenth birthday.

(2) “Victim” or “witness” shall not include any child accused of committing a felony; provided, however, that the word “victim” or “witness” may, in the Court’s discretion, include:

a. A child where such child’s participation in a felony appears to have been induced, coerced or unwilling; or

b. A child who has participated in the felony, but who has subsequently and voluntarily agreed to testify on behalf of the State.

(65 Del. Laws, c. 158, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5133. Expedited proceedings.

In all criminal proceedings in the Superior Court involving a child victim or witness, the Court and the prosecution shall take appropriate action to ensure a prompt trial in order to minimize the length of time a child victim or witness must endure the stress of the victim’s or witness’ involvement in the proceedings. In ruling on any motion or other request for a delay or continuance of proceedings, the Court shall consider and give weight to any adverse impact such delay or continuance might have on the well-being of any child victim or witness.

(65 Del. Laws, c. 158, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5134. Additional rights and services.

(a) A child victim or witness is entitled to an explanation, in language understood by the child, of all legal proceedings in which the child is to be involved.

(b) A child victim or witness is entitled to be accompanied, in all proceedings, by a “friend” or other person in whom the child trusts, which person shall be permitted to advise the judge, when appropriate and as a friend of the Court, regarding the child’s ability to understand proceedings and questions.

(c) A child victim or witness is entitled to information about, and referrals to, appropriate social services and programs to assist such child, and the child's family, in coping with the emotional impact of the crime, and the subsequent Court proceedings in which the child is to become involved.

(65 Del. Laws, c. 158, § 1.)

Part III
Procedure in Particular Courts

Chapter 53
Court of Common Pleas

§ 5301. General provisions.

(a) The accused shall have the right to trial by petit jury in all criminal cases except as otherwise provided by statute.

(b) The Court shall have the power to receive pleas of guilty from persons charged with misdemeanors and to impose sentence or probation according to law, as fully as is now done by the Superior Court.

(c) From any order, rule, decision, judgment or sentence of the Court in a criminal action, the accused shall have the right of appeal to the Superior Court in and for the county wherein the information was filed as provided in § 28, article IV of the Constitution of the State. Such appeal to the Superior Court shall be reviewed on the record and shall not be tried de novo.

(11 Del. C. 1953, § 5301; 59 Del. Laws, c. 133, § 3; 69 Del. Laws, c. 421, § 1.)

§ 5302. Rules of criminal procedure.

The Judges of the Court, or a majority of them, may, from time to time, adopt and promulgate general rules which prescribe and regulate the form and manner of process, pleading, practice and procedure governing criminal proceedings in the Court from inception to termination.

(11 Del. C. 1953, § 5302; 59 Del. Laws, c. 133, § 3.)

§ 5303. Election by accused to have case tried by Court when proceeding brought before justice of the peace.

The accused in all criminal cases in which there is a possibility that a period of incarceration may be imposed or the maximum fine is $100 or more where a justice of the peace or alderman or mayor of any incorporated city or town, except the City of Newark, in the county where the charge is brought has jurisdiction and power to hear and finally determine the matter, may elect at any time prior to day of trial to have the case tried by the Court. If an offense or criminal case within the exclusive jurisdiction of a justice of the peace or alderman or mayor of any incorporated city or town, except the City of Newark, is or may be joined properly with a criminal case or other offense that is within the jurisdiction of the Court and has been transferred upon the accused's election pursuant to this section, such criminal case shall be within the jurisdiction of the Court.

(11 Del. C. 1953, § 5303; 59 Del. Laws, c. 133, § 3; 61 Del. Laws, c. 207, § 1; 63 Del. Laws, c. 398, § 1; 78 Del. Laws, c. 207, §§ 1, 2.)

§ 5304. Contempt; issuance of process in aid of jurisdiction.

(a) The Court may punish contempt and may issue all process necessary for the exercise of its criminal jurisdiction, which process may be executed in any part of the State.

(b) The Court, in the exercise of its criminal jurisdiction, may issue subpoenas and other warrants into any county in the State for summoning or bringing any person to give evidence in any matter triable before it and may enforce obedience by fine or imprisonment. Such subpoenas and warrants shall be in such form as may be prescribed by the Rules of the Court.

(11 Del. C. 1953, § 5304; 59 Del. Laws, c. 133, § 3; 73 Del. Laws, c. 130, § 1.)

§ 5305. Bail and commitment upon election to trial by Court.

(a) In all those cases where, by § 5303 of this title, the accused may elect to be tried by the Court, if the accused elects to be tried by the Court, the justice of the peace shall hold such accused under sufficient bail for a hearing or for accused's appearance at the Court where the matter shall proceed as though originating in the Court by information filed.

(b) In default of bail, the person accused shall be committed to the custody of the Department of Correction to await the session of the Court.

(11 Del. C. 1953, § 5305; 59 Del. Laws, c. 133, § 3; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 51, § 3.)

§ 5306. Witness fees.

(a) The witnesses attending the Court in criminal cases shall receive the same fees as in the Superior Court.

(b) In criminal cases witness fees shall be taxed as part of the costs of such proceeding.

(11 Del. C. 1953, § 5306; 59 Del. Laws, c. 133, § 3.)

§ 5307. Legal counsel for public officers and employees.

Any public officer or employee, in any criminal action against such officer or employee arising from the officer's or employee's state employment, shall be entitled to petition the Court for a Court-appointed attorney to represent the officer's or employee's interests in the

matter. If the Judge, after consideration of the petition, examination of the petitioner and receipt of such further evidence as the Judge may require, determines that the petition has merit, the Judge shall appoint an attorney to represent the interests of such public officer or employee. The Court-appointed attorney shall represent such person at all stages, trial and appellate, until the final determination of the matter, unless the attorney is earlier released by such person or by the Court. In any action where the Court-appointed attorney has been appointed in the Court of Common Pleas, such attorney shall remain the Court-appointed attorney of said public official or employee even when the case is transferred for any reason to another court of this State. This section shall also apply to all federal courts within this State.

(60 Del. Laws, c. 474, § 3; 60 Del. Laws, c. 676, § 3; 70 Del. Laws, c. 186, § 1.)

§ 5308. Preliminary hearing.

A Court of Common Pleas Judge shall conduct a preliminary hearing in accordance with the rules of criminal procedure promulgated by the Court of Common Pleas.

(61 Del. Laws, c. 348, § 1.)

Part III
Procedure in Particular Courts

Chapter 57
[Reserved.]

Part III
Procedure in Particular Courts

Chapter 59
Justices of the Peace

§ 5901. Advising accused of right to trial by Court of Common Pleas.

In all criminal cases in all counties where a justice of the peace has jurisdiction to hear and determine the matter and the accused has the right to elect to have the case tried by the Court of Common Pleas, every justice of the peace shall advise such accused of the accused's right to so elect, before the justice shall have jurisdiction to try the case.

(Code 1915, § 3763E; 29 Del. Laws, c. 250; 37 Del. Laws, c. 262, §§ 17, 19, 20; 38 Del. Laws, c. 199, §§ 1, 2; 40 Del. Laws, c. 235, §§ 1, 2; 40 Del. Laws, c. 236; Code 1935, §§ 5811, 5839; 42 Del. Laws, c. 184; 46 Del. Laws, c. 176; 11 Del. C. 1953, § 5901; 50 Del. Laws, c. 58, § 1; 58 Del. Laws, c. 432; 70 Del. Laws, c. 186, § 1.)

§ 5902. Assault; trial procedure.

In every case of assault in which the defendant elects to be tried in the Justice of the Peace Court, the prosecution shall proceed consistent with the Justice of the Peace Court Criminal Rules.

(Code 1852, § 2016; Code 1915, § 3958; Code 1935, § 4458; 11 Del. C. 1953, § 5905; 75 Del. Laws, c. 278, § 3.)

§ 5903. Arrest upon complaint; escaped persons.

Every justice of the peace shall cause to be arrested, on proper complaint, all persons found within the justice's county charged with any offense and all persons who, after committing any offense in such county, shall escape out of the same.

(Code 1852, § 2035; Code 1915, § 3976; Code 1935, § 4476; 11 Del. C. 1953, § 5906; 70 Del. Laws, c. 186, § 1.)

§§ 5904, 5905. Arrest of drunkards and profane swearers; Sunday hearing of motor vehicle, motorboat, fish and game and Criminal Code violations [Repealed].

Repealed by 75 Del. Laws, c. 278, § 2, effective June 13, 2006.

§ 5906. Examination of law-enforcement officer's warrant of arrest; form.

(a) When complaint is made in due form to a justice of the peace by a law-enforcement officer, alleging that an offense has been committed, the justice shall carefully examine the law-enforcement officer on oath or affirmation and if the justice considers there is probable ground for the accusation, the justice shall issue the law-enforcement officer a warrant.

(b) A warrant of arrest may be in the form prescribed by the Justice of the Peace Court Criminal Rules.

(c) The warrant shall ordinarily be directed to any law-enforcement officer in the county in which the alleged offense was committed, but in case of an emergency the warrant may be directed to any law-enforcement officer in the State.

(d) A copy of the complaint shall be attached to the warrant.

(Code 1852, §§ 2023-2025; Code 1915, § 3968; Code 1935, § 4468; 11 Del. C. 1953, § 5910; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 278, §§ 4-6; 83 Del. Laws, c. 481, § 1.)

§ 5907. Disposition of complaint by third person of an assault and battery [Repealed].

Repealed by 75 Del. Laws, c. 278, § 2, effective June 13, 2006.

§ 5908. Execution of warrant of arrest.

A warrant of arrest, issued by a justice of the peace in 1 county, may be executed in any county of the State. The constable or officer having it in hand may command aid as in the constable's or officer's own county.

(Code 1852, § 2036; Code 1915, § 3977; Code 1935, § 4477; 11 Del. C. 1953, § 5912; 70 Del. Laws, c. 186, § 1.)

§ 5909. Proceedings on arrest.

(a) Upon the arrest of any person according to this chapter, the person arrested shall be brought before a Justice of the Peace Court in the county in which the offense was alleged to have occurred unless a Justice of the Peace Court in another county is closer to the place where the offense was alleged to have occurred, in which case the prosecution may be before said Court.

(b) The Justice of the Peace Court before which the person is brought shall try the case so far as to determine whether the defendant ought to be discharged, or bound for the defendant's appearance at court or held to answer finally before the Justice of the Peace Court. In which last case, the justice shall proceed to hear fully and to determine the case. But if the matter is not properly cognizable before the justice for final decision, the justice shall commit, or bind, the party for the party's appearance at the court having cognizance of the case.

(Code 1852, § 2026; Code 1915, § 3970; Code 1935, § 4470; 11 Del. C. 1953, § 5913; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 342, §§ 1, 2.)

§ 5910. Use of audiovisual devices.

Anything else in this or any other chapter or title notwithstanding, those proceedings specified by court rule may be conducted by audiovisual device. Audiovisual monitors shall be situated in the courtroom and at the location where the defendant is physically located so as to provide the public, the court and the defendant with a view of the proceedings. Such court proceedings may be conducted by a Justice of the Peace Court in the same or another county from that in which the defendant is physically located.

(71 Del. Laws, c. 43, § 1.)

§ 5911. Procedure where probable ground for accusation is found.

(a) If a justice of the peace considers there is probable ground for an accusation, the justice shall, in case of a capital crime, commit the accused for trial, and in any other case bind the accused, with sufficient surety, for the accused's appearance at such court having jurisdiction of the offense for the county where the offense is alleged to have been committed, and, if the accused does not give such surety, shall commit the accused for trial.

(b) The justice shall also bind material witnesses for their appearance, without surety, unless the justice believes the witness will not appear, and that the loss of the witness' testimony ought not to be risked. In which case, justice may require surety and may commit the witness if it is not given.

(c) Such binding of the accused and of the witnesses shall be as provided in Chapter 21 of this title.

(Code 1852, §§ 2030-2032; Code 1915, § 3972; Code 1935, § 4472; 11 Del. C. 1953, § 5915; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 278, § 7.)

§ 5912. Subpoenas and warrants in criminal cases; enforcement.

Any justice of the peace, in the exercise of that justice's criminal jurisdiction, may issue subpoenas and other warrants into any county in the State for summoning or bringing any person to give evidence in any matter triable before the justice and may enforce obedience by fine or imprisonment. Such subpoenas and warrants shall be in such form as may be prescribed by the Rules of the Court.

(Code 1852, §§ 2033, 2034; Code 1915, §§ 3973, 3974; Code 1935, §§ 4473, 4474; 11 Del. C. 1953, § 5916; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 130, § 2.)

§ 5913. Endorsing names of witnesses on commitments and recognizances.

(a) Justices of the peace and other officers of this State, who give persons charged with the commission of any crime, preliminary hearings, shall endorse on the back of such commitments and recognizances, the names of state's witnesses, and their place of residence. The prothonotaries of the respective counties shall insert the place of residence of such witnesses after their names in the subpoenas.

(b) Whoever violates this section shall be fined not more than $10.

(18 Del. Laws, c. 239; Code 1915, § 3975; Code 1935, § 4475; 11 Del. C. 1953, § 5917.)

§ 5914. Transcripts of docket entries.

(a) The Justice of the Peace Court, upon request and payment or tender of the legal fee, shall make and certify under seal a true transcript of all the docket entries in any cause before the court, or upon any record in the Court's possession, or if specially required, a full and true copy of all the records, entries, process and papers in or touching in such cause. Such transcript or copy shall be received in evidence in any court.

(b) Upon an appeal, a transcript shall be sufficient, unless a full copy be specially requested. Upon a certiorari, the Justice of the Peace Court shall make a full copy of the entire record and proceedings.

(c) Whoever, being authorized to prepare or issue a transcript or record of the proceedings, upon such request and payment or tender of the lawful fees:

(1) Refuses or neglects to perform the duty required by this section; or

(2) Falsely certifies any such transcript or full copy; or

(3) Uses any fraud, falsehood or deceit in making the same,

shall be fined not more than $100, and shall be liable to the party aggrieved in double damages.

(d) Any court reviewing the record on appeal or on application for a writ may, in a proper case, supported by affidavit, require the production of the original record.

(Code 1852, §§ 2053-2056; Code 1915, § 3987; Code 1935, § 4486; 11 Del. C. 1953, § 5918; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 278, § 8.)

§ 5915. Fines, costs and restitution; collection and disposition.

(a) All fines, costs, restitution, penalties, charges and emoluments imposed or levied by the Justice of the Peace Court, including those costs now levied for constables, shall be for such amounts as are provided by law, and all such amounts imposed or levied shall be collected by the Justice of the Peace Court imposing the same for which a proper receipt shall be given to the person paying the same. Every and all

amounts so collected shall be recorded showing the purpose for which the amounts were collected, the name of the person paying same and such other information as the Justice of the Peace Court may require. The information so maintained shall be open to inspection by the State Treasurer and the State Auditor or their authorized agents at all times. All fines and penalties collected for each calendar month shall be paid over by the Justice of the Peace Court to the State Treasurer within 15 days after the first day of the succeeding calendar month, provided that any such fines or forfeitures which, by the laws of this State, are due and payable to a county or municipality thereof shall be paid by the Justice of the Peace Court to the county or municipality entitled thereto.

(b) All fines collected for the violation of any of this title, in the limits of any county, incorporated city or town in this State where arrests are procured by the authorized representatives of that county, incorporated city or town, shall be paid to that county, incorporated city or town within which such offense was committed for the use of that county, incorporated city or town. Nothing in this subsection shall be construed to entitle any county to fines, penalties or forfeitures arising from an arrest made under this title by an authorized representative of that county for a violation committed within any incorporated city or town. All the fines, penalties and forfeitures imposed and collected in any county of this State for violation of any of the laws of this title, where the arrests are procured by the authorized representatives of the Department of Safety and Homeland Security, shall inure and be paid to the State Treasurer for the General Fund. Such fines, penalties and forfeitures shall be collected as other fines, penalties and forfeitures are collected under the laws of this State, and the officers collecting them shall make a monthly report thereof to the State Treasurer on blanks to be furnished for that purpose by the Department of Safety and Homeland Security. All costs collected for the violation of any of this title shall be paid to the jurisdiction whose court imposed said costs.

(Code 1852, § 2017; Code 1915, § 3959; Code 1935, § 4459; 43 Del. Laws, c. 229, § 1; 11 Del. C. 1953, § 5919; 55 Del. Laws, c. 85, § 33D; 55 Del. Laws, c. 359; 57 Del. Laws, c. 123; 63 Del. Laws, c. 141, § 2; 65 Del. Laws, c. 218, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 138; 75 Del. Laws, c. 278, §§ 9, 10.)

§ 5916. Collecting costs according to statute; acting as collecting agent; penalties [Repealed].

Repealed by 75 Del. Laws, c. 278, § 2, effective June 13, 2006.

§ 5917. Jurisdiction over violations of ordinances, codes and regulations of the governments of the several counties and municipalities; penalty; appeal; disposition of fines.

(a) Justices of the peace shall have jurisdiction throughout the State to hear, try and finally determine any violation or violations of any ordinance, code or regulation of the governments of their respective counties and municipalities, including those classified in such ordinance, code or regulation as misdemeanors. Any person convicted of such violations may be fined not more than $1,000 for each violation. The Justice of the Peace Court shall accept administrative transfers from an alderman court or mayor’s court.

(b) Notwithstanding subsection (a) of this section, in any municipality with a population greater than 50,000 people, and in New Castle County, any offense under the building, housing, health or sanitation code which is classified therein as a misdemeanor, the sentence for any person convicted of such a misdemeanor offense shall include the following fines and may include restitution or such other conditions as the court deems appropriate:

(1) For the first conviction, not less than $250, nor more than $1,000.

(2) For the second conviction for the same offense, not less than $500, nor more than $2,500.

(3) For all subsequent convictions for the same offense, not less than $1,000 nor more than $5,000.

(c) In any municipality with a population greater than 50,000 people, a conviction for a misdemeanor offense, which is defined as a “continuing'' or “ongoing'' violation, shall be considered a single conviction for the purposes of paragraphs (b)(1)-(3) of this section. For all convictions subsequent to the second, the minimum fines required herein shall not be suspended, but such amounts imposed over the minimum may be suspended or subject to such other conditions as the court deems appropriate. The provisions of this subsection relating to municipalities with a population greater than 50,000 people shall not apply to offenses or convictions involving single family residences that are occupied by an owner of the property.

(d) Every person convicted under this section shall have the right to appeal to the Court of Common Pleas of this State. No such conviction or sentence shall be stayed pending appeal unless the person convicted shall give bond in an amount and with surety to be fixed by the justice of the peace before whom such person was convicted, at the time such appeal was taken. Such appeal shall be taken and bond given within 5 days from the time of conviction.

(e) Election to have a case tried by the Court of Common Pleas pursuant to § 5303 of this title shall not be applicable to violations under this section, except that any violation under this section accompanied in the same case by an additional charge or charges over which the Court of Common Pleas has jurisdiction is eligible to be transferred under such election.

(f) All fines collected for the violation of any ordinance, code or regulation of any county or municipality of this State where a summons was issued or where an arrest was procured by the authorized representatives of that county or municipality shall be paid to that county or municipality within which such violation occurred for the use of that county or municipality; otherwise such fines shall inure and be paid to the State Treasurer for the General Fund. Nothing in this subsection shall be construed to entitle any county to fines, penalties or forfeitures arising from a summons issued or an arrest made under this section by an authorized representative of that county for a violation committed within any incorporated city or town. Fines, penalties and forfeitures collected under this section shall be collected and disbursed as other fines, penalties and forfeitures are collected and disbursed under the laws of this State, and the officers collecting

them shall make a monthly report thereof to the State Treasurer on blanks to be furnished for that purpose by the Department of Safety and Homeland Security. All costs collected for the violation of any county or municipal ordinance, code or regulation shall be paid to the jurisdiction whose court imposed said costs.

(11 Del. C. 1953, § 5921; 58 Del. Laws, c. 38; 59 Del. Laws, c. 263, § 1; 65 Del. Laws, c. 218, § 3; 67 Del. Laws, c. 358, § 1; 69 Del. Laws, c. 423, § 17; 74 Del. Laws, c. 110, § 138; 74 Del. Laws, c. 153, § 2; 74 Del. Laws, c. 322, § 5; 75 Del. Laws, c. 212, § 2; 78 Del. Laws, c. 133, § 1; 82 Del. Laws, c. 231, § 2; 83 Del. Laws, c. 283, § 15.)

§ 5918. Records of warrants and bonds.

All traffic and criminal warrants and bonds shall be retained of record in the Justice of the Peace Court that issued same. A justice of the peace shall certify transcripts of such records to be a true copy of the original.

(27 Del. Laws, c. 275; Code 1915, § 3963; 28 Del. Laws, c. 239; 34 Del. Laws, c. 218; Code 1935, § 4463; 11 Del. C. 1953, § 5924; 59 Del. Laws, c. 315, § 1; 75 Del. Laws, c. 278, § 11.)

§ 5919. Legal counsel for public officers and employees [Repealed].

Repealed by 75 Del. Laws, c. 278, § 2, effective June 13, 2006.

§ 5920. Appeals.

From any order, ruling, decision, judgment or sentence of the Court entered in a Justice of the Peace Court in a criminal action pursuant to this title in which the sentence shall be imprisonment exceeding 1 month or a fine exceeding $100, the accused shall have the right of appeal to the Court of Common Pleas in and for the county wherein the offense was committed. Such appeal to the Court of Common Pleas shall be tried de novo.

(70 Del. Laws, c. 89, § 1.)

Part IV
Prisons and Prisoners
Chapter 65
Department of Correction
Subchapter I
Purposes, Definitions and Powers

§ 6501. Establishment.

There is established a Department of Correction. Said Department shall be a continuation of and successor to the State Board of Corrections existing prior to July 8, 1964.

(11 Del. C. 1953, § 6504; 54 Del. Laws, c. 349, § 1.)

§ 6502. Purposes and construction; custody of inmates.

(a) A Department of Correction is established to provide for the treatment, rehabilitation and restoration of offenders as useful, law-abiding citizens within the community. To achieve these purposes more effectively in a coordinated and united manner, the Department shall be completely responsible for the maintenance, supervision and administration of adult detention and correctional services and facilities of the State, which include institutional facilities and probation and parole services. These institutions and services shall be diversified in program, construction and staff to provide effectively and efficiently for the maximum study, care, custody, training and supervision and treatment of those persons committed to the institutional facilities or on probation or parole, so that they may be prepared for release, aftercare, discharge or supervision in the community. This chapter shall be liberally construed so as to effectuate its purposes.

(b) The Department shall accept custody of all persons committed to it by courts of competent jurisdiction. Persons committed to the custody of the Department shall not be released from custody except in accordance with this title or by order of a court of competent jurisdiction.

(c) Nothing in this title shall be construed to require the release of persons committed to the custody of the Department, nor shall anything in this title be construed as a limitation on the inmate population at any of the facilities maintained by the Department.

Nothing in any regulation promulgated by the Department shall be construed as a limitation on the inmate population at any of the facilities maintained by the Department.

(d) In the event that: (1) The number of persons housed by the Department at any of its facilities exceeds the design capacity of that facility; and (2) because the inmate population at that facility exceeds the design capacity of that facility the Department is unable to provide conditions of confinement as may otherwise be required by this title or by the regulations promulgated by the Department, then the Department shall not be required to provide said conditions of confinement to the extent it is unable to do so because of the inmate population at that facility. The Commissioner shall determine the design capacity of each of the facilities maintained by the Department.

(e) For purposes of this section, the term “inmate population” shall include both convicted and pretrial detentioners.

(11 Del. C. 1953, § 6501; 54 Del. Laws, c. 349, § 1; 62 Del. Laws, c. 61, §§ 1, 2.)

§ 6503. Definitions.

As used in this chapter:

(1) “Commissioner” or “Commissioner of Correction” means the Commissioner of the Department of Correction.

(2) “Department” means the Department of Correction. References in other statutes to the State Board of Corrections or Board of Trustees or workhouse or jail shall be deemed to mean the Department.

(3) “Law” includes the laws and ordinances of this State, political subdivisions and municipalities thereof.

(4) “Offender” includes any person convicted of a crime or offense as defined in § 101 of this title or the ordinances of any incorporated municipality of this State, including a person committed for civil or criminal contempt, except,

a. A person not yet 18 years old when adjudged by a Family or Juvenile Court of this State except when committed to the Department in accordance with law, and

b. A person who has been determined to be mentally ill or criminally inclined and has been committed to another appropriate authority.

(11 Del. C. 1953, § 6502; 54 Del. Laws, c. 349, § 1; 57 Del. Laws, c. 591, § 47; 58 Del. Laws, c. 172, § 2; 60 Del. Laws, c. 251, §§ 11-13; 64 Del. Laws, c. 108, § 15; 78 Del. Laws, c. 305, § 2.)

§ 6504. General powers and duties of the Department.

The Department, subject only to powers vested in the judicial and certain executive departments and officers of the State, shall have the duties set forth in this chapter and the exclusive jurisdiction over the care, charge, custody, control, management, administration and supervision of:

(1) All offenders and persons under the custody of the Department;

(2) All institutions for the custody, correction and rehabilitation of persons committed to its care;

(3) Such other facilities as may be established by the Department for the safekeeping, correction or rehabilitation of offenders and persons;

(4) Probation services for courts having jurisdiction of offenders;

(5) Parole services for persons within the institutions and facilities of the Department or on parole;

(6) Furnishing the Board of Parole adequate office facilities and supplies to properly perform its duties;

(7) Providing consultation services and establishing standards on the design and construction of buildings, programs, administration of detention, jail or other facilities, operated by any county or municipality, and to provide a course of training for the personnel of same and establish standards for the same, with annual inspections, publishing the results of such inspections, as well as statistical and other data on persons held in the same;

(8) Operating classification committees, diagnostic and treatment programs and such other programs as may be desirable to fulfill the purposes of this chapter;

(9) Employing such officers, employees and agents and securing offices and quarters as deemed necessary to discharge the functions of the Department;

(10) Receiving all offenders committed to the Department;

(11) Executing the orders of the court as to sentences of corporal and capital punishment;

(12) Selling the products of its institutions and farms to other institutions supported in all or part by taxes levied within the State, prices to be set as provided by rules of the Department. All funds received from such sales shall be deposited in the General Fund. In the event that there is a surplus of the products of the Department's institutions and farms which cannot be sold to the other institutions supported in whole or part by taxes levied within the State, the Department may sell such surplus products on the open market. All funds received from such sales shall be deposited in the General Fund;

(13) To agree with the proper authorities of the United States for payment to the General Fund of the State of such sums as shall be fixed by the Department for the maintenance and support of offenders committed to the Department by authority of the United States.

(14) [Repealed.]

(11 Del. C. 1953, § 6505; 54 Del. Laws, c. 349, § 1; 64 Del. Laws, c. 108, § 15; 66 Del. Laws, c. 233, § 1; 68 Del. Laws, c. 289, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 27, § 6; 78 Del. Laws, c. 305, § 2; 83 Del. Laws, c. 441, § 9.)

§ 6505. Powers of the Board [Repealed].

(11 Del. C. 1953, § 6513; 54 Del. Laws, c. 349, § 1; repealed by 78 Del. Laws, c. 305, § 7, eff. July 5, 2012.)

§ 6506. Employment of personnel.

(a) The Department shall be the hiring agency for all correctional officers and other persons employed by the Department. Any applicant for employment by the Department shall take such physical, mental, and intelligence or other tests as the Department shall prescribe, and shall provide the Department with such information as it may need for its employment decisions.

(b) Prior to making an employment decision on an applicant for employment by the Department, the Department shall obtain the applicant's entire criminal history record from both the State and the Federal Bureau of Investigation. Prior to employing the applicant, the Department shall complete and review the results of a computerized name search of the National Crime Information Center (NCIC) and the Criminal Justice Information System (CJIS) maintained by the Delaware Criminal Justice Information System (DELJIS) to determine if the applicant has any criminal history record information. Based on the results of the computerized name searches for criminal history records, the Department shall not employ any individual who has ever been convicted of a felony offense in this or any other state or jurisdiction, or who has ever been convicted of an offense in another state or jurisdiction that would be a felony offense in the State of Delaware. Prior to employing the applicant, the Department also shall initiate a background search using any state or federal automated fingerprint identification system. Upon receiving the results of fingerprint-based searches for background information, the Department shall immediately terminate the employment of any individual employed by the Department who has ever been convicted of a felony offense in this or any other state or jurisdiction, or who has ever been convicted of an offense in another state or jurisdiction that would be a felony offense in the State of Delaware.

(c) Notwithstanding the above prohibition on employment and the provisions of § 8914 of Title 29, the Department may, upon an individual's release from a Level 4 or Level 5 vocational program, employ on a casual/seasonal basis an ex-offender disqualified from employment pursuant to subsection (b) of this section, above, demonstrating exceptional job skills (as determined by the Department in its sole discretion) in certain qualified positions for a period of time not to exceed 6 months. The Department may not employ an ex-offender disqualified from employment pursuant to subsection (b) of this section, above, unless the Department has adopted policies and procedures governing the terms and conditions of employment for such individuals, identifying the qualified positions available to such individuals and setting forth the selection criteria and job qualifications and requirements for each qualified position. Individuals employed under this subsection shall not be covered by any union contract or Chapter 59 of Title 29. Nothing in this section shall create any right, privilege or entitlement to employment of any kind to any individual.

(d) The initial employment of any person by the Department shall be on a probationary basis for the first 6 months or in accordance with the union contract during which time the probationary employee shall not be eligible for merit system status. Upon the successful completion of the probationary period, the employee shall be covered by the classified service as defined under Chapter 59 of Title 29. This subjection shall not apply to any individual hired on a casual/seasonal basis pursuant to subsection (c) of this section, above.

(60 Del. Laws, c. 654, § 1; 73 Del. Laws, c. 66, § 1; 78 Del. Laws, c. 305, § 7; 79 Del. Laws, c. 296, § 1.)

Subchapter II

Commissioner of Correction

§ 6516. Commissioner in charge.

The Commissioner shall assume full and active charge of the Department, its facilities and services, and is the chief executive and administrative officer of the Department.

(11 Del. C. 1953, § 6516; 54 Del. Laws, c. 349, § 1.)

§ 6517. Duties and responsibilities of the Commissioner.

The Commissioner shall carry out and provide for:

(1) Promulgating rules and regulations to carry out the Commissioner's duties and operate the Department;

(2) The organization, maintenance, control and operation of the Department;

(3) The custody, study, training, treatment, correction and rehabilitation of persons committed to the Department;

(4) Regulating the nature and limitations of authorized punishments for violations of the rules established for the government of any institution or facility under the jurisdiction of the Department, but corporal punishment shall not be inflicted therefor; providing by general rule for a merit system for reduction of confinement;

(5) The administration, supervision, operation, management and control of state correction institutions, farms or any other institution or facility under the jurisdiction of the Department;

(6) The management and control of institutional labor and industry;

(7) The operation of probation and parole field services;

(8) The employment of such officers, employees and agents as may be deemed necessary to discharge the functions of the Department, together with establishing their qualifications and the establishment of a merit system and training programs;

(9) Developing a suitable administrative structure providing for divisions, bureaus and services within the Department;

(10) Governing the transportation and transfer of offenders and persons between the various institutions and facilities under its jurisdiction or elsewhere as provided in this chapter, transfers to be made by issued orders, the reasons thereof to be made a matter of record, in each case. No female offender or person shall be transferred unless accompanied by at least 1 female officer or guard;

(11) Managing and supervising the Department and doing any and all things necessary to carry out and to fulfill the purposes of this chapter; and

(12) Administering the medical/treatment services contract, or appointing a designee to administer the medical/treatment contract.

(11 Del. C. 1953, § 6517; 54 Del. Laws, c. 349, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 320, § 1; 78 Del. Laws, c. 305, § 7.)

§ 6518. Adult Correction Healthcare Review Committee.

(a) The Adult Correction Healthcare Review Committee (Committee) is hereby established.

(b) For administrative and budgetary purposes, the Committee shall be placed within the Criminal Justice Council. The Criminal Justice Council shall provide fiscal oversight as determined by the Executive Director of the Criminal Justice Council. Staff of the Committee are under the authority of and subject to the oversight and supervision of the Executive Director of the Criminal Justice Council.

(c) The Committee shall consist of 9 voting members, appointed by the Governor and confirmed by the Delaware State Senate which shall include all of the following;

(1) A Delaware licensed physician.

(2) A Delaware licensed forensic psychologist.

(3) A Delaware licensed psychologist.

(4) A Delaware licensed registered nurse.

(5) A member of the Delaware Bar.

(6) An expert in the field of substance abuse treatment.

(7) Any additional healthcare professional who by virtue of training, education, and specialization holds expertise in correctional healthcare.

(8) An individual representing a nonprofit that is serving the families of inmates or the inmates themselves, or a local civil rights organization.

(9) A Delaware licensed psychiatrist.

(d) The Committee shall also consist of the following 3 nonvoting ex-officio members:

(1) The Chief of the Bureau of Healthcare, Substance Abuse, and Mental Health Services.

(2) Chairperson of the House Corrections Committee.

(3) Chairperson of the Senate Corrections and Public Safety Committee.

(e) Voting members shall be appointed for a term of 3 years.

(f) No member of the committee other than those designated in subsection (d) of this section may be an employee of the Department of Correction or a contractor providing medical services under the direction of the Department of Correction.

(g) Nonvoting ex-officio members may designate another individual to attend Committee meetings. The nonvoting ex-officio members identified in paragraphs (d)(2) and (d)(3) of this section may only designate a member of their respective corrections committees.

(h) Members shall receive no salary for their service, but may be reimbursed for reasonable expenses incurred in their work for the commission.

(i) Five voting members of the Committee must be present to constitute a quorum.

(j) The Medical Society of Delaware, the Delaware Psychiatric Society, the Delaware Psychological Association, the Delaware Nurses Association, and the Delaware State Bar Association, may submit recommendations to the Governor for consideration of appointment.

(k) The chair of the Committee shall be elected annually by majority vote of the voting Committee members.

(*l*) The Committee serves in an advisory capacity to the Governor, the General Assembly, and the Commissioner of the Department of Correction on all matters in Delaware's adult correction system relating to the provision of inmate health-care services, the review of all inmate deaths and autopsies relating to those deaths, the construction of health-care contracts that provide inmate health-care services, and the review of all statistics relating to inmate health care.

(m) The Committee shall not be considered a public body as defined at § 10002 of Title 29.

(n) The Committee shall do all of the following:

(1) Perform advisory reviews of medical records and autopsies of inmates who have died while incarcerated.

(2) Review and monitor the quality and appropriateness of health-care services rendered in Delaware's adult correctional facilities.

(3) Review critical incident and mortality and morbidity review reports.

(4) Receive and review monthly summaries of inmate, staff, public, and other health-care related grievances and the resolutions of these grievances in order to be fully appraised of the state of health-care services in Delaware's adult correction facilities.

(5) Receive and review monthly reports of inmate hospital admissions and infectious disease diagnoses, such as hepatitis C, tuberculosis, human immunodeficiency virus (HIV), methicillin resistant staphylococcus aureus (MRSA), and meningitis, from all adult correction facilities.

(6) Have access to any and all otherwise protected health-care information relating to current and former inmates supervised by the Department of Correction notwithstanding any other statute to the contrary.

(7) Advise the Governor, the General Assembly, and the Commissioner of the Department of Correction on any other matters relating to adult inmate health care that the Committee considers reasonable and worthwhile including all of the following:

a. Assurance that all inmates receive appropriate and timely services in a safe environment.

b. Systematic monitoring of the treatment environment.

c. Assisting in the reduction of professional and general liability risks.

d. Enhancing efficient utilization of resources.

e. Assisting in credential review.

f. Enhancing the identification of continuing educational needs.

g. Facilitating the identification of strengths, weaknesses, and opportunities for improvement.

h. Facilitating the coordination and integration of information systems.

i. Assuring the resolution of identified problems.

j. Changes considered necessary by the Committee.

(8) By November 30, 2021, provide a report to the Governor, the General Assembly, and the Commissioner of the Department of Correction regarding the efficacy and appropriateness of the Department's response to COVID-19 from March 12, 2020, to March 30, 2021.

a. All of the following shall be included in the report identified in this paragraph (n)(8):

1. The total number of inmates who tested positive for COVID-19.

2. The total number of inmates at each correctional institution who tested positive for COVID-19.

3. The total number of correctional officers who tested positive for COVID-19.

4. The total number of correctional officers at each correctional institution who tested positive for COVID-19.

5. The total number of deaths of inmates and correctional officers due to COVID-19.

6. The strengths, weaknesses, and opportunities for improvement of the Department's response to COVID-19.

7. An assessment of the medical treatment provided to inmates who tested positive for COVID-19.

b. In order to discharge its obligations under this paragraph (n)(8), the Committee may do all of the following:

1. Request records of or the appearance of the Department or any contractor who provided medical services to an inmate from March 12, 2020, to March 30, 2021, relating to COVID-19.

2. Consult with any additional medical professional.

3. Engage additional staff other than the Criminal Justice Council.

c. Any individual who provides services to the Committee under this paragraph (n)(8) must abide by federal and state laws regarding privacy of protected health information. Any person aggrieved by a violation of this paragraph shall have, in additional to any other rights, a right of action in the Superior Court pursuant to subsection (t) of this section.

(o) The Committee may request the appearance of any contractor providing medical and behavioral health services to an inmate under the direction of the Department of Correction at a Committee meeting in order to provide information to the Committee.

(p) The Committee shall refer to the appropriate licensing board grievance cases in which there is a serious deviation from the community standard of care by a health-care worker or other employee of a prison health-care contractor, if the health-care worker or other employee's profession or occupation is governed under Title 24.

(q) The Department of Correction shall forward copies of National Commission of Correctional Health Care (NCCHC) and American Correctional Association (ACA) surveys, reports, and evaluations to the Committee upon their request. Whenever a survey, evaluation, or similar act is conducted by or on behalf of NCCHC or ACA, the Committee may be contacted and be allowed to contribute to the survey, evaluation, or other activity. The transmission of documents in the possession of the Department of Correction to the Committee shall not be considered a waiver of any statutory or common law privilege.

(r) All of the following shall be provided to the Committee at the Committee's request:

(1) Autopsy reports of inmates who have died while incarcerated within the control of the Department of Safety and Homeland Security.

(2) Evaluations performed by the Delaware Psychiatric Center of an inmate within the control of the Department of Health and Social Services except those records protected by 42 C.F.R. Part 2 [42 C.F.R. § 2.1 et seq.].

(3) Inmate medical and behavioral health services records in the custody of the Department of Correction.

(4) Records of a contractor providing medical and behavioral health services to an inmate under the direction of the Department of Correction.

(s) Any document received or generated by the Committee is hereby specifically excluded from the definition of public record as set forth at § 10002 of Title 29.

(t) All Committee members must abide by federal and state laws regarding privacy of protected health information. In addition any other remedies available under federal and state law, any person aggrieved by a violation of this paragraph shall have a right of action in the Superior Court and may recover for each violation all of the following:

(1) Against any person who intentionally or recklessly violates a provision of this paragraph, damages of $5,000 or actual damages, whichever is greater.

(2) Reasonable attorney's fees.

(3) Such other relief, including an injunction, as a court may deem appropriate.

(u) This section is intended only to provide ongoing independent review, monitoring, advice, and critique of the provision of health-care services to inmates within the custody of the Department of Correction. Accordingly, nothing in this chapter shall give rise to any right, entitlement or a private cause of action for civil damages or injunctive relief for any public or private party.

(v) The Committee shall submit a report by December 31 of each year to the Governor, the General Assembly and the Commissioner of the Department of Correction on the state of inmate health-care services in Delaware's adult correction system by delivering a copy to the Governor, and the Clerks of the House of Representatives and the Senate, and the Commissioner of the Department of Correction.

(w) Notwithstanding any provision of this section to the contrary, for 2021 and 2022, the Chairperson of the House Corrections Committee and the Chairperson of the Senate Corrections and Public Safety Committee shall be voting members of the Committee, but cannot designate another individual to attend Committee meetings or vote.

(76 Del. Laws, c. 388, § 1; 78 Del. Laws, c. 382, § 1; 80 Del. Laws, c. 378, § 1; 82 Del. Laws, c. 67, § 1; 83 Del. Laws, c. 199, § 1; 84 Del. Laws, c. 10, § 1.)

Subchapter III

Bureaus and Divisions of the Department

§ 6520. Establishment of bureaus.

There shall be within the Department the following bureaus:

(1) A Bureau of Administrative Services.

(2) A Bureau of Healthcare, Substance Abuse, and Mental Health Services.

(3) A Bureau of Prisons.

(4) A Bureau of Community Corrections.

(5) Such other bureaus, divisions, and subdivisions, with such personnel as the Commissioner shall deem desirable.

(11 Del. C. 1953, § 6520; 54 Del. Laws, c. 349, § 1; 78 Del. Laws, c. 305, § 7; 83 Del. Laws, c. 34, § 1.)

Subchapter IV

Division of Field Services

§ 6521. Division of Field Services [Repealed].

(11 Del. C. 1953, § 6521; 54 Del. Laws, c. 349, § 1; 57 Del. Laws, c. 233, § 1; 75 Del. Laws, c. 88, § 20(1); repealed by 78 Del. Laws, c. 305, § 7, eff. July 5, 2012.)

Subchapter V

Diagnostic Services and Special Groups

§ 6523. Rehabilitation services.

(a) The Department shall make social, medical, psychological and other appropriate studies and investigations of persons committed to its care for the purpose of rehabilitation of said persons. At the request of any sentencing court, the Department shall, to the extent possible, receive for study and report to the court concerning any person who has been convicted, is before the court for sentencing and is subject to commitment to the Department.

(b) The Department shall take steps to ensure that infectious diseases are not disseminated among the persons committed to the Department's care and staff. In performing the function, the Department is empowered to review medical histories, to complete medical histories, to complete appropriate medical examinations, to perform laboratory tests as are deemed appropriate, and to begin a course of treatment on persons committed to its care.

(11 Del. C. 1953, § 6523; 54 Del. Laws, c. 349, § 1; 65 Del. Laws, c. 424, § 1; 78 Del. Laws, c. 305, § 7.)

§ 6524. Special problem groups.

The Department may establish facilities for the treatment of alcoholics, prostitutes, drug addicts and other such groups as the Department shall determine. The Department shall coordinate its work with any other state agency to reduce overlapping or duplication of functions and services.

(11 Del. C. 1953, § 6524; 54 Del. Laws, c. 349, § 1.)

§ 6525. Treatment of inmates with mental illnesses and serious mental disorders; transfer.

(a) The Department shall establish resources and programs for the treatment of persons with mental illnesses and serious mental disorders, either in a separate facility or as part of other institutions or facilities of the Department. The Department shall coordinate its work with any other state agency to reduce overlapping or duplication of functions and services.

(b) The Commissioner is empowered to transfer to other appropriate state institutions for care and treatment inmates who have been determined to have mental illnesses. Transfer may also be made to such facilities in other jurisdictions, or to municipal or private facilities, upon the consent of responsible administrators of such facilities. Such transfers shall occur only as set forth at § 5153 of Title 16. Inmates to be transferred as contemplated herein who have not reached the age of 18 years and have been found nonamenable to the processes of Family Court shall not be transferred to the Delaware Psychiatric Center. Nonamenable inmates under the age of 18 years shall be transferred to appropriate residential treatment facilities within the State of Delaware or in other states.

(c) When, in the judgment of the administrator of the institution to which an inmate has been transferred, the inmate has recovered from the condition which occasioned the transfer, the inmate shall be returned to the Department.

(11 Del. C. 1953, § 6525; 54 Del. Laws, c. 349, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 322, §§ 4-6; 78 Del. Laws, c. 224, § 22.)

§ 6526. Special facilities for witnesses and those awaiting trial.

Special facilities shall be provided for witnesses detained for inability to give bail and those awaiting trial, as the Department deems fit and necessary.

(11 Del. C. 1953, § 6526; 54 Del. Laws, c. 349, § 1; 58 Del. Laws, c. 172, § 1; 64 Del. Laws, c. 108, § 33.)

§ 6527. Creation and responsibility of classification boards.

(a) The Department shall classify persons in the several institutions and facilities by the use of 2 separate and distinct classification boards to be known as The Institutional Classification Board and The Institutional Release Classification Board with powers and responsibilities delineated in subchapter VI of this chapter.

(b) The Institutional Classification Board shall be responsible for the classification of all inmates residing and remaining in the several institutions and facilities.

(c) The Institutional Release Classification Board shall be responsible for the classification of all inmates that are being considered for release from the several institutions and facilities under the jurisdiction of the Department.

(60 Del. Laws, c. 703, § 1.)

Subchapter VI

Classification and Employment

§ 6529. Institutional Classification Board; discretion of Department in adopting classification systems.

(a) The Institutional Classification Board shall classify persons in the several institutions and facilities and shall promulgate regulations in accordance with which 1 or more classification committees shall be organized and operated not inconsistent with § 6527(b) of this title.

(b) The Institutional Classification Board's purpose is the organization and harmony of inmate life.

(c) The Institutional Classification Board shall consist of an equal number of individuals from both the custodial staff and the treatment staff.

(d) The warden shall maintain the power to veto decisions of the Board.

(e) Nothing in this chapter shall be construed to require the Department to institute or maintain any system of classification of convicted persons for the purpose of assignment to institutions or housing units within institutions. However, the Department may, at its discretion, institute or maintain any such system at any or all of its institutions.

(f) Nothing in this chapter shall be construed to require the Department to reduce the inmate population of any of its institutions below the capacity for which that institution was designed in order to accommodate any system of classification of convicted persons for purposes of assignment to institutions or housing units within an institution which the Department institutes or maintains.

(g) Nothing in this chapter requiring or permitting the Department to institute or maintain a program or programs for the custody, rehabilitation or care of persons coming under the jurisdiction of the Department, including but not limited to such programs as may be required or permitted by §§ 6530 and 6531 of this title, shall be construed to require the Department to reduce the inmate population at any of its institutions below the capacity for which that institution was designed.

(11 Del. C. 1953, § 6529; 54 Del. Laws, c. 349, § 1; 60 Del. Laws, c. 703, § 2; 61 Del. Laws, c. 193, §§ 1, 2.)

§ 6529A. Institutional Release Classification Board.

(a) The Institutional Release Classification Board shall classify any and all inmates seeking release from an institution for whatever reason.

(b) The Institutional Release Classification Board shall consist of 7 members: Two members each from the custodial staff and treatment staff as well as 3 individuals to be appointed by the Criminal Justice Council and whose terms shall run for a period of 4 years from the date of appointment.

(c) The 3 individuals to be appointed by the Criminal Justice Council shall receive compensation in the amount of $90 per meeting. However, no member so appointed shall receive compensation in excess of $4,000 per annum.

(d) The warden of the institution shall possess veto power over decisions of the Board and also shall possess discretionary authority to grant a furlough in the event of the sudden death of a member in an inmate's immediate family.

(60 Del. Laws, c. 703, § 2; 66 Del. Laws, c. 349, § 1; 78 Del. Laws, c. 305, § 7.)

§ 6530. Classification committee; information.

Immediately after a person who has been sentenced to 90 days or more of imprisonment is received at any institution under the jurisdiction of the Department, a classification committee shall obtain and file complete information with regard to such person. Similar records may be compiled on persons sentenced to less than 90 days, in accordance with rules and regulations of the Department. When all such existing available records have been assembled, each such classification committee shall determine whether or not any further investigation is necessary, and, if so, it shall make such additional investigation. Each classification committee shall determine and prescribe the custodial and rehabilitation program and the care for each person coming under its jurisdiction. The classification committee shall determine the persons who shall work and labor and shall assign persons to jobs, studies and programs according to their abilities and in the manner best calculated to effectuate their training and rehabilitation. Review for reclassification shall occur periodically in accordance with the Department's regulations, or whenever the committee shall deem it advisable.

(11 Del. C. 1953, § 6530; 54 Del. Laws, c. 349, § 1.)

§ 6531. Treatment and rehabilitation programs.

(a) Persons committed to the institutional care of the Department shall be dealt with humanely, with effort directed to their rehabilitation. To the maximum extent possible, the Department shall evaluate each person using an objective risk and needs assessment instrument and shall create a case plan for those persons assessed to be moderate- to high-risk that targets the need factors identified by the assessment. The Department shall prioritize the provision of such evaluations according to the length of sentence and the severity of the conduct giving

rise to the sentence of incarceration. The Department shall make efforts to provide treatment and services responsive to the person's needs and characteristics. Use of the objective risk assessment instrument shall commence by December 31, 2013.

(b) The Department shall establish alcohol and drug counseling and treatment programs for inmates. The Department may further establish a program of mandatory drug testing for inmates. In establishing such programs, the Department shall also establish rules and regulations regarding the order in which inmates shall be eligible to participate in such courses.

(c) When the Department shall make programs of counseling and treatment available to inmates at a correctional facility, inmates at such facility who are eligible in accordance with the rules and regulations of the Department established under subsection (b) of this section, shall be required to enroll in and participate in such programs.

(d) The costs of providing such counseling and treatment programs established pursuant to subsections (b) and (c) of this section shall, in accordance with a schedule to be established by the Department, be assessed against those inmates required under subsection (c) of this section to be enrolled, and may be deducted from said inmate's account in accordance with the provisions of § 6532(f) of this title.

(e) An inmate's refusal to participate in compulsory programs of drug or alcohol counseling or treatment established by the Department does not prohibit an application for sentence modification under § 4217 of this title or eligibility for parole under § 4346(e) of this title, but may be considered by the court under § 4217(b) of this title. An inmate refusing to participate in compulsory programs of drug or alcohol counseling or treatment established by the Department is subject to disciplinary measures as the Commissioner may establish by regulation.

(f) The Department shall establish programs of work, case work counseling and psychotherapy, library and religious services and commissary, and shall further establish procedures for the classification of inmates for those purposes.

(g) The Department shall undertake an assessment of its ability to meet treatment and rehabilitation needs of the confined population every 3 years and endeavor to provide programs in accordance with identified needs. The first report shall be completed by December 31, 2012.

(11 Del. C. 1953, § 6531; 54 Del. Laws, c. 349, § 1; 67 Del. Laws, c. 396, § 7; 78 Del. Laws, c. 392, §§ 14, 15; 83 Del. Laws, c. 233, § 2; 85 Del. Laws, c. 76, § 5.)

§ 6531A. Education programs.

(a) The Department of Education and the Department of Correction shall be jointly responsible for the administration of a prison education program. The Department of Correction and the Department of Education shall work collaboratively through designated agency contracts to accomplish this task.

(b) The Department of Education and the Department of Correction shall be responsible for the oversight and management of the prison education program, including academic courses leading towards a high school diploma, life skills, special education, media resource services and vocational technical courses. The Department of Education shall be responsible for the establishment of rules and regulations regarding the administration of academic and vocational programs within the prison education program. The Department of Education shall be responsible for hiring teachers to provide instruction in these programs. The Department of Education shall further supervise these employees, who shall be considered employees of the Department of Education and are subject to all rules and regulations of the Department. Employees who are assigned to the prison education program as teachers that have remained Department of Correction employees shall be supervised by the Department of Education. Teachers who were employees at the time this legislation is enacted, that work for the Department of Correction, shall have the right to transfer to the Department of Education each year upon notification to the Department of Education by April 15 and such transfer shall become effective July 1 of that year. Any position transfer made pursuant to this section shall become permanent. If a remaining Department of Correction teacher position becomes vacant, the position and the associated funding shall be transferred to the Department of Education. Any Department of Education employee working in the prison education program and whose permanent work assignment location resides within or on the campus of a Department of Correction Level 5 or Level 4 facility must submit to the same random drug testing procedure required of Department of Correction employees.

(c) The Department of Correction through the wardens of each facility shall be responsible for classifying offenders in and out of the prison education program, providing dedicated facilities that accommodate the educational needs, and disciplining inmates who have displayed inappropriate behavior in the prison education program. The Department of Correction shall conduct security and background checks on all potential prison education personnel and notify the Department of Education as to the results of that security check.

(d) When the Department of Education shall make prison education programs available to inmates at a correctional facility, inmates at such facility who are eligible, in accordance with rules and regulations established under subsections (b) and (c) of this section, shall be required to enroll in and attend such courses.

(e) An inmate's refusal to participate in compulsory programs of education established under this section does not prohibit an application for sentence modification under § 4217 of this title or eligibility for parole under § 4346(e) of this title, but may be considered by the court under § 4217(b) of this title. An inmate refusing to participate in compulsory programs of education established under this section is subject to disciplinary measures as the Commissioner may establish by regulation.

(f) The Department of Education shall continue to provide funding through its discretionary federal special education funds for a portion of the education costs associated with prison inmates aged 18 to 21 years who qualify for special education.

(67 Del. Laws, c. 396, § 5; 73 Del. Laws, c. 137, § 2; 73 Del. Laws, c. 320, § 4; 76 Del. Laws, c. 20, § 1; 85 Del. Laws, c. 76, § 6.)

§ 6532. Work by inmates.

(a) The Department may establish compulsory programs of employment, work experience and training for all physically able inmates. To the maximum extent practical, these programs shall approximate normal conditions of employment in free agriculture, industry and business, with respect to equipment, management practices and general procedures.

(b) The products of inmate labor and services may be sold and marketed to tax-supported departments and institutions and agencies of the State and its governmental subdivisions and such other employers or entities within or outside of the State, as the Department shall determine. The Department may make contractual arrangements for the use of inmate labor by other tax-supported units of government responsible for the conservation of natural resources or other public works. The Department may also assign inmates to community work projects including, but not limited to, litter control along state highways and on state beaches and trash removal from state facilities, as provided in subsection (c) of this section.

(c) Before entering into an agreement with any other state department seeking prisoner-workers in accordance with this section, the Department shall have established a pilot litter-control program in each of the 3 counties with the cooperation of the Department of Transportation. The Department of Transportation shall advise the Department as to the kinds of equipment and the costs thereof that will be required and will act at all times as the consultant to the Department in this program.

(d) Inmates shall be compensated or awarded additional good time credits, at the discretion of and at rates fixed by the Department, for labor performed, including institutional maintenance.

(e) In the event that an inmate shall labor for more than 40 hours in 1 week, said inmate shall be compensated at $1^1/_2$ times the regular hourly rates paid to said inmates for such work time the inmate has labored in excess of 40 hours in 1 week.

(f) The Department shall cause to be placed into an account, payable to each inmate upon the inmate's discharge, income from the inmate's employment and any other income or benefits, accruing to or payable to, and for the benefit of said inmate, including but not limited to any worker's compensation or Social Security benefits. From the account of each inmate, the Department shall deduct, in order of the priority set forth herein, the following sums:

(1) Support payments for dependents of the inmate who are receiving public assistance during the period of incarceration, or to whom the inmate is under a court ordered obligation to provide support and restitution as may have been assessed against said inmate pursuant to court order;

(2) Court costs, fines, and such other items as may be assessed against said inmate pursuant to court order; and

(3) A proportionate share of the costs of incarceration of inmates in the facility in which said inmate is housed including but not limited to room, board, medical care, legal services, prison education, training, library services, counseling and treatment services, religious services and other programs and services as shall be provided together with an allocation of the overhead for operating such prison and the Department in accordance with a fee schedule to be established by the Department.

(g) In assigning inmates to employment, work experience, training and community work project programs in accordance with this section:

(1) Assignments to programs conducted or operated outside the physical boundaries of Department-run correctional facilities shall not be available to inmates serving time for any crime classified as a class A felony, or any crime classified as a class B felony which involves a sex offense, escape or assault.

(2) The Department is authorized to establish regulations or guidelines further restricting the participation of inmates in such programs so as to minimize potential danger to the community.

(h) The Department is authorized to revoke previously earned good time (whether such good time was earned pursuant to this section or other provisions of this title) from inmates who refuse to perform labor as required by the Department pursuant to this section. In addition, the Department may impose such other lawful disciplinary measures as it deems appropriate upon inmates refusing to perform labor as required by the Department pursuant to this section.

(i) No greater amount of labor shall be required of any inmate than the inmate's physical health and strength will reasonably permit, nor shall any inmate be placed at such labor as the institutional physician determines to be beyond the inmate's ability to perform.

(j) An inmate's refusal to participate in compulsory programs of employment established by the Department does not prohibit an application for sentence modification under § 4217 of this title or eligibility for parole under § 4346(e) of this title, but may be considered by the court under § 4217(b) of this title. An inmate refusing to participate in compulsory programs of employment established by the Department under this section is subject to disciplinary measures as the Commissioner may establish by regulation.

(11 Del. C. 1953, § 6532; 54 Del. Laws, c. 349, § 1; 62 Del. Laws, c. 96, § 1; 62 Del. Laws, c. 350, § 1; 62 Del. Laws, c. 377, §§ 1, 2; 67 Del. Laws, c. 350, § 31; 67 Del. Laws, c. 396, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 327, § 230; 83 Del. Laws, c. 82, § 1; 85 Del. Laws, c. 76, § 7.)

§ 6533. Outside employment; work release.

(a) The Department shall adopt rules and regulations governing the employment of trustworthy inmates outside the institutions and facilities under the jurisdiction of the Department. Said Department shall adopt policies and procedures outlining the latitude and limitations of employers who utilize the service of inmates and provide provisions for any violation by said employer.

(b) Any inmate employed under subsection (a) of this section shall continue to be in the legal custody of the Department, notwithstanding the inmate's absence from an institution by reason of such employment and any employer of any such person shall be considered the representative of, or keeper for, the Department.

(c) Whoever, being an employer or other person, through negligent control of the inmate or otherwise, permits, or whoever counsels, advises, aids, assists, abets or procures the escape from the legal control of the Department of any inmate employed under this subchapter, shall be fined, or imprisoned, or both.

(d) Notwithstanding any other provision of this section or title to the contrary, no person shall be permitted work release under this section, until such person is within 6 months from the date of such person's release from custody, as determined by the Department, if the person is:

(1) Serving a sentence imposed for a class A felony; or

(2) Serving a sentence imposed pursuant to § 4214 of this title; or

(3) Has previously been convicted of 2 or more of the following crimes set forth in this title under sections:

513 Conspiracy first degree;

531 Any attempt to commit any crime listed in this paragraph;

604 Reckless endangering first degree;

612 Assault second degree;

613 Assault first degree;

629 Vehicular assault first degree;

630 Vehicular homicide second degree;

630A Vehicular homicide first degree;

631 Criminally negligent homicide;

632 Manslaughter;

635 Murder second degree;

768 Unlawful sexual contact second degree;

769 Unlawful sexual contact first degree;

[Former] 770 Unlawful sexual penetration third degree;

[Former] 771 Unlawful sexual penetration second degree;

[Former] 772 Unlawful sexual penetration first degree;

[Former] 773 Unlawful sexual intercourse third degree;

[Former] 774 Unlawful sexual intercourse second degree;

770 Rape in the fourth degree;

771 Rape in the third degree;

772 Rape in the second degree;

773 Rape in the first degree;

776 Continuous sexual abuse of a child;

782 Unlawful imprisonment first degree;

783 Kidnapping second degree;

783A Kidnapping first degree;

801 Arson third degree;

802 Arson second degree;

803 Arson first degree;

831 Robbery second degree;

832 Robbery first degree;

[Former] 835 Carjacking in the second degree;

[Former] 836 Carjacking in the first degree;

1108 Sexual exploitation of a child;

1254 Assault in a detention facility;

1302 Riot;

1312A Stalking;

1338 Bombs, incendiary devices, Molotov cocktails and explosive devices;

1447 Possession of a deadly weapon during the commission of a felony;

1447A Possession of a firearm or projectile weapon during the commission of a felony;

1448 Possession of a deadly weapon by a person prohibited; or

3533 Aggravated act of intimidation.

(e) All wages, salary, or other compensation earned by or payable to an inmate employed in accordance with this section shall be placed in said inmate's account and subject to deductions in accordance with the provisions of § 6532(f) of this title.

(f) Notwithstanding any other provision of this section or title to the contrary, no person who has previously been convicted under § 1252 or § 1253 of this title or any attempt to commit such crimes under § 531 of this title shall be permitted outside employment or work release under this section.

(g) Funds collected for goods produced or services performed by offenders housed at a Community Corrections facility shall be deposited in the Bureau of Community Corrections Special Services Fund. Such funds shall be used to support the operational costs for offender re-entry and work programs in the Bureau of Community Corrections. The Bureau of Community Corrections Special Services Fund shall be appropriated and expended in conformity with the annual Appropriations Act of the State.

(11 Del. C. 1953, § 6533; 54 Del. Laws, c. 349, § 1; 58 Del. Laws, c. 433; 60 Del. Laws, c. 705, § 1; 61 Del. Laws, c. 363, § 1; 67 Del. Laws, c. 396, § 3; 70 Del. Laws, c. 181, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 285, §§ 19, 20; 72 Del. Laws, c. 34, § 6; 77 Del. Laws, c. 318, § 6; 78 Del. Laws, c. 290, § 210; 82 Del. Laws, c. 216, § 1; 84 Del. Laws, c. 525, § 27.)

§ 6533A. [Reserved.]

§ 6534. Payment of compensation.

(a) The balance remaining in an inmate's account established and maintained in accordance with § 6532(f) of this title shall be paid to the inmate at the time of the inmate's release, except that the Department may from time to time, in its discretion, or upon order from a court of competent jurisdiction, pay all or part thereof to the inmate as spending money. The Department shall establish guidelines and procedures for payments to inmates in accordance with this section.

(b) The Department shall have the authority to deduct from any inmate's wages resulting from employment under the Private Sector/Prison Industries Enhancement Certification Program a portion thereof to be applied to the Victim Compensation Fund created pursuant to Chapter 90 of this title. All deductions made by the Department pursuant to this subsection shall be limited to no more than 20 percent and no less than 5 percent of an inmate's gross wages received under the Program.

(11 Del. C. 1953, § 6534; 54 Del. Laws, c. 349, § 1; 67 Del. Laws, c. 396, § 4; 67 Del. Laws, c. 436, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6534A. Claims for costs of support; lien.

Upon the sentencing of any convicted criminal to incarceration in any state correctional facility, the Attorney General may file a claim for future maintenance and support of such inmate with the court from which said inmate was sentenced, and thereupon the court may make an order making such inmate's estate or property liable for the expenses of such future care and support by the Department as is more fully provided in § 6532(f) of this title, and such claim, upon approval by the court, shall constitute a lien upon all property, real and personal, of said prisoner.

(67 Del. Laws, c. 396, § 2.)

§ 6534B. Delaware Correctional Industries Special Fund.

(a) There is hereby established a Delaware Correctional Industries Special Fund which shall consist of:

(1) Moneys received from the sale of products as described in § 6532 of this title;

(2) Moneys received through the contract of service or labor as described in § 6532 of this title;

(3) Moneys received per § 6532(f)(3) of this title;

(4) Moneys received per § 6531A(c) of this title; and

(5) Moneys received per § 6531(d) of this title.

(b) Funds from the Delaware Correctional Industries Special Fund shall be expended only for the following purposes:

(1) Financing the Delaware Correctional Industries programs, including, but not limited to, all prison manufacturing, construction, contractual services and labor provided;

(2) Financing the educational programs required by § 6531A of this title;

(3) Financing the treatment and rehabilitation programs required by § 6531 of this title;

(4) Financing any and all programs as itemized in § 6532(f)(3) of this title; and

(5) Financing the casual/seasonal positions referenced in § 6506(c) of this title.

(c) The Delaware Correctional Industries Special Fund shall be appropriated and expended in conformity with the annual Appropriations Act of the State.

(d) Nothing in this subchapter shall preclude the appropriation of general funds to support the programs itemized in subsection (b) of this section.

(67 Del. Laws, c. 396, § 8; 78 Del. Laws, c. 305, § 7; 79 Del. Laws, c. 296, § 2.)

Subchapter VII
Discipline, Medical Care and Discharge

§ 6535. Discipline.

The Department shall promulgate rules and regulations for the maintenance of good order and discipline in the facilities and institutions of the Department, including procedures for dealing with violations. Prisoners of the Department shall have access to those portions of the disciplinary rules that apply to them, at places and times deemed reasonable and appropriate by the Commissioner. There shall be a record of charges of infractions by inmates, any punishments imposed and of medical inspections made.

(11 Del. C. 1953, § 6535; 54 Del. Laws, c. 349, § 1; 71 Del. Laws, c. 306, § 1.)

§ 6536. Medical care.

(a) The Department shall promulgate reasonable standards, and shall establish reasonable health, medical and dental services, for each institution, including preventive, diagnostic and therapeutic measures on both an out-patient and hospital basis for all types of patients. The nature and extent of such medical and dental services shall be determined by the Commissioner of Correction in consultation with the Bureau Chief of Correctional Healthcare Services. The Department may authorize, under regulations, inmates to be taken, with or without guard, to a medical institution or facility outside the institution.

(b) The Department shall charge a reasonable fee as defined by the Department for every inmate initiated visit with an institutional health-care practitioner for examination and/or treatment. The Department shall not charge an inmate for medical visits initiated by medical/mental health staff, visits as a result of a reference to a physician from a physician's assistant or nurse practitioner, follow-up visits initiated by a medical professional or visits resulting from a chronic medical condition. The Department shall not be responsible for the cost of medical visits to or by outside medical consultants if the visits were not ordered by institutional medical services personnel. Notwithstanding the above, an inmate shall not be refused medical treatment for financial reasons; provided, however, that the Department shall debit an inmate's account for future payment to the Department in the event funds are deposited in said account and the Department shall retain records of an inmate's account upon the release of the inmate from the custody of the Department if such account has a negative balance. The outstanding balance of such an account shall be reinstated should that person be committed to the custody of the Department at some future time.

(c) The Department may charge a reasonable fee, not to exceed the cost to the Department, for any prescription or nonprescription medication. The Department shall not be responsible for the cost of prescriptive drugs or medications prescribed by outside medical consultants unless approved by institutional medical services personnel. Notwithstanding the above, an inmate shall not be refused medications for financial reasons; provided, however, that the Department shall debit an inmate's account for future payment to the Department in the event funds are deposited in said account and the Department shall retain account records upon the release of the inmate from the custody of the Department if such account has a negative balance. The outstanding balance of such account shall be reinstated should that person be committed to the custody of the Department in the future.

(d) Notwithstanding any provision of the Delaware Code to the contrary, there shall be established a special fund of the State to be known as the Medical Cost Recovery Fund. The Department of Correction shall, commencing upon July 1, 1996, deposit funds assessed pursuant to subsections (b) and (c) of this section into the Medical Cost Recovery Fund. The Department may use the Medical Cost Recovery Fund to defray the costs of medical services provided to inmates.

(e) The Department shall provide onsite hospice services to any terminally ill inmate or defendant confined in facilities operated by the Department at the request of a care provider with whom the Department has a contract. Hospice services provided by the Department, or its contractor, must be provided in a manner consistent with the regulations of the Department of Health and Social Services (DHSS), and shall meet all licensure standards set forth therein, governing the provision of hospice services in the State to the fullest extent possible without compromising the security and safety considerations of the institutions wherein the hospice services are being provided. The Department of Correction (DOC) may require alternate procedures for the provision of hospice services in any DOC facility where strict adherence to DHSS regulations would compromise the security and safety considerations of that facility. DOC contractors need not apply for or obtain a license from DHSS in order to provide hospice services in any DOC facility. For the purposes of this section, "hospice" and "hospice services" shall be as defined by DHSS regulations.

(f) The Department shall ensure that all female inmates in a Department of Correction facility, at level IV or V, receive annual or biennial screening mammograms as recommended by the United States Preventive Services Task Force. The decision as to whether an inmate receives a mammogram annually or biennially shall be made by the inmate and the inmate's health-care practitioner and shall be based on the inmate's individual risk factors for developing breast cancer.

(11 Del. C. 1953, § 6536; 54 Del. Laws, c. 349, § 1; 56 Del. Laws, c. 60; 70 Del. Laws, c. 410, § 1; 72 Del. Laws, c. 475, § 1; 78 Del. Laws, c. 305, § 7; 79 Del. Laws, c. 56, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 333, § 1.)

§ 6536A. Medical care [Effective until July 21, 2026].

(a) The Department shall make reasonable accommodations for the provision of available midwifery or doula services to pregnant or postpartum persons who have given birth in the last 6 weeks who are subject to the custody of the Department at Level IV or V. Persons

providing midwifery or doula services must be granted appropriate facility access, must be allowed to attend and provide assistance during labor and childbirth where feasible, and must have access to the pregnant or postpartum person's relevant, otherwise protected health-care information if the pregnant or postpartum person seeking midwifery or doula services authorizes disclosure.

(b) The Department shall provide written notice to all pregnant and postpartum persons subject to the custody of the Department at Level IV or V of the availability of midwifery and doula services.

(c) *Definitions. —*

As used in this section:

(1) "Doula services" means services provided by a trained doula and designed to provide physical, emotional, or information support to a pregnant person before, during, and after delivery of a child. "Doula services" include the following:

a. Support and assistance during labor and childbirth.

b. Prenatal and postpartum education.

c. Breastfeeding assistance and lactation support.

d. Parenting education.

e. Support in the event that a postpartum person has been or will become separated from the child.

(2) "Midwife" means a midwife licensed under subchapter XIII of Chapter 17 of Title 24 or a certified nurse midwife licensed under Chapter 19 of Title 24.

(3) "Midwifery services" means medical aid rendered by a midwife to a person during prenatal, intrapartum, or postpartum stages, or to a postpartum person's newborn outside of the correctional facility up to 2 weeks of age.

(d) Subject to the availability of funds, the Department shall provide midwifery or doula services to pregnant or postpartum persons who have given birth in the last 6 weeks who are subject to the custody of the Department at Level IV or V.

(e) The Department shall ensure that pregnant persons subject to this section are able to meet with a doula or midwife to create a written birth plan surrounding the birth of their child. The birth plan shall include the following:

(1) Preferred methods of pain management during and after birth.

(2) A statement recommending the preferred caretaker of the newborn child.

(3) A statement on whether the pregnant person intends to express breast milk and a plan on how the pregnant person will do so.

(f) Nothing in this section prevents the Department from adopting policy guidelines for the delivery of midwifery or doula services to pregnant or postpartum person subject to the custody of the Department at Level IV or V. Services under this section may not supplant health-care services routinely provided to persons subject to the custody of the Department at Level IV or V.

(g) The Department shall publish an annual report with the following information regarding pregnant and postpartum persons subject to the custody of the Department at Level IV or V:

(1) The number of pregnant or postpartum persons eligible for doula and midwife assistance pursuant to this section.

(2) The number of times a doula or midwife is requested.

(3) The number of times a doula or midwife is provided.

(4) The reason why a doula or midwife is not provided if these services are requested.

(5) The number of birth plans created.

(6) The number of times lactation support is offered to each pregnant or postpartum person.

(7) The number of times the doula or midwife is able to attend a birth and reasons why a doula or midwife are not able to attend a birth.

(8) The number of times a doula or midwife provided postpartum assistance.

(83 Del. Laws, c. 368, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 425, § 1.)

§ 6536A. Medical care [Effective July 21, 2026].

(a) The Department shall make reasonable accommodations for the provision of available midwifery or doula services to pregnant or postpartum persons who have given birth in the last 6 weeks who are subject to the custody of the Department at Level IV or V. Persons providing midwifery or doula services must be granted appropriate facility access, must be allowed to attend and provide assistance during labor and childbirth where feasible, and must have access to the pregnant or postpartum person's relevant, otherwise protected health-care information if the pregnant or postpartum person seeking midwifery or doula services authorizes disclosure.

(b) The Department shall provide written notice to all pregnant and postpartum persons subject to the custody of the Department at Level IV or V of the availability of midwifery and doula services.

(c) *Definitions. —*

As used in this section:

(1) "Doula services" means services provided by a trained doula and designed to provide physical, emotional, or information support to a pregnant person before, during, and after delivery of a child. "Doula services" include the following:

a. Support and assistance during labor and childbirth.

b. Prenatal and postpartum education.

c. Breastfeeding assistance and lactation support.

d. Parenting education.

e. Support in the event that a postpartum person has been or will become separated from the child.

(2) “Midwife” means a midwife licensed under subchapter XIII of Chapter 17 of Title 24 or a certified nurse midwife licensed under Chapter 19 of Title 24.

(3) “Midwifery services” means medical aid rendered by a midwife to a person during prenatal, intrapartum, or postpartum stages, or to a postpartum person's newborn outside of the correctional facility up to 2 weeks of age.

(d) Subject to the availability of funds, the Department shall provide midwifery or doula services to pregnant or postpartum persons who have given birth in the last 6 weeks who are subject to the custody of the Department at Level IV or V.

(e) The Department shall ensure that pregnant persons subject to this section are able to meet with a doula or midwife to create a written birth plan surrounding the birth of their child. The birth plan shall include the following:

(1) Preferred methods of pain management during and after birth.

(2) A statement recommending the preferred caretaker of the newborn child.

(3) A statement on whether the pregnant person intends to express breast milk and a plan on how the pregnant person will do so.

(f) Nothing in this section prevents the Department from adopting policy guidelines for the delivery of midwifery or doula services to pregnant or postpartum person subject to the custody of the Department at Level IV or V. Services under this section may not supplant health-care services routinely provided to persons subject to the custody of the Department at Level IV or V.

(g) The Department shall publish an annual report with the following information regarding pregnant and postpartum persons subject to the custody of the Department at Level IV or V:

(1) The number of pregnant or postpartum persons eligible for doula and midwife assistance pursuant to this section.

(2) The number of times a doula or midwife is requested.

(3) The number of times a doula or midwife is provided.

(4) The reason why a doula or midwife is not provided if these services are requested.

(5) The number of birth plans created.

(6) The number of times lactation support is offered to each pregnant or postpartum person.

(7) The number of times the doula or midwife is able to attend a birth and reasons why a doula or midwife are not able to attend a birth.

(8) The number of times a doula or midwife provided postpartum assistance.

(h) The Department shall submit the annual report under subsection (g) of this section, along with the annual report created under § 6536B of this title, to the Governor, the General Assembly, and the Director and the Librarian of the Division of Legislative Services not later than January 1.

(83 Del. Laws, c. 368, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 425, § 1; 85 Del. Laws, c. 100, § 2.)

§ 6536B. Breastfeeding and lactation program [Effective July 21, 2026].

(a) The Department shall create a breastfeeding and lactation program to support pregnant, postpartum, and lactating women in the custody of the Department. The Department shall develop policies and procedures for the program in partnership with a contracted breastfeeding organization. The program shall include:

(1) Policies for expressing breast milk, disposal of breast milk, and same-day storage of breast milk for later retrieval and delivery to an infant or toddler. Retrieval or delivery of breastmilk must be made by an approved person selected by the lactating inmate and approved by the facility administrator.

(2) Policies for providing and sterilizing manual or electric breast pumps and storage bags.

(3) Procedures for identifying a comfortable place to pump on a regular basis that is based on national best practices.

(4) A system for proper storage of the breast milk and transfer to the infant or toddler by an approved individual.

(5) A requirement that participants are in compliance with Department drug testing policies.

(6) The dispensing of prenatal vitamins to all lactating inmates.

(7) Procedures for providing medically-appropriate support and care related to the cessation of lactation or weaning.

(8) Nutrition information and a meal plan, based on national best practices, that is specific to pregnant, postpartum, or lactating women.

(b) Information regarding the breastfeeding program and policies shall be posted in all locations in the correctional facility where medical care is provided and shall be communicated to all staff persons who interact with or oversee pregnant or lactating inmates.

(c) The Department shall publish an annual report with the following information:

(1) The number of women requesting breastfeeding support.

(2) The number of women participating in the breastfeeding and lactation program.

(3) The number of women denied participation in the breastfeeding and lactation program and the reasons why the women were unable to participate in the program.

(4) The number of women expressing milk only and the number of women expressing milk for storage and transport to an infant and toddler.

(5) The number of women unable to start or continue in the program due to a failed drug screening.

(6) The number of women who receive nutrition information and a meal plan specific to pregnant, postpartum, or breastfeeding women.

(d) The Department shall submit the annual report created under subsection (c) of this section, along with the annual report created under § 6536A of this title, to the Governor, the General Assembly, and the Director and the Librarian of the Division of Legislative Services not later than January 1.

(85 Del. Laws, c. 100, § 1.)

§ 6537. Inmate contacts outside institution.

(a) The Department shall authorize, under reasonable conditions, visits to, and correspondence with, inmates by relatives, friends and others and temporary release of inmates for such occasions as the death of a member of the inmate's family, or interview of the inmate by a prospective employer.

(b) With the exception of the authority granted under § 4205(h) and (l) of this title, the Department shall have no authority to place any person convicted of a class A felony, during the first 10 years of said sentence, or of any class A or B felony sex offense or C felony sex offense, during the first 10 years of said sentence, or any person sentenced pursuant to § 4204(k) of this title on any program or status beyond the confines of a secured institution to which the person must be classified. In the event of the death or serious illness of an immediate family member, or a similar emergency, the Commissioner of Correction shall have the authority to permit such person an escorted visit within the State under strict security. In the event that there exists extraordinary circumstances, excluding emergency situations authorized by the Commissioner pursuant to the previous sentence of this subsection, and the Commissioner of Correction agrees, the Commissioner may petition the Superior Court, after notice to the Attorney General, for permission to exempt an individual from the limitations contained in this section.

(11 Del C. 1953, § 6537; 54 Del. Laws, c. 349, § 1; 65 Del. Laws, c. 245, § 1; 67 Del. Laws, c. 350, § 32; 70 Del. Laws, c. 186, § 1.)

§ 6538. Furloughs.

(a) The Department shall promulgate strict rules and regulations subject to the approval of the Institutional Release Classification Board under which inmates, as part of a program looking to their release from the custody of the Department, or their treatment, may be granted temporary furloughs from the institution to visit their families or to be interviewed by prospective employers.

(b) In the case of death, furloughs shall only be granted to an inmate for an immediate family which would include said inmate's mother, father, son, daughter, brother, sister, husband or wife. An inmate shall only be granted a furlough to attend a private viewing or wake with the inmate's immediate family. The Institutional Release Classification Board, or the warden in charge of the institution, in cases of emergency, shall set the conditions of an inmate's furlough, including the determination of whether the inmate should be handcuffed to the officer and when such action should take place.

(c) Inmates taking part in choral presentations and other legitimate programs shall be escorted by custodial officers whenever leaving the institution. Transportation and custodial costs shall be borne by the individuals or groups requesting the inmates' appearance and shall not be at the State's expense.

(d) The Department may permit inmates to participate in Community Service Projects by granting special furloughs for the period of such projects, not to exceed 14 days. Such furloughs shall not be considered personal furloughs under the Department rules and regulations. The time spent participating in a Community Service Project may be counted towards a restitution or community service component of a sentence. During a Community Service Project, the inmate need not be under the continual escort and supervision of custodial officers. All associated transportation and custodial costs shall be the responsibility of the organization which sponsors the Community Service Project.

(e) Notwithstanding any provision of this section or title to the contrary, no person serving a sentence imposed for a class A felony shall be permitted to participate in any furlough or furlough program under this section.

(11 Del. C. 1953, § 6538; 54 Del. Laws, c. 349, § 1; 60 Del. Laws, c. 704, § 1; 61 Del. Laws, c. 363, § 2; 70 Del. Laws, c. 67, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6539. Supervised custody program.

(a) Notwithstanding any provision of this title to the contrary, the Department may place inmates outside the institutions and facilities under the jurisdiction of the Department.

(b) The Department shall establish rules and regulations governing the eligibility of inmates for such placement and governing the conduct of inmates so placed.

(c) No inmate shall be placed in the supervised custody program established by this section unless, in addition to meeting eligibility requirements imposed by Departmental rules or regulations, the Department, in its discretion, determines that an inmate is trustworthy and does not pose a threat to the safety of the community.

(d) Any inmate released from incarceration pursuant to this section shall continue to be in the legal custody of the Department, notwithstanding the inmate's absence from a correctional institution.

(e) If any person released pursuant to this section shall violate any of the conditions of the person's release, the person shall immediately be returned to incarceration. Nothing in this section shall limit the discretion of the Department to return persons released pursuant to this section to incarceration. Placement into the supervised custody program shall be a privilege, not a right or entitlement, which may be withdrawn by the Department, in its absolute discretion. There shall be no judicial review of the refusal by the Department to place any inmate into the supervised custody program; nor shall there be any judicial review of the withdrawal of such privilege by the Department.

(f) Notwithstanding any provision of this title to the contrary, persons convicted of class A felonies, persons detained in default of bail and persons sentenced to minimum mandatory terms of incarceration shall not be eligible for the supervised custody program.

(62 Del. Laws, c. 259, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6540. Discharge allowance.

(a) Persons discharged upon completion of their term or released on parole or mandatory conditional release may be supplied in accordance with the Department's rules and regulations, within budget requirements, with satisfactory clothing and transportation to the point of destination within the State. If the inmate's family is financially able, or if the inmate has resources, these shall be used prior to the use of public funds.

(b) Payments to eligible inmates who upon their release from an adult correctional facility are financially unable to obtain transportation away from the facility shall be expended as follows:

(1) Upon release, a prisoner who within 30 days prior to release has $50 or more in the prisoner's inmate account or accounts shall not be eligible for such payment, but shall be paid the amount in the prisoner's inmate account or accounts.

(2) Upon release, a prisoner who has less than $50 in the prisoner's inmate account or accounts shall be paid the amount remaining in the prisoner's account or accounts and may be paid an additional sum sufficient to ensure transportation to the prisoner's place of residence. Such sum sufficient, together with the funds available in the inmate account, shall not exceed $50.

(3) Any prisoner who, after using option (1) or (2) of this subsection, has insufficient funds to provide a one-way bus ticket to the prisoner's place of residence, shall forfeit all such funds and shall be provided with a 1-way bus ticket to the prisoner's place of residence, as well as sufficient funding to provide food during travel.

(11 Del. C. 1953, § 6539; 54 Del. Laws, c. 349, § 1; 62 Del. Laws, c. 259, § 1; 73 Del. Laws, c. 320, § 2; 70 Del. Laws, c. 186, § 1.)

§ 6541. Publication of names of inmates on supervised custody, work release or furloughs.

(a) Upon placing an inmate on supervised custody, work release or furloughs which shall include personal special visits whether escorted or unescorted the Department shall publish the name of that inmate and the crimes for which the inmate is incarcerated. Said information shall be published in each of the 3 counties of this State in a newspaper located in that county and having a general circulation throughout the county. No inmate shall be placed on supervised custody, work release or furloughs which shall include personal special visits whether escorted or unescorted until the notice provided for herein has been released for publication to the newspaper. This section shall not apply to those inmates being released on furlough or special visit for the purpose of attending the funeral of an immediate family member as specified under § 6538(b) of this title.

(b) In cases of inmates convicted of crimes against persons, including robbery, prior to publication of names, the Department shall notify the victim at the victim's last known place of residence.

(64 Del. Laws, c. 200, § 1; 65 Del. Laws, c. 396, §§ 1-4; 70 Del. Laws, c. 186, § 1.)

Subchapter VIII
General Provisions

§ 6550. Seal; authentication.

The Department shall adopt a seal. Copies of all records and papers in the offices of the Department, certified by an authorized agent of the Department and authenticated by the seal, shall be evidence with like effect as the original.

(11 Del. C. 1953, § 6550; 54 Del. Laws, c. 349, § 1.)

§ 6551. Cooperation with other departments and agencies.

The Department shall cooperate with the courts and with public and private agencies and offices to assist it in attaining its purposes. The Department may enter into agreements with other departments of federal, state and municipal government for the employment of persons committed to the charge of the Department.

(11 Del. C. 1953, § 6551; 54 Del. Laws, c. 349, § 1.)

§ 6552. Discharge of employees.

All discharges shall be for cause and in accordance with regulations and procedures established by the Department. Upon requesting in writing, any discharged employee shall be given a hearing before the Board.

(11 Del. C. 1953, § 6552; 54 Del. Laws, c. 349, § 1.)

§ 6553. Compensation of employees [Repealed].

(11 Del. C. 1953, § 6553; 54 Del. Laws, c. 349, § 1; repealed by 78 Del. Laws, c. 305, § 7, eff. July 5, 2012.)

§ 6554. Bond of officers and employees [Repealed].

(11 Del. C. 1953, § 6554; 54 Del. Laws, c. 349, § 1; 70 Del. Laws, c. 186, § 1; repealed by 78 Del. Laws, c. 305, § 7, eff. July 5, 2012.)

§ 6555. [Reserved.]

§ 6556. Facilities, equipment and supplies.

The Department shall acquire, by lease, purchase or otherwise, all necessary facilities, equipment, supplies or articles for the carrying out of its duties in the safekeeping, maintenance, improvement and rehabilitation of those in its care.

(11 Del. C. 1953, § 6555; 54 Del. Laws, c. 349, § 1; 59 Del. Laws, c. 532, § 1.)

§ 6557. Offices and quarters.

The Department shall secure and furnish offices and quarters sufficient for its needs.

(11 Del. C. 1953, § 6556; 54 Del. Laws, c. 349, § 1; 59 Del. Laws, c. 532, § 1.)

§ 6558. Lands and buildings.

The Department may acquire, by lease, purchase or otherwise, and hold in the name of the State for the use of the Department, all necessary lands and buildings for the carrying out of its duties and functions.

(11 Del. C. 1953, § 6557; 54 Del. Laws, c. 349, § 1; 59 Del. Laws, c. 532, § 1.)

§ 6559. Contracts; limitations for interest.

No officer or employee of the Department may be directly or indirectly concerned or interested in any contract, purchase or sale made by the Department or by its authority, or may accept any reward or gift, or any promise of any reward or gift, directly or indirectly from any person interested in any contract, purchase or sale made by the Department or its authority, and every officer and employee shall report to the Department all offenses coming to the officer's or employee's knowledge.

(11 Del. C. 1953, § 6558; 54 Del. Laws, c. 349, § 1; 59 Del. Laws, c. 532, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 305, § 7.)

§ 6560. Annual reports.

The Commissioner shall make a report every year on or before November 15 to the Governor, showing the financial operation of the Department for the preceding year, together with adequate statistical information concerning the persons committed to the Department, or under the supervision of the Department, with such research reports, analysis, planning, evaluation and recommendations as may appear necessary to the advancement of the interest of the Department and its objectives. A copy of said report shall be sent to each member of the General Assembly and shall be made available to other agencies and citizens, as desired.

(11 Del. C. 1953, § 6559; 54 Del. Laws, c. 349, § 1; 59 Del. Laws, c. 532, § 1; 78 Del. Laws, c. 305, § 7.)

§ 6561. Police powers of correction officers, employees and internal affairs investigators.

(a) All correctional officers and employees of the Department shall have the full power of a State Police officer when:

(1) On duty at 1 of the correctional institutions; or

(2) In charge of prisoners at any place within the State and while going to or returning from such duty; or

(3) Searching for escaped prisoners.

(b) Only those correctional officers and employees who have been sworn in by the Commissioner shall have the power of a police officer under this section. The Department shall provide appropriate identification for all such correctional officers and employees.

(c) In addition to the police powers set forth in subsection (a) of this section, any internal affairs investigator in the Department who has been sworn in by the Commissioner in accordance with subsection (b) of this section shall:

(1) Exercise the full power of a State Police officer when acting in the course and scope of the investigator's duties as an internal affairs investigator on or off the premises of a correctional institution; provided, however, that before an internal affairs investigator executes a search warrant or makes an arrest off the premises of a correctional institution, the Commissioner shall notify the Superintendent of the Delaware State Police or the Attorney General or both;

(2) Have the right of access at all times to the books, papers, records and other documents of the Department or any of its bureaus, divisions, units or other administrative subdivisions; and

(3) Have the power to summon employees of the Department as witnesses pursuant to a lawful internal affairs investigation.

(11 Del. C. 1953, § 6560; 54 Del. Laws, c. 349, § 1; 59 Del. Laws, c. 532, § 1; 66 Del. Laws, c. 85, § 202; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 305, § 7.)

§ 6562. [Reserved.]

§ 6562A. Furnishing contraband; penalty.

Whoever furnishes to any person committed to the jurisdiction of the Department:

(1) Any intoxicating liquor or narcotic drug of any kind except as prescribed by a physician for medical treatment; or

(2) Any money without the knowledge and consent of the Department; or

(3) Any deadly weapon or part thereof, or any instrument or article which may be used to effect an escape,

shall be punished by fine or imprisonment, or both.

(11 Del. C. 1953, § 6561; 54 Del. Laws, c. 349, § 1; 59 Del. Laws, c. 532, § 1; 71 Del. Laws, c. 100, § 1.)

§ 6562B. Confiscated Contraband Interdiction Fund.

The General Assembly hereby declares that in order to provide funds to combat the unlawful trafficking of drugs, unlawful gambling activities and gang activities within secure correctional facilities, it is necessary to create a separate special fund within the Bureau of Prisons. All moneys collected as contraband or from the proceeds of the auction or sale of property confiscated from the inmate population at each of these institutions shall be set aside into a special fund. This special fund is hereby created within the Office of the Bureau Chief of Prisons and shall be known as the Confiscated Contraband Interdiction Fund.

(1) *Use of funds.* — Funds deposited into the Confiscated Contraband Interdiction Fund shall be expended only to procure, sustain, and maintain the adequacy of investigative and security operations within the Bureau of Prisons.

(2) *Creation of fund.* — Upon the confiscation of any moneys or upon the receipt of the proceeds from any auction or commercially reasonable sale of confiscated property obtained as a result of any investigation, interdiction, or prosecution of disciplinary, civil, or criminal violations at the facilities listed herein the same shall be placed in the Confiscated Contraband Interdiction Fund. All auctions or sales of confiscated property as authorized herein shall be administered and approved by the Bureau Chief of Prisons.

(3) *Disbursement of fund.* — The disbursement of the funds from this account shall be made only upon approval by the Bureau Chief of Prisons. All requests for funds must be by written application and on a form designed for such purpose. This application and authorization form must include the following:

a. The amount of funds requested;

b. The anticipated purpose for which such funds are requested;

c. The name of the person requesting the funds and the name of the person who shall be responsible for keeping accurate records as to the use of the funds.

The Bureau Chief of Prisons shall determine whether or not the expressed purpose for the expenditure requested is within the purposes allowed under this section and whether the proposed expenditure of funds for the expressed purpose will be in the best interests of the Bureau of Prisons. If the Bureau Chief of Prisons determines that the proposed expenditure meets those criteria, the Bureau Chief of Prisons may authorize the expenditure in whole or in part and only then shall the funds be expended as requested.

(4) *Accounting of funds.* — Funds obtained pursuant to this subchapter shall be used only for the purposes set out in paragraph (1) of this section. Any and all funds shall be accounted for by the support services manager on or before June 30 of each year. The Bureau Chief of Prisons shall maintain a full and complete accounting for the use of such funds.

(5) *Review of records.* — Any funds requested and disbursed shall be accounted for through an itemized report by the Bureau Chief of Prisons to the Commissioner of Correction due no later than July 31 of each year which details each request and expenditure from the prior fiscal year.

(6) *Excess funds.* — If at any time the fund aggregated in this special fund exceeds $10,000, the excess shall be deposited in the General Fund.

(71 Del. Laws, c. 100, § 1; 76 Del. Laws, c. 232, § 2; 79 Del. Laws, c. 16, § 1.)

§ 6563. Incarceration upon arrest by private detective [Repealed].

(11 Del. C. 1953, § 6562; 54 Del. Laws, c. 349, § 1; 59 Del. Laws, c. 532, § 1; repealed by 85 Del. Laws, c. 74, § 2, effective July 14, 2025.)

§ 6564. Violation of § 6563 of this title [Repealed].

(11 Del. C. 1953, § 6563; 54 Del. Laws, c. 349, § 1; 59 Del. Laws, c. 532, § 1; repealed by 85 Del. Laws, c. 74, § 2, effective July 14, 2025.)

§ 6565. Mandatory training of correctional officers; exceptions; appropriations.

(a) All correctional officers of the Department shall be required to complete a basic training program as a condition of employment or continued employment.

(b) All correctional officers shall be required to complete advanced annual training after having completed the basic training program.

(c) The Department shall be responsible for administering the mandatory basic and advanced training programs for all correctional officers with responsibility and authority to obtain professional assistance from other sources to accomplish the purposes and objectives of the programs.

(d) There will be no exceptions granted to any correctional officer employed by the Department from the training provisions established by this section.

(e) The General Assembly shall appropriate each year to the Department of Correction such funds as are necessary for the purpose of carrying out this section.

(60 Del. Laws, c. 617, § 1.)

Subchapter IX

Interstate Corrections Compact

§ 6570. Title.

This subchapter may be cited as the “Interstate Corrections Compact.”

(11 Del. C. 1953, § 6570; 57 Del. Laws, c. 275.)

§ 6571. Interstate Corrections Compact.

The Interstate Corrections Compact is enacted into law and entered into by this State with any other states legally joining therein in the form substantially as follows:

INTERSTATE CORRECTIONS COMPACT

ARTICLE I Purpose and Policy

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

ARTICLE II Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) “State” means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) “Sending state” means a state party to this compact in which conviction or court commitment was had.

(c) “Receiving state” means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) “Inmate” means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

(e) “Institution” means any penal or correctional facility, including but not limited to a facility for persons with mental illness or serious mental disorders, in which inmates as defined in subsection (d) of this article above may lawfully be confined.

ARTICLE III Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV Procedures and Rights

(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III of this compact, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III of this compact.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his or her status changed on account of any action or proceeding in which he or she could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his or her exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V Acts Not Reviewable in Receiving State; Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he or she is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any 2 states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

ARTICLE VIII Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until 1 year after the notices provided in said statute have been sent. Such withdrawals shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(11 Del. C. 1953, § 6571; 57 Del. Laws, c. 275; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 224, § 23.)

§ 6572. Powers.

The Commissioner of the Department of Correction is hereby authorized and directed to do all things necessary or incidental to the carrying out of the Compact in every particular.

(11 Del. C. 1953, § 6572; 57 Del. Laws, c. 275.)

§ 6573. Execution.

The Governor shall execute the Interstate Corrections Compact on behalf of this State with any of the United States legally joining therein.

(11 Del. C. 1953, § 6573; 57 Del. Laws, c. 275.)

Subchapter IX-A

International Transfer of Prisoners

§ 6575. Authorization.

Notwithstanding any law of this State to the contrary, if a treaty in effect between the United States and a foreign country provides for the transfer of convicted offenders to the country of which they are citizens or nationals, the Governor may authorize, on behalf of the State and subject to the terms of the treaty, the Commissioner of the Department of Correction to consent to the transfer of offenders and take any other action necessary to initiate the participation of this State in the treaty.

(74 Del. Laws, c. 258, § 1.)

Subchapter X

Sentencing Accountability Commission

§ 6580. Established; composition; purpose.

(a) The Delaware Sentencing Accountability Commission (hereinafter referred to as the “Commission”) is hereby established. The Commission shall consist of 11 members, the body of which shall be comprised as follows:

(1) Four members of the judiciary appointed by the Chief Justice, 2 of whom shall be initially appointed for a 2-year term and 2 of whom shall be appointed to a 4-year term; provided, that each succeeding term for all 4 of such members shall be 4 years;

(2) The Attorney General or the Attorney General's designee;

(3) The Chief Defender or the Chief Defender's designee;

(4) The Commissioner of Corrections or the Commissioner of Corrections' designee;

(5) Four other members-at-large, each of whom shall, by training or experience, possess a knowledge of Delaware sentencing practices, 2 to be appointed by the Governor, 1 by the President Pro Tempore of the Senate and 1 by the Speaker of the House. One of the members-at-large shall be appointed by the Governor for a 2-year term; the remaining members-at-large shall be appointed for 4-year terms; provided that each succeeding term following the initial term of all 4 members-at-large shall be 4 years.

The Chief Justice shall designate 1 of the members of the judiciary serving on the Commission to serve as Chairperson of the Commission.

(b) It shall be the overall purpose of this body to establish a system which emphasizes accountability of the offender to the criminal justice system and accountability of the criminal justice system to the public.

For purposes of this subchapter, the grouping of punishments consistent with the guidelines developed by the Commission shall be known as "accountability levels."

(c) The Commission shall develop sentencing guidelines consistent with the overall goals of ensuring certainty and consistency of punishment commensurate with the seriousness of the offense and with due regard for resource availability and cost. In developing these guidelines, the Commission shall also consider the following additional goals in the priority in which they appear:

(1) Incapacitation of the violence-prone offender;

(2) Restoration of the victim as nearly as possible to the victim's preoffense status; and

(3) Rehabilitation of the offender.

(64 Del. Laws, c. 402, § 1; 80 Del. Laws, c. 26, § 3.)

§ 6581. Sentencing guidelines.

(a) A computer-driven model of proposed sentencing criteria shall be created by March 1, 1985, which will be able to project the effect of alternative policy decisions on the Department of Correction resources. Sentencing guidelines will be drafted with nonbinding pilot testing by July 1, 1985.

The Commission shall submit to the Supreme Court on or before March 1, 1986, sentencing guidelines developed in accordance with § 6580(c) of this title for adoption by court rule. Such guidelines shall have no force or effect unless so adopted, and shall not in any event authorize or be construed as authorizing the exercise of any power or duty exceeding or conflicting with those heretofore or hereafter granted by act of the General Assembly or pursuant to inherent authority granted under the Delaware Constitution.

(b) The Commission, on or before July 1, 1987, shall recommend to the Governor and the General Assembly legislation necessary for the implementation of the sentencing guidelines.

(c) Consistent with the goals of this subchapter, the sentencing guidelines recommended by the Commission shall:

(1) Formulate a series of sanctions ranging from nonincarcerative to incarcerative. These sanctions may include, but not be limited to, fines, costs, restitution, unsupervised and/or supervised probation, community service, work release and community-based residential and nonresidential programs, work camps and electronic monitoring. These sanctions shall be placed in one or more accountability levels;

(2) Establish detailed objective criteria to be utilized in determining which offenders shall be assigned to each of the various accountability levels, such criteria to combine factors relating to the nature of the offense, the background and criminal history of the offender and the availability of resources;

(3) Define under what conditions of aggravation or mitigation and in what manner a sentencing judge may impose a sentence outside of the sentencing guidelines and recommend such mitigating and/or aggravating circumstances; and

(4) Define under what circumstances, by what process, and by whom offenders may be moved from 1 accountability level to another, subject to any law regulating such movement.

(d) The Commission shall estimate to what extent public and private resources are appropriate and available to meet the specifications and supervision standards necessitated by the population of offenders to be assigned to each level.

(e) The Commission shall define the roles of the various criminal justice agencies in the implementation of the proposed guidelines.

(f) The Commission shall recommend, as appropriate, mechanisms to insure that offenders are assessed a reasonable fee for their supervision and/or treatment.

(g) The Commission shall also recommend a procedure or a tribunal for appellate review by either the defendant or the State when sentences are imposed outside of the guidelines.

(h) The Commission shall have the authority to collect from any state or local governmental entity information, data, reports, statistics or such other material which is necessary to carry out the Commission's functions.

(i) The executive department shall provide staff services for the Commission which shall, for administrative purposes, be placed within that office.

(j) The Commission shall carry out such other duties consistent with its mandate as the General Assembly or the executive department shall from time to time direct.

(64 Del. Laws, c. 402, § 1; 65 Del. Laws, c. 206, § 1.)

§ 6581A. Additional duties of the Commission.

The Delaware Sentencing Accountability Commission (SENTAC) is hereby directed, pursuant to § 6581(j) of this title, to modify or amend its Benchbook, so that the sentencing guidelines set forth in the Benchbook recommend that, in cases in which the weight of the controlled substance significantly exceeds the Tier 2 Controlled Substances Quantity and in which there is a conviction pursuant to § 4752 of Title 16, a sentence guideline range that is commensurate with the seriousness of the offense.

(78 Del. Laws, c. 13, § 20.)

§ 6582. Treatment Access Committee established.

(a) There is established a permanent committee of the Sentencing Accountability Commission which shall be known as the "Treatment Access Committee."

(b) The Treatment Access Committee shall be comprised of 7 voting members which shall include:

(1) The Chairperson of SENTAC, ex officio, who shall serve as Chairperson of the Committee;

(2) The Secretary of Health and Social Services, ex officio;

(3) The Secretary of the Department of Youth Services, ex officio;

(4) The Commissioner of Corrections, ex officio;

(5) The Chairperson of the Board of Parole, ex officio;

(6) Two additional members, 1 of whom shall represent the President of the Senate and 1 of whom shall represent the Speaker of the House; and

(7) Such other nonvoting members as will assist the Committee in performing its functions as are appointed by the Chairperson of SENTAC.

(c) The Treatment Access Committee shall supervise the establishment of a Treatment Access Center for substance abusing offenders. The Treatment Access Center shall be designed in a manner to coordinate the provision of substance abuse evaluation and treatment by public and private providers to criminal defendants and youths adjudicated delinquent or pending such adjudication. The Committee shall have the power through its Chairperson to make and enter into any and all contracts, agreements or stipulations; and to seek, accept and receive funds, grants or donations necessary to fulfill the purposes of this section.

(d) The Treatment Access Committee shall supervise the expenditure of funds from the Substance Abuse Rehabilitation, Treatment, Education and Prevention Fund. It shall make grants to the Treatment Access Center, and to other state and local public entities or agencies for substance abuse treatment, rehabilitation, education or prevention activities, subject to the provisions of § 4803A(b) of Title 16.

(e) The Treatment Access Committee shall report annually to SENTAC and the General Assembly on its activities and the status of substance abuse problems in Delaware.

(68 Del. Laws, c. 443, § 7; 70 Del. Laws, c. 186, § 1.)

Subchapter XI

Institutional Planning

§ 6590. Comprehensive plan.

The Department shall develop a comprehensive plan for determining the need for establishing various types of correctional facilities, for selecting the location of a correctional facility, and for determining the size of the correctional facility. The comprehensive plan shall include procedures for evaluation of environmental, social, economic, transportation, land use, property value, public and social services impacts generated by the construction of a particular facility in any proposed location within the State. The comprehensive plan shall not be implemented until the General Assembly, by concurrent resolution adopted by a majority of those elected and serving in each house thereof by a roll call vote, approves the comprehensive plan.

(67 Del. Laws, c. 254, § 1.)

§ 6591. Procedure.

(a) The Department shall determine the need for a correctional facility based upon the comprehensive plan developed pursuant to § 6590 of this title.

(b) Following a formal determination of need for such facility by the Department, the Department shall publish a notice in 2 newspapers of general circulation within this State that it proposes to establish a correctional facility in a particular town, city or county.

(c) In addition to the general notice specified in subsection (b) of this section, the Department shall further provide written notice within 30 days of the publishing of said general notice to the following officials:

(1) The state senator and the state representative representing the district or districts in the county and town or city where the proposed correctional facility is to be located.

(2) The chief elected official of the county and town or city in which the proposed correctional facility is to be located.

(3) Each member of the governing body of the county and town or city in which the proposed correctional facility is to be located.

(4) The president of the local school board of the school district or districts in the county and town or city in which the proposed correctional facility is to be located.

(5) The president of each state-supported college or university whose campus is located within the county, town or city where the proposed correctional facility is to be located.

(d) In addition to the notice required by paragraph (c)(3) of this section, the Department, on or before the date of the issuance of said notice, shall request the chief elected official of the county in which the proposed correctional facility is to be located to create a local advisory board to assist in the identification of potential sites for the correctional facility, to act as a liaison between the Department and the local community, and to ensure that the comprehensive plan is being followed by the Department. The advisory board shall consist of no less than 7 and no more than 11 citizens of the county, town or city in which the proposed correctional facility is to be located. The citizens appointed to the advisory committee shall be fairly representative, in terms of economic status, race, education and the like, of the population of the county, city or town where the proposed correctional facility is to be located.

(e) After the requirements of subsections (a), (b), (c) and (d) of this section are completed, and the Department has identified a potential site, the Department shall hold public hearing or hearings on at least 2 different dates in the city or town in which the potential site is located. If the potential site is in an unincorporated area, the public hearings shall be held in the county seat of the county in which the potential site is located. The Department shall participate in the hearings and shall make a reasonable effort to respond in writing to concerns and questions raised on the record at the hearings. The hearing shall not be held until the local advisory board created by subsection (d) of this section has organized or no sooner than 30 days after the notice is sent pursuant to subsection (c) of this section, whichever occurs first.

(f) The hearings to be conducted under subsection (e) of this section shall be open to the public and shall be held in a place available to the general public. Any person shall be permitted to attend a hearing except as otherwise provided herein. A person shall not be required as a condition of attendance at a hearing to register or otherwise provide the person's name or other information. A person shall be permitted to address the hearing under written procedures established by the Department. A person shall not be excluded from a hearing except for a breach of peace actually committed at the meeting.

(g) The following provisions shall apply with respect to public notice of hearings required under this section:

(1) The public notice required under this section shall always contain the name of the Department, its telephone number and address.

(2) A copy of the public notice shall always be posted at the Department's principal office and other locations considered appropriate by the Department.

(3) Public notice of the hearings required under this section shall be prominently posted in the office of the county clerk of the county in which the proposed facility is to be located at least 10 days prior to each hearing and shall state the date, time and place of the hearing. The required public notice of hearing shall also be published at least 10 days prior to the hearing in a newspaper of general circulation within the county in which the proposed facility is to be located.

(4) A public notice stating the date, time and place of the hearing shall be prominently posted at least 10 days before the hearing.

(h) Minutes of each hearing required under this section shall be kept by the Department showing the date, time, place, members of the local advisory board present, members of the local advisory board absent, and a summary of the discussions at the hearing. The minutes shall be public record open to public inspection and shall be available at the address designated on the posted public notices. Copies of the minutes shall be available from the Department to the public at the reasonable estimated cost for printing and copying.

(i) On the basis of the information developed by the Department during the course of the site selection process and after community concerns have been responded to by the Department pursuant to subsection (e) of this section, a final site determination shall be made by the Department for the proposed correctional facility. The Department shall make a finding that the site determination was made in compliance with this section.

(67 Del. Laws, c. 254, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6592. Action for noncompliance with site selection process.

(a) Any person who resides in the city, town or county in which the Department has determined a need for a correctional facility may bring an action in a court of proper jurisdiction if the Department has not followed the site selection process set forth in this subchapter.

(b) An action brought under this section shall not be maintained if it is filed more than 60 days after the Department formally announces its final site selection.

(67 Del. Laws, c. 254, § 1.)

Subchapter XII

Privacy for Correctional Officers, Probation and Parole Officers [Effective Feb. 8, 2026].

(85 Del. Laws, c. 125, § 1.)

§ 6594. Definitions [Effective Feb. 8, 2026].

As used in this subchapter:

(1) "Correctional officer" means any active, formerly-active, or retired individual who serves or served as a correctional officer or a probation and parole officer with the Department of Correction.

(2) "Department" means the Department of Correction.

(3) "Family" means as defined in § 901 of Title 10.

(4) "Government agency" includes all agencies, authorities, boards, commissioner, departments, institutions, offices, and any other bodies of this State created by the Constitution or statute, whether in the executive, judicial, or legislative branch; all units and corporate outgrowths created by executive order of the Governor or any constitutional officer, by the Supreme Court, or by resolution of the General Assembly; and agencies, authorities, boards, commissions, departments, institutions, offices, and any other bodies politic and corporate of a unit of local government, or school district.

(5) "Home address" includes a correctional officer's permanent residence and any secondary residence affirmatively identified by the correctional officer, but does not include a correctional officer's work address.

(6) "Online privacy vendor" means a company that specializes in or offers services that continuously conduct a basic search and removal of personal information from people finding and database websites.

(7) "Person" means as defined in § 302 of Title 1.

(8) "Personal information" means a home address, home telephone number, mobile telephone number, direct telephone number to a correctional officer's private office, personal e-mail address, Social Security number, federal tax identification number, checking and savings account numbers, credit or debit card numbers, birth or marital records, property tax records, and identity of children under the age of 18.

(9) "Publicly-available content" means any written, printed, or electronic document or record that provides information or that serves as a document or record maintained, controlled, or in the possession of a government agency that may be obtained by any person, from the Internet, from the government agency upon request either free of charge or for a fee, or in response to a request under the Freedom of Information Act (Chapter 100 of Title 29).

(10) "Publicly post" or "publicly display" means to intentionally communicate or otherwise make available to the general public.

(11) "Written request" means written notice signed by a correctional officer or a representative of the correctional officer's employer requesting a government agency or person to refrain from posting or displaying publicly-available content that includes the personal information of the correctional officer or of their family.

(85 Del. Laws, c. 125, § 1.)

§ 6595. Applicability [Effective Feb. 8, 2026].

This subchapter applies to correctional officers who serve or served on or after February 8, 2026.

(85 Del. Laws, c. 125, § 1.)

§ 6596. Public display or public posting of a correctional officer's personal information by government agencies [Effective Feb. 8, 2026].

Government agencies may not publicly post or publicly display content that includes the personal information of the correctional officer or their family if the correctional officer has made a written request under § 6598 of this title that the government agency not disclose such personal information. After a government agency has received a written request, that agency shall remove the personal information from publicly-available content within 72 hours. After the government agency has removed the correctional officer's personal information from publicly-available content, the agency shall not publicly post, display or otherwise release the information unless the government agency has received the correctional officer's consent to make the personal information available to the public.

(85 Del. Laws, c. 125, § 1.)

§ 6597. Public display or public posting of a correctional officer's personal information by persons [Effective Feb. 8, 2026].

(a) *Prohibited conduct. —*

(1) No person shall publicly post or publicly display the personal information of a correctional officer or their family if the correctional officer has made a written request under § 6598 of this title of that person not to publicly post or publicly display.

(2) No person shall share, solicit, sell, or trade the personal information of a correctional officer or their family with the intent to pose an imminent and serious threat to the health and safety of the correctional officer or their family.

(b) *Required conduct. —*

(1) After a person has received a written request from a correctional officer to protect the personal information of the correctional officer or their family, that person must remove the personal information from public display within 72 hours or, in the case of a printed directory, no later than the next update to the directory.

(2) After a person has received a written request from a correctional officer, that person shall ensure that the correctional officer's personal information is not publicly displayed, including on any website or subsidiary website controlled by that person.

(c) *Remedies. —*

(1) *Equitable relief. —*

A correctional officer or family member whose personal information is made public as a result of a violation of this subchapter may bring an action seeking injunctive or declaratory relief in any court of competent jurisdiction. If the court grants injunctive or declaratory relief, the person responsible for the violation shall be required to pay the correctional officer's costs and reasonable attorneys' fees.

(2) *Private right of action. —*

A correctional officer or family member whose personal information is publicly posted or publicly displayed in violation of this subsection may bring an action in any court of competent jurisdiction. A prevailing plaintiff in such action shall be awarded damages in an amount not greater than 3 times the actual damages to the plaintiff and not less than $10,000.

(3) *Criminal penalties. —*

Public posting or display of a correctional officer's personal information after receipt of a written request may result in criminal penalties under Title 11 where the statutory elements of a crime defined under that title are met.

(d) *Affirmative defense. —*

Nothing in this section shall be construed to limit or enlarge the protections that 47 U.S.C § 230 confers on an interactive computer service for content provided by another information content provider, as those terms are defined in 47 U.S.C. § 230.

(85 Del. Laws, c. 125, § 1.)

§ 6598. Procedure for completing a written request [Effective Feb. 8, 2026].

(a) *Requirement that a correctional officer make a written request. —*

No government agency or person shall be found to have violated any provision of this subchapter if the correctional officer has not submitted a written request calling for the protection of the correctional officer's personal information.

(b) *Written request procedure. —*

(1) A correctional officer's written request is valid if any of the following occur:

a. The correctional officer sends a written request directly to a government agency or person.

b. The correctional officer files a written request with the Department for the Department to notify government agencies and persons.

(2) The Department shall develop a policy and procedure for a correctional officer to file a written request with the Department for the Department to notify government agencies and persons and shall enroll the correctional officer in the services of an online privacy vendor.

(c) In each quarter of a calendar year, the Department shall provide a list of all correctional officers who have submitted a written request to it, to the appropriate officer with ultimate supervisory authority for a government agency. The officer shall promptly provide a copy of the list to all government agencies under the officer's supervision. Receipt of the written request list compiled by the Department by a government agency shall constitute a written request to that agency for the purposes of this subchapter.

(d) A representative from the correctional officer may submit a written request on the correctional officer's behalf, provided that the correctional officer gives written consent to the representative and provided that the representative agrees to furnish a copy of that consent when a written request is made. The representative shall submit the written request as provided in subsection (b) of this section.

(e) *Information to be included in the written request. —*

(1) A correctional officer's written request shall specify what personal information shall be maintained private.

(2) If a correctional officer wishes to identify a secondary residence as a home address as that term is defined in this subchapter, the designation shall be made in the written request.

(3) A correctional officer shall disclose the identity of the correctional officer's family and indicate that the personal information of these family members shall also be excluded to the extent that it could reasonably be expected to reveal the personal information of the correctional officer.

(f) *Duration of the written request, removal for cause, renewals, revocations, and good standing clause. —*

(1) A correctional officer's written request is valid for 2 years, unless the correctional officer is removed for cause or fired, in which case that correctional officer's name must be immediately removed by the Department.

(2) A correctional officer may renew their written request an unlimited number of times so long as they remain employed with the Department.

(3) A correctional officer may revoke their written request by providing notice to the Department or the government agency, person, business, or association with written permission to release the private information.

(4) Any correctional officer who retires or leaves the Department in good standing is eligible to request a 2-year extension of their written request from the date of retirement or date of leave.

(85 Del. Laws, c. 125, § 1.)

Part IV
Prisons and Prisoners

Chapter 66
Restraint of Pregnant Persons in Custody

(83 Del. Laws, c. 365, § 1.)

§ 6601. Findings and purposes.

The General Assembly hereby finds that the physical restraint of persons in custody during pregnancy, labor, and recovery presents serious risks to the health and well-being of mother and baby. In most circumstances, the use of restraints is unnecessary and dangerous.

(78 Del. Laws, c. 330, § 1; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 365, § 1.)

§ 6602. Definitions.

As used in this chapter:

(1) "Correctional institution" means any entity under the authority of any state, county, or municipal law-enforcement division that has the power to detain or restrain a person under the laws of the State.

(2) "Corrections official" means the official responsible for oversight of a correctional institution, or the official's designee.

(3) "Extraordinary circumstances" means an immediate and serious threat of harm to themselves, staff, or others, or a substantial flight risk that cannot reasonably be contained by any other means.

(4) "Immediate postpartum period" means the 13-week period following childbirth.

(5) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

(6) "Prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of a criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program. Included is any person detained under the immigration laws of the United States at any correctional facility.

(7) "Restraints" means any physical restraint or mechanical device used to control the movement of a prisoner's body and/or limbs, including, but not limited to, flex cuffs, soft restraints, hard metal handcuffs, a black box, Chubb cuffs, leg irons, belly chains, a security (tether) chain, or a convex shield.

(78 Del. Laws, c. 330, § 1; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 365, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 255, § 1.)

§ 6603. Use of restraints on pregnant prisoners; other prohibitions.

(a) (1) Except as provided in paragraphs (a)(2) and (3) of this section, a correctional institution may not use restraints on a pregnant prisoner who is in the second or third trimester of pregnancy, in labor, in delivery, or in the immediate postpartum period. Under no circumstances shall leg or waist restraints be used on any prisoner or detainee who is in labor or delivery. Where allowed, wrist restraints must be fastened in front of the body.

(2) If a corrections official makes an individualized determination that an extraordinary circumstance exists, restraints may be used for the limited period that such circumstance exists, subject to the limitations in paragraphs (a)(2)a., b., and c. of this section.

a. A licensed medical professional must be notified as soon as practicable upon the application of leg or waist restraints and shall examine the restrained prisoner within 10 minutes of the notification.

b. If a doctor, nurse, or other health professional treating the prisoner requests that restraints not be used, the corrections officer accompanying the prisoner shall immediately remove all restraints.

(3) Wrist restraints fastened in the front of the body may be used when a prisoner who is pregnant or in the immediate postpartum period is being transported outside of the facility for medical or other appointments. Absent extraordinary circumstances, no restraints may be used, including in transport, on a woman who is in labor, delivery, or being transported with a newborn.

(b) If restraints are used on a prisoner pursuant to paragraph (a)(2) of this section:

(1) The type of restraint applied and the application of the restraint must be done in the least restrictive manner necessary.

(2) The corrections official shall make written findings within 10 days as to the extraordinary circumstances that dictated the use of the restraints. These findings shall be kept on file by the correctional institution for at least 5 years.

(c) A pregnant prisoner who is required to squat and cough must be provided with accommodations or supports to prevent the risk of falls.

(d) A pregnant prisoner may not be required to undergo a vaginal examination unless prescribed and performed by a licensed health-care professional.

(78 Del. Laws, c. 330, § 1; 83 Del. Laws, c. 365, § 1.)

§ 6604. Enforcement.

(a) By August 11, 2012, all affected correctional institutions in Delaware shall adopt policies and procedures, pursuant to this chapter as contemplated by § 4322(d) of this title.

(b) Correctional institutions shall inform pregnant and postpartum prisoners of the rules developed pursuant to subsection (a) of this section upon determination of the pregnancy.

(c) Notwithstanding any other provisions to the contrary or § 4322(c) and (d) of this title, correctional institutions shall inform all staff contractors, medical providers, prisoners and detainees in the custody of the affected correctional institutions about the policies and procedures developed pursuant to subsection (a) of this section.

(d) The Department of Correction shall develop training guidelines regarding the use of restraints on prisoners during pregnancy, labor, and postpartum recovery and shall incorporate guidelines into appropriate training programs. Training guidelines must include all of the following:

(1) How to identify certain symptoms of pregnancy that require immediate referral to a health-care professional.

(2) Circumstances under which the exceptions under subsection (a) of this section would apply and in the case that an exception under subsection (a) of this section applies, all of the following:

a. How to apply restraints in a way that does not harm the prisoner or fetus.

b. The information required to be reported under subsection (b) of this section.

c. The right of a health-care professional to request that restraints not be used and the requirement under paragraph (a)(2)a. of this section to comply with the request.

(78 Del. Laws, c. 330, § 1; 83 Del. Laws, c. 365, § 1.)

§ 6605. Annual report.

No later than 30 days before the end of each fiscal year, the Commissioner of the Department of Correction shall submit a written report to the Office of the Governor, the Chairs of the House Corrections Committee and the Senate Corrections and Public Safety Committee, the Director and the Librarian of the Division of Legislative Services, and the Public Archives that certifies compliance with this chapter and includes an account of every instance where restraints were used on a prisoner who is pregnant, in labor, in delivery, or in the immediate postpartum period, other than the use of wrist restraints fastened in front of the body. The written report shall not contain any individually identifying information of any prisoner. Such reports shall be made available for public inspection.

(78 Del. Laws, c. 330, § 1; 83 Del. Laws, c. 365, § 1; 84 Del. Laws, c. 255, § 8.)

Part IV
Prisons and Prisoners
Chapter 67
Boot Camp Intensive Incarceration

§ 6701. Findings and purposes.

(a) The General Assembly hereby finds that certain offenders, especially young adults, respond positively to a short term military-type program which would provide for the restructuring of behavior through a highly-regimented routine of physical exercise, hard work, continued education, and substance abuse therapy. The General Assembly also finds that the cost of incarcerating the increasing number of criminal offenders in conventional prison facilities has been increasing annually, and there is an urgent need to develop and implement innovative and cost-effective options to alleviate prison overcrowding.

(b) This chapter has the following purposes:

(1) *Deterrence.* — To include a "shock" component to give certain offenders, especially young first offenders, an advance warning of the unpleasant consequences of conventional imprisonment, in an attempt to discourage future criminal behavior;

(2) *Cost effectiveness.* — To reduce future corrections expenses by utilizing cost avoidance as an effective strategy of cost savings and capital savings due to implementation of this chapter.

(3) *Rehabilitation.* — To develop a foundation on which a participant in the program can develop the self-control needed to meet daily stresses and challenges;

(4) *Behavior modification.* — To instill more positive attitudes and behavior within each participant, which will be reflected, upon release, in less negative behavior and no subsequent arrests for violent crimes.

(70 Del. Laws, c. 244, § 1.)

§ 6702. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them herein, except where the context clearly indicates a different meaning:

(1) "Bureau" shall mean the Bureau of Prisons.

(2) "Department" shall mean the Department of Correction.

(70 Del. Laws, c. 244, § 1.)

§ 6703. "Violent crime" defined.

For purposes of this chapter, the words "violent crime" shall mean: abuse of an adult who is impaired; abuse of a patient in a nursing facility; abuse of a patient causing injury; abuse of a patient causing death; adulteration causing death; adulteration causing injury; aggravated intimidation; arson in the first degree; arson in the second degree; assault in the first degree; assault in the second degree; assault in the third degree; assault in the first degree on K-9 dog causing, injury or death to the dog; assault on a K-9 dog with risk of injury to the dog; assault in a detention facility which causes injury; assault in a detention facility; assault on a sports official; bestiality; home invasion; burglary in the first degree; carjacking; carrying a concealed deadly weapon (firearm or projectile weapon offense); continuous sexual abuse of child; criminally negligent homicide; dealing with child pornography, second offense; possession of a destructive weapon; reckless endangering; escape after conviction; escape in the second degree; extortion; possession of an explosive device; unlawful imprisonment; incest; kidnapping in the first degree; kidnapping in the second degree; manslaughter; manufacture or use or possession of explosives or an incendiary device; murder in the first degree, murder in the second degree; organized crime and racketeering; possession of a deadly weapon during the commission of a felony; possession of a destructive weapon; possession of a firearm or projectile weapon during the commission of a felony; promoting prison contraband (weapon); promoting prostitution in the first degree; racketeering; reckless endangering first degree; reckless endangering in the second degree; riot; robbery in the first degree; robbery in the second degree; continued sexual abuse of child; unlawful sexual contact in the first degree; unlawful sexual contact in the second degree; unlawful sexual contact in the third degree; sexual exploitation of a child; sexual extortion; rape in the first degree; rape in the second degree; rape in the third degree; rape in the fourth degree; unlawful sexual intercourse in the first degree; unlawful sexual intercourse in the second degree; unlawful sexual intercourse in the third degree; unlawful sexual penetration in the first degree; unlawful sexual penetration in the second degree; unlawful sexual penetration in the third degree; stalking; terroristic threatening; unlawful firearm transactions (second or subsequent offense); unlawful imprisonment in the first degree; unlawful transportation of a firearm to commit a felony; vehicular assault in the first degree; vehicular assault in the second degree; vehicular homicide in the first degree; vehicular homicide in the second degree; wearing body armor during felony.

(70 Del. Laws, c. 244, § 1; 71 Del. Laws, c. 7, § 1; 71 Del. Laws, c. 285, § 21; 77 Del. Laws, c. 313, § 3; 78 Del. Laws, c. 13, §§ 15, 16; 78 Del. Laws, c. 224, § 24; 78 Del. Laws, c. 252, § 13; 84 Del. Laws, c. 525, § 28.)

§ 6704. Establishment of boot camp programs.

(a) The Bureau of Prisons may establish 1 or more regimented boot camp inmate training programs. Subject to appropriations therefor, each such program shall include, but not be limited to:

(1) A military-style intensive physical training and discipline component;

(2) An educational and vocational component, emphasizing job-seeking skills;

(3) A health education component;

(4) A substance abuse education and treatment component, which shall be structured as an integral part of the boot camp program; and

(5) Such other activities as may be deemed appropriate and effective by the Bureau.

(b) The Bureau may establish and enforce standards for the boot camp program, and each component set forth in paragraphs (a)(1) through (a)(5) of this section.

(c) The boot camp facilities and all boot camp participants should be effectively separated from the general inmate population, and shall be supervised by a specially-trained staff.

(d) The boot camp program shall be 6 months in duration; provided however, that any participant who is assigned to the program shall remain in the program at least 1 month, unless the camp commander, in the commander's discretion, determines otherwise. In exceptional cases, a participant may be retained in the program in order to join the next following class if the additional time spent in the program is, in the opinion of the Bureau, needed to allow such person to complete the program successfully after illness or other circumstance has delayed such person's normal progress through the program.

(e) Selection for participation in a boot camp program is a privilege, and not a right. No person has the right to participate in a boot camp program.

(70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 244, § 1.)

§ 6705. Sentencing; boot camp designation.

(a) Each participant in the boot camp program shall have first been convicted of a criminal offense. The selection of boot camp participants shall be made by the Bureau from those offenders not otherwise excluded under this section. However, satisfying the statutory or regulatory qualifications for admission to the boot camp program shall not mean that an offender shall automatically be permitted to participate in the program.

(b) Notwithstanding the provisions of subsection (a) of this section, the following offenders shall not be classified or otherwise permitted to participate in the boot camp program:

(1) Any person declared to be an habitual offender under § 4214 of this title;

(2) Any person who is serving a sentence of Level V incarceration for a violent crime;

(3) Any person who is serving a sentence for a violation of probation or parole where the crime for which the offender was originally convicted is any class A, B or C Title 11 violent felony, or any sexual offense as set forth in subpart D of subchapter II of Chapter 5 of this title or any of the following offenses: Vehicular homicide first and second degree, criminally negligent homicide, promoting prison contraband felony or stalking;

(4) Any person designated by the sentencing court or the Attorney General pursuant to subsection (c) of this section as not being eligible for the boot camp program.

(c) The sentencing court or the Attorney General shall have the authority to designate any person as bootcamp ineligible at the time of sentencing. Such designation shall be specifically and clearly set forth in the sentencing order.

(d) Subject to the provisions of subsections (a), (b)(1) and (b)(3) of this section, any person serving a sentence for a violation of probation or parole shall be eligible for the boot camp program.

(70 Del. Laws, c. 244, § 1; 71 Del. Laws, c. 7, § 2; 71 Del. Laws, c. 174, §§ 1-3; 71 Del. Laws, c. 484, § 1.)

§ 6706. Criteria for selection and classification by the Bureau.

In order for a person to be eligible for selection by the Bureau for the boot camp program, such person shall:

(1) Not be subject to any of the exclusionary criteria under § 6705(b) or (c) of this title;

(2) Be at least 18 years of age at the time of sentencing;

(3) Have been sentenced to a period of incarceration of 5 years or less;

(4) In accordance with the Bureau's assessment and determination, be physically and mentally capable of successfully completing the rigorous boot camp program; provided, however, no such assessment and/or determination shall be deemed as a waiver of any of the various immunity defenses or otherwise trigger a duty, obligation and/or liability on the Department or Bureau not presently provided under applicable law;

(5) Be a resident of the State; and

(6) Have a term of not less than 9 months, nor have more than 18 months remaining in Level V incarceration.

(70 Del. Laws, c. 244, § 1; 71 Del. Laws, c. 7, § 3.)

§ 6707. Contract; admission into the program.

No offender may participate in the boot camp program unless such individual voluntarily enrolls by agreeing to be bound by a written contract with the Bureau, which contract shall clearly set forth the obligations, duties, responsibilities and expectations with which such

offender must comply. A representative of the Bureau shall also explain to the offender the intended benefits of the program, and the consequences of failing the program. The time served as a boot camp participant shall begin the first day such person is physically within the camp.

(70 Del. Laws, c. 244, § 1.)

§ 6708. Evaluation of program participants.

Each participant shall be evaluated by members of the boot camp staff on a continual basis throughout the period of such person's participation in the program. Such evaluation shall include the participant's performance within the program, the likelihood of successful adjustment after release, and such other matters which the boot camp staff deems relevant or important.

(70 Del. Laws, c. 244, § 1.)

§ 6709. Conduct and administration of boot camp program.

(a) The program shall be a rigorous military-type program which, among other features, shall include mandatory physical training; hard labor which has a rational goal or objective; military formations, drills and courtesy; regimentation of all activities, except those which are specifically exempted by the camp commander; control which is strict, but not capricious; uniformity and cleanliness in dress and appearance; education and counseling; and drug treatment, counseling and education where appropriate.

(b) The Bureau and the camp commander shall establish rules and regulations for the conduct and administration of each boot camp program. Such rules and regulations shall reflect the goals and objectives of this chapter, and shall include a system of rewards for individuals and groups based upon achievements and progress in achieving camp standards and requirements; and shall include sanctions, administered by the staff within the confines and authority of the camp, to punish those individuals whose demeanor, behavior or attitude do not comply with camp standards and requirements. The rules and regulations shall also include the supervision and the structure to be used in each program offered by the camp.

(c) The camp commander and staff shall be responsible for the day-to-day functions and decisions affecting the operations of the boot camp. Each full-time employee employed inside the boot camp shall, to the extent possible, be a volunteer regardless of job description or function. All boot camp employees shall receive appropriate specialized boot camp training. Each drill instructor shall receive specialized drill instructor training, preferably military training, from an agency which specializes in such training. Boot camp employees shall receive, for the same general responsibilities, the same salaries as prison employees not employed in a boot camp. Job bidding shall not be used in the selection of the camp staff.

(d) Participants may be formed into work squads by boot camp staff to perform labor-intensive projects outside the perimeters of the camp. No wages shall be paid to individual participants working outside the camp, but the camp commander may from time to time receive funds or gifts for the general use or benefit of the camp or for all participants. Work squads may be utilized to work on state, county, municipal or town projects; for disaster relief, civil or community emergencies; and for specific projects for nonprofit organizations, if the Bureau determines that the project is of direct benefit to a community or a large number of people, and not for the organization itself. No work squad is permitted to do any labor for the benefit of any individual or commercial entity. Approved projects may include, but not limited to, highway cleanup and trash removal; timber clearing on state forestry lands; preparing and stacking sandbags in the event of a flood; and beach and state park clean-up. Participants are not employees for purpose of workers' compensation. Notwithstanding any provision of this title to contrary, any boot camp participant who is otherwise appropriately classified to the boot camp program may participate in work squads pursuant to this section.

(70 Del. Laws, c. 244, § 1; 71 Del. Laws, c. 7, § 4.)

§ 6710. Sanctions; removal from the program.

(a) A participant who is accepted into the boot camp program shall not receive any credit for time spent in the program, except for actual time served, unless such participant completes the full program. Before any participant is deemed to have completed the full boot camp program, such participant must have been graduated from the program with a written certification of successful completion.

(b) A participant who fails to complete the boot camp program, who is administratively terminated from the program, or who violates any conditions of the program, shall be re-classified to serve the full unexpired term of the original sentence.

(c) Upon the successful completion of the boot camp program as determined by the Department in its sole discretion, and having served at least 6 months of incarceration, the participant shall be allowed to serve the remaining part of the participant's Level V sentence at either Level IV or Level III, in the discretion of the Department. Should a boot camp graduate violate the Level IV or Level III conditions of supervision, such person shall upon conviction of a violation of probation, be returned to Level V custody to serve the full term of the original Level V sentence, less the 6 months served in boot camp.

(70 Del. Laws, c. 244, § 1.)

§ 6711. Aftercare; intensive parole supervision.

A person who has successfully completed the boot camp program shall be placed under parole supervision (Level IV or Level III supervision). During this period, such person shall participate in an aftercare program which emphasizes completion of GED requirements

where appropriate, drug and alcohol education and treatment; the development of job placement skills and opportunities; and the learning of successful employment habits and attitudes.

(70 Del. Laws, c. 244, § 1.)

§ 6712. First offender boot camp diversion program [Repealed].

(71 Del. Laws, c. 174, § 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 484, §§ 2-7; 74 Del. Laws, c. 106, §§ 11, 12; 75 Del. Laws, c. 167, § 1; 78 Del. Laws, c. 13, §§ 17-19; repealed by 82 Del. Laws, c. 217, § 20, effective Dec. 15, 2019.)

Part V
Law-Enforcement Administration

Chapter 81
Firearm Forensics

(80 Del. Laws, c. 426, § 1.)

§ 8101. Declaration of policy.

It shall be the policy of this State for its various law-enforcement agencies to fully employ electronic technology and interjurisdictional information and analysis sharing programs to deter and solve gun crimes.

(80 Del. Laws, c. 426, § 1.)

§ 8102. Procedure for certain seized, recovered firearms, shell casings.

(a) Whenever a law-enforcement agency seizes or recovers a firearm that was unlawfully possessed, used for any unlawful purpose, recovered from the scene of a crime, is reasonably believed to have been used or associated with the commission of a crime, or is acquired by the agency as an abandoned or discarded firearm, the agency shall:

(1) Transmit and receive information relating to that firearm with the National Crime Information Center System;

(2) Transmit and receive information relating to that firearm to the United States Alcohol, Tobacco, Firearms, and Explosives E-Trace System; and

(3) Arrange for every such firearm to be test-fired as soon as may be practicable and the results of that test-firing be forthwith submitted to the National Integrated Ballistics Identification Network to determine whether the firearm is associated or related to a crime, criminal event, or any individual associated or related to a crime or criminal event or reasonably believed to be associated or related to a crime or criminal event.

(b) Whenever a law-enforcement agency recovers any spent shell casing at a crime scene or has reason to believe that the recovered spent shell casing is related to or associated with the commission of a crime or the unlawful discharge of a firearm, the agency shall, as soon as may be practicable, submit the ballistics information to the National Integrated Ballistics Identification Network.

(c) The Department of Safety and Homeland Security, in cooperation with the Department of Justice, shall develop and promulgate a statewide standard protocol for the recovery and forensic processing of firearms and firearm-related evidence where such firearm was unlawfully possessed, used for any unlawful purpose, recovered from the scene of a crime, or reasonably believed to have been used or associated with the commission of a crime.

(80 Del. Laws, c. 426, § 1.)

Part V
Law-Enforcement Administration

Chapter 82
Capitol Police

§ 8201. Appointment and classification; primary duty.

The Department of Safety and Homeland Security, hereinafter in this chapter referred to as "Department," may appoint police officers whose primary duty shall be to compel the enforcement of all laws within the State. They shall be officially known and referred to as "Capitol Police."

(75 Del. Laws, c. 322, § 4.)

§ 8202. Powers and duties of Capitol Police; local police officers assisting Capitol Police.

Capitol Police shall have police powers similar to those of constables and other police officers, and shall be conservators of the peace throughout the State, and they shall suppress all acts of violence, and enforce all laws relating to the safety of persons and property. In addition to the foregoing, Capitol Police shall be authorized to develop, implement, maintain, exercise and update Comprehensive School Safety Plans (CSSPs) pursuant to § 8237 of Title 29 and such regulations adopted in connection therewith, as directed by the Secretary of Safety and Homeland Security.

(75 Del. Laws, c. 322, § 4; 78 Del. Laws, c. 405, § 2.)

§ 8203. Salaries.

Each of the Capitol Police shall receive a salary in accordance with the current annual State Budget Act.

(75 Del. Laws, c. 322, § 4.)

§ 8204. Uniforms.

The Chief of Capitol Police shall, subject to the approval of the Department, prescribe the specifications for the standard uniforms to be used by the Capitol Police.

(75 Del. Laws, c. 322, § 4.)

§ 8205. Capitol Police stations; location, staff and equipment.

The Department shall establish and maintain at least 3 Capitol Police offices in the State, 1 of which shall be located at New Castle County Courthouse, New Castle County, 1 of which shall be located in Kent County, and 1 of which shall be located in Sussex County, and such other offices as the Department deems necessary for the proper policing of, and for the enforcement of the laws of the State. Such Capitol Police stations as are herein directed to be established and maintained shall each be staffed with members of the Capitol Police, and shall each be equipped with radio equipment to aid in the police work of the Department.

(75 Del. Laws, c. 322, § 4.)

Part V
Law-Enforcement Administration

Chapter 83
State Police

Subchapter I
General Provisions

§ 8301. Appointment and classification; primary duty.

The Department of Safety and Homeland Security, hereinafter in this chapter referred to as "Department," may appoint police officers whose primary duty shall be to compel the enforcement of all laws relating to the weight, speed and operation of vehicles on the public highways of the State. They shall be officially known and referred to as "State Police." The Department may classify such State Police according to such rank as the Department determines, and according to the duties assigned to them from time to time by the Department. The Superintendent of the State Police shall hold the rank of Colonel and shall be so classified by the Department. There may not be less than 660 authorized police officers. Calculations for determining the number of such positions shall include any appropriated (ASF) and nonappropriated (NSF) special funded positions.

(34 Del. Laws, c. 84, §§ 1, 2; 37 Del. Laws, c. 73; Code 1935, § 5747; 45 Del. Laws, c. 276; 47 Del. Laws, c. 1; 11 Del. C. 1953, § 8301; 53 Del. Laws, c. 235, § 1; 56 Del. Laws, c. 438, § 1; 57 Del. Laws, c. 670, § 3A; 58 Del. Laws, c. 495; 66 Del. Laws, c. 241, § 1; 67 Del. Laws, c. 47, § 209; 69 Del. Laws, c. 291, § 244; 69 Del. Laws, c. 461, § 1; 72 Del. Laws, c. 98, § 1; 74 Del. Laws, c. 110, § 138; 75 Del. Laws, c. 354, § 3.)

§ 8302. Powers and duties of State Police; local police officers assisting State Police.

(a) State Police shall have police powers similar to those of constables and other police officers, and shall be conservators of the peace throughout the State, and they shall suppress all acts of violence, and enforce all laws relating to the safety of persons and property. The State Police shall be the primary law-enforcement agency within the State. The State Police shall have exclusive jurisdiction, excluding the incorporated limits of any municipality maintaining an established police department, for police investigations of the following:

(1) Homicide;

(2) Suicide;

(3) All other deaths requiring medical examiner's investigation;

(4) Kidnapping;

(5) Rape and unlawful sexual intercourse; and

(6) All attempts thereof.

(b) When police officers who are certified by the Delaware Police Officer Standards and Training Commission are acting outside their respective jurisdiction as conservators of the peace in response to a request for assistance from the State Police, those officers shall be considered to be acting as State Police Officers and shall have the powers of arrest thereof.

(c) State Police shall have all powers and jurisdiction to enforce all county noise ordinances duly enacted in the unincorporated areas of Kent County and Sussex County.

(34 Del. Laws, c. 84, § 4; Code 1935, § 5747; 45 Del. Laws, c. 276; 11 Del. C. 1953, § 8302; 58 Del. Laws, c. 204; 60 Del. Laws, c. 103, § 1; 61 Del. Laws, c. 7, § 1; 66 Del. Laws, c. 269, § 10; 72 Del. Laws, c. 131, § 1; 74 Del. Laws, c. 45, § 1; 76 Del. Laws, c. 111, § 1; 84 Del. Laws, c. 149, § 7.)

§ 8303. Salaries.

Each of the State Police shall receive a salary in accordance with the current State Police compensation schedule. Years of service commence as of anniversary date of hire. The Superintendent of State Police shall receive a salary that is 9 percent greater than the Assistant Superintendent of State Police. The Assistant Superintendent of State Police shall receive a salary that is 9 percent greater than the most senior ranking major of the State Police. Upon the retirement of the most senior major, no adjustment shall be made to the salaries of the incumbent Superintendent or Assistant Superintendent. Adjustments shall be made during the normal budget process.

(34 Del. Laws, c. 84, § 3; 35 Del. Laws, c. 64; 37 Del. Laws, c. 76; Code 1935, § 5747; 45 Del. Laws, c. 276, § 1; 11 Del. C. 1953, § 8303; 56 Del. Laws, c. 353, § 1; 57 Del. Laws, c. 331, § 1; 58 Del. Laws, c. 332, § 1; 59 Del. Laws, c. 379, § 1; 60 Del. Laws, c. 696, § 1; 71 Del. Laws, c. 132, § 246; 76 Del. Laws, c. 280, § 288; 82 Del. Laws, c. 64, § 249.)

§ 8304. Uniforms.

The Superintendent of State Police shall, subject to the approval of the Department, prescribe the specifications for the standard uniforms to be used by the State Police.

(34 Del. Laws, c. 84; 37 Del. Laws, c. 73; Code 1935, § 5748; 43 Del. Laws, c. 263, § 1; 11 Del. C. 1953, § 8304.)

§ 8305. State Police stations; location, staff and equipment.

The Department shall establish and maintain at least 5 State Police stations in the State, 1 of which shall be located at Penny Hill, New Castle County, 1 of which shall be located at or near the intersection of Routes 40 and 896, New Castle County, 1 of which shall be located at or near the City of Dover, Kent County, 1 of which shall be located at or near Bridgeville, Sussex County and 1 of which shall be located at or near Georgetown, Sussex County, and such other stations as the Department deems necessary for the proper policing of the highways of the State and for the enforcement of the laws of the State. Such State Police stations as are herein directed to be established and maintained shall each be staffed with members of the State Police, and shall each be equipped with radio equipment to aid in the police work of the Department.

(Code 1935, § 5747A; 46 Del. Laws, c. 49, § 1; 11 Del. C. 1953, § 8305; 72 Del. Laws, c. 340, § 1.)

§ 8306. Work week.

The regular work week of all members of the State Police appointed by the Department shall consist of a 5-day, 40-hour week, except at such times as the Department, acting upon the specific recommendation of the Superintendent of State Police, may declare a longer regular work week during periods of special need.

(11 Del. C. 1953, § 8306; 49 Del. Laws, c. 101, § 1; 57 Del. Laws, c. 331, § 2; 57 Del. Laws, c. 670, § 3B; 58 Del. Laws, c. 332, § 2.)

§ 8307. Disposition of lost or stolen property or money.

(a) Whenever any personal property of any kind, except money, comes into the custody of the State Police and the person entitled to possession of the same cannot be located and fails to claim the same for a period of 1 year, the Superintendent of the State Police may dispose of the same at public sale at some place which shall be convenient and accessible to the public, provided that the time, place and terms of said sale, together with a description of said personal property, shall be inserted in 1 or more daily newspapers published in the State at least once each week for 2 successive weeks prior to said sale. The Superintendent shall in the Superintendent's discretion fix the terms of sale and may employ an auctioneer to make the sale. If the personal property be of the kind for which a certificate of title or registration shall or should have been issued by any commissioner, commission or department, whether state or federal, the Superintendent shall cause notice by registered mail to be sent at least 10 days prior to the sale to the owner and lien holder, if any, shown on the records of such commissioner, commission or department, or to the person entitled to the possession thereof, if an address be known or if it can be ascertained by the exercise of reasonable diligence; and if said address cannot be so ascertained, then such notice shall not be required to be given.

(b) After deducting from the proceeds of the sale the expense of making the same and the amount of storage and any other repair or tow charges incurred during the period in which the same was in custody, and after the payment of all liens to which said property was subject in the order of their priority, the balance remaining, if any, shall be paid into the Police Retirement Fund of the State Police. If the owner or the person entitled to the possession of personal property, sold as aforesaid, shall present to the Superintendent a claim, duly sworn to, at any time within 3 years from the date of such sale, for the balance remaining from the proceeds of such sale, the Superintendent shall cause to be paid from said Police Retirement Fund the amount of such balance, without interest, to such claimant. If no claim for such balance is made within 3 years from the date of such sale, such balance shall become the property of said Police Retirement Fund in the same manner as other sums contributed thereto.

(c) Whenever any lost, abandoned or stolen money comes into the custody of the State Police, the Superintendent of the State Police shall make a reasonable effort to locate the owner thereof. If the owner of any stolen money cannot be located or fails to claim such stolen money within 1 year from the date that it came into the custody of the State Police, such money shall become the property of the State Police Retirement Fund in the same manner as other sums contributed thereto. If the owner of any lost or abandoned money cannot be located or fails to claim such lost or abandoned money within 1 year from the date that it came into the custody of the State Police, such money shall become the property of the person who delivered custody of such money to the State Police and shall be returned by the Superintendent to such person as soon as is practicable.

(d) No action for the recovery of personal property, money or damages arising under this section shall be brought after the expiration of 3 years from the accruing of the cause of such action; provided, however, that this subsection shall not be deemed to constitute a waiver of any immunity from suit to which the Superintendent of State Police may otherwise by law be entitled.

(e) The certificate of the Superintendent that any such personal property has been sold to a purchaser as provided in this section shall constitute sufficient evidence of title to any property so sold in order to enable any such purchaser to obtain a certificate of title and registration from the appropriate commissioner, commission or department, which shall recognize such certificate of the Superintendent as sufficient authority for the issuance of a certificate of title and registration.

(f) This section shall not apply to any property the disposition of which is provided for elsewhere in this title.

(11 Del. C. 1953, § 8307; 50 Del. Laws, c. 239, § 1; 61 Del. Laws, c. 95, §§ 1-3; 70 Del. Laws, c. 186, § 1.)

§ 8308. Crime Reduction Fund.

(a) The Superintendent of the State Police is authorized to administer a fund to be known as the "Crime Reduction Fund."

(b) Expenses for the administration of this Fund shall be paid by the State Treasurer out of funds of the General Fund, not otherwise appropriated, not to exceed $10,000 in any fiscal year.

(11 Del. C. 1953, § 8308; 57 Del. Laws, c. 493.)

Subchapter II

Pensions; Disability and Death Benefits

§ 8322. Police Retirement Fund.

The Police Retirement Fund, hereafter in this subchapter referred to as "Fund," shall be created in the following manner:

All rewards offered for any particular service, when otherwise payable to any member of the State Police, shall be paid to the Secretary of Finance and shall be credited by the Secretary to the account of the Fund. Also there shall be deducted each month from the monthly payroll of each member of the State Police 5 percent of the amount of the member's salary and such amount shall be paid to the Secretary of Finance and shall be credited by the Secretary to the account of the Fund; provided, however, that for any member of the State Police who has completed 20 years of credited service and who was hired before July 1, 1980, and for any member of the State Police who has completed 25 years of credited service and who was hired after July 1, 1980, as defined in this chapter, there shall be deducted from the monthly payroll of each such member of the State Police 2 percent of the amount of the member's salary and such amount shall be paid to the Secretary of Finance and shall be credited by the Secretary to the account of the Fund. At the same time, the Secretary of Finance shall transfer from the funds of the Department of Safety and Homeland Security and credit to the Fund, each month, a sum equivalent to 5 percent of the amount of the monthly payroll of all of the members of the State Police. If at any time there shall be insufficient money in the Fund for the purposes of this subchapter, the Secretary of Finance shall transfer from the funds of the Department of Safety and Homeland Security sufficient money to make up any such deficiency. No money shall be paid out of the Fund thus created, except for the purposes of this subchapter and on warrants of the Board of Pension Trustees. The assets of the Fund will be commingled in the Delaware Public Employees' Retirement System as provided for by § 8308 of Title 29. Effective July 1, 1997, employee pension contributions made pursuant to this section shall not be subject to adjustment or recovery after the expiration of 3 full calendar years from December 31 of the year in which the contributions were made unless no contributions were paid during that calendar year.

(41 Del. Laws, c. 262, § 2; 11 Del. C. 1953, § 8322; 57 Del. Laws, c. 741, §§ 41B, 41C; 60 Del. Laws, c. 695, § 1; 66 Del. Laws, c. 295, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 121, § 4; 71 Del. Laws, c. 165, § 6; 74 Del. Laws, c. 110, § 138.)

§ 8323. Eligibility for pensions; employment of pension beneficiaries by the State; exceptions.

(a) Any member of the State Police who has served as such for a period of 20 years may retire, or any member who has reached the age of 55 years shall be retired; in either event, the retired member shall thereupon receive monthly, from the Fund, an amount equal to $^1/_2$ of the monthly salary received by such member at the time of retirement; provided, however, that members of the State Police retired prior to January 1, 1972, shall as of that date receive an amount equal to one half of the monthly salary provided under this chapter for an active-duty officer of equivalent rank. Thereafter, pensions of retired State Police shall not be recomputed based on the salaries of active-duty State Police; provided further, however, that as of July 1, 1974, the monthly amount payable to retirees shall increase on July 1 of each year by any cumulative percentage increase in the national consumer price index average of the previous calendar year, plus the aggregated cumulative percentage change in the national consumer price index average of the previous consecutive years in which an increase was not granted. A cumulative percentage decrease in any calendar year shall not result in any reduction in the pension rates.

(b) Any former or present member of the State Highway Police, State Police, or any successor or substitute therefor, who shall have been a member of the County Police of New Castle County, shall receive full credit for the time served in such County Police in computing the number of years' service required to receive pension benefits provided in subsection (a) of this section.

(c) An individual shall not receive a pension under this subchapter for any month which the individual is an employee, as defined in § 8301 of this title or § 5501 of Title 29, unless the individual is:

(1) An official elected by popular vote at a regular or special election; or

(2) An official appointed by the Governor; or

(3) A registration or election official or a juror; or

(4) Receiving an ordinary service, disability or survivor's pension.

The employment, except employment as an elected official, may not be used for further retirement benefits.

(d) Nothing in this section shall prevent the employment by the State as a registration or election official or as a juror of any person receiving a state pension. Persons so employed may receive the compensation provided by law without deduction from their state pension.

(e) Any former or present member of the State Highway Police, State Police, or any successor or substitute therefor, who shall have been a member of the Delaware Memorial Bridge Police before the establishment of the Delaware River and Bay Authority, shall receive full credit for the time served in such Delaware Memorial Bridge Police in computing the number of years' service required to receive pension benefits provided in subsection (a) of this section.

(f) Nothing in this section shall prevent the employment by the State as a registration or election official or as a juror any person receiving a state pension. Persons so employed may receive the compensation provided by law without deduction from their state pension.

(g) Nothing in this section shall prevent the employment by the Superior Court, Court of Chancery, Court of Common Pleas or Family Court in or of any county of any person receiving a State Police pension. Persons so employed may receive compensation for such services without deduction from their State Police pension.

(h) No retired member of the Uniformed Division, State Police, entitled to receive a pension under subsection (a) of this section, shall receive a monthly pension less than any retiree on the retired rolls from the immediately prior retiring class, and of the same active-duty rank, if such difference is solely the result of a cost-of-living increase granted to such retiree.

(i) A member of the State Police hired prior to July 1, 1980, and who has 20 years of credited service shall have a vested right to a service pension as provided for in this subsection at a rate not less than the pension payment due upon completing 20 years of credited service; payments of said pension benefit shall increase pursuant to this section based upon increased annual salary adjustments and/or promotional increases that may occur subsequent to the twentieth year of credited service. A member's vested pension under this subsection shall be payable upon the effective date of termination of employment as a member of the State Police.

(j) Any reduction in a member's salary, mandated as part of the FY 2010 Annual Appropriations Act [77 Del. Laws, c. 84] and implemented during FY 2010, shall not be used when computing a member's final monthly salary. Rather, the member's base salary as of June 30, 2009, shall be used in calculating the member's monthly salary as defined in subsection (a) of this section.

(41 Del. Laws, c. 263, § 3; 46 Del. Laws, c. 271, § 1; 11 Del. C. 1953, § 8323; 50 Del. Laws, c. 57, § 1; 54 Del. Laws, c. 55; 54 Del. Laws, c. 89, § 1; 54 Del. Laws, c. 158; 55 Del. Laws, c. 26; 55 Del. Laws, c. 189, § 2; 56 Del. Laws, c. 304; 57 Del. Laws, c. 100, § 1; 57 Del. Laws, c. 228, § 12; 57 Del. Laws, c. 654; 57 Del. Laws, c. 741, § 41C; 58 Del. Laws, c. 332, § 3; 60 Del. Laws, c. 694, § 1; 61 Del. Laws, c. 456, § 1; 66 Del. Laws, c. 192, § 1; 66 Del. Laws, c. 277, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 142, § 3; 72 Del. Laws, c. 384, §§ 1, 2; 77 Del. Laws, c. 84, § 86.)

§ 8324. Eligibility of permanently injured; retirement for injury or disease.

Any former, present or future member of the State Highway Police or the State Police, who has heretofore received or who may hereafter receive permanent injuries in the performance of the member's duties, shall upon certification of a physician selected by the Board of Pension Trustees or by the injured person, be entitled to receive a pension equal to $^1/_2$ of the member's salary at the time the injury was received; but no such pension shall be paid as long as such person is regularly employed as a State Police Officer. When, however, a member of the State Police shall desire to retire by reason of injury or disease, the member shall make application in writing to the Board of Pension Trustees for such retirement. Whereupon, the Board of Pension Trustees shall call to its assistance the aid of a physician or surgeon representing the Board of Pension Trustees, and the member may also call to the member's aid a physician or surgeon. Any member of the Board of Pension Trustees may administer oaths to such physician or surgeon or to any other person called as a witness with respect to the matter before the Board of Pension Trustees, and the Board of Pension Trustees shall determine by resolution passed by at least a majority of the members of the Board of Pension Trustees, whether such member is entitled to the benefits of this subchapter, and if so determined, such member shall be retired upon a pension equal to $^3/_4$ of the member's salary at the time of retirement, together with cost of medical attention, if such medical attention be made necessary by reason of such injury or disease; provided, however, that members of the State Police who by reason of permanent injuries received in the performance of their duties and who for that reason have retired prior to January 1, 1972, shall as of that date receive an amount equal to $^3/_4$ of the monthly salary provided under this chapter for an active duty officer of an equivalent rank in accordance with § 8326 of this title. Thereafter, pensions of State Police retired by reason of permanent injuries received in the performance of their duties shall not be recomputed based on the salaries of active duty State Police; provided further, however, that members of the State Police retired by reason of injury not received in the performance of their duties or disease prior to January 1, 1972, shall as of that date receive an amount equal to one half of the monthly salary provided under this chapter for an active duty officer of equivalent rank in accordance with § 8326 of this title. Thereafter, pensions of State Police members retired by reason of injury or disease shall not be recomputed based on the salaries of active duty State Police; provided further, however, that as of July 1, 1974, the monthly amount payable to State Police retired by reason of permanent injuries received in the performance of their duties and by State Police retired by reason of other injury or disease shall increase on July 1 of each year by any cumulative percentage increase in the national consumer price index average of the previous calendar year, plus the aggregated cumulative percentage change in the national consumer price index average of the previous consecutive years in which an increase was not granted. A cumulative percentage decrease in any calendar year shall not result in any reduction in the pension rates.

Any member who is entitled to a pension equal to $^3/_4$ of the member's salary pursuant to this section shall be examined by at least 2 competent physicians employed by the Department of Health and Social Services every 6 months in order to determine the continuing eligibility of said member. Should such pensioner reside without the territorial limits of the State, the pensioner shall submit certificates of examination by 2 competent physicians approved by the Department of Health and Human Services or comparable agency of the state of residence for the foregoing purpose.

(41 Del. Laws, c. 262, § 4; 11 Del. C. 1953, § 8324; 54 Del. Laws, c. 89, § 2; 54 Del. Laws, c. 230; 57 Del. Laws, c. 741, § 41C; 58 Del. Laws, c. 332, § 4; 70 Del. Laws, c. 149, § 7; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 384, §§ 3, 4.)

§ 8325. Eligibility of dependents.

The surviving spouse or minor children or sole dependent parent of any member of the State Police, who shall have heretofore or shall hereafter die after having been retired or after having been eligible to retire under this subchapter, or who shall have heretofore or

shall hereafter lose life in the performance of the member's duties, or when death results from injury received in the performance of the member's duties, shall receive a pension equal to three fourths of the salary of such member at the time of death. Such pension to such minor children shall be discontinued when the youngest dependent child shall cease to be a dependent as defined by § 8351(4) of this title; provided, however, that anyone entitled to receive a pension under this section prior to January 1, 1972, shall as of that date receive an amount equal to three fourths of the monthly payment to which the decedent would have been entitled under this chapter had the death occurred on or after January 1, 1972. Thereafter, pensions of those eligible under this section shall not be recomputed based on the salaries of active duty State Police; provided further, however, that as of July 1, 1974, the monthly amount payable to those eligible under this section shall increase on July 1 of each year by any cumulative percentage increase in the national consumer price index average of the previous calendar year, plus the aggregated cumulative percentage change in the national consumer price index average of the previous consecutive years in which an increase was not granted. A cumulative percentage decrease in any calendar year shall not result in any reduction in the pension rates. Any pension to a surviving spouse that has been discontinued as a result of remarriage shall be reinstated as of July 1, 2002, at the rate that the surviving spouse would have been receiving if the surviving spouse's pension had not been discontinued.

(41 Del. Laws, c. 262, § 5; 11 Del. C. 1953, § 8325; 50 Del. Laws, c. 491, § 1; 54 Del. Laws, c. 89, § 3; 54 Del. Laws, c. 129; 58 Del. Laws, c. 332, § 5; 67 Del. Laws, c. 20, §§ 1, 2; 69 Del. Laws, c. 154, §§ 1, 3; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 384, §§ 5, 6; 73 Del. Laws, c. 396, § 1.)

§ 8326. Nonoccupational disability pension; eligibility.

Any present or future member of the State Police who shall become disabled due to any nonoccupational injury or disease, or who shall die while an active member of the State Police and after having served as an active member of the State Police for at least one third of the required number of years for regular pension, shall be eligible for a nonoccupational disability pension. When a member of the State Police shall desire to retire by reason of a nonoccupational injury or disease that causes the member to become disabled, the member shall make application in writing, and, in the case of death, the surviving spouse, minor children or dependent parent shall make application in writing to the Board of Pension Trustees for such pension. Whereupon, the Board of Pension Trustees shall call to its assistance the aid of a physician or surgeon representing the Board of Pension Trustees, and the member may also call to the member's aid a physician or surgeon. The Board of Pension Trustees shall determine by resolution, passed by at least a majority of the members of the Board of Pension Trustees, whether such member is entitled to the benefits of this subchapter, and if so determined, such member shall be retired upon a pension equal to one half of the member's salary at the time of retirement, and in the case of death, the following persons shall receive a pension equal to one half of the salary of the member in the following order of preference: surviving spouse, children, dependent parent. Such pension to such children shall be discontinued when the youngest living dependent child shall cease to be a dependent as defined by § 8351(4) of this title. Nothing in this section shall be construed as to conflict with any other section contained within this subchapter; provided, however, that any retired police member entitled to receive a pension under this section prior to January 1, 1972, shall, as of that date, receive an amount equal to one half the monthly salary provided under this chapter for an active duty officer of the same rank as that held by the retired State Police member. Thereafter, pensions of retired State Police members eligible to receive such pensions under this section shall not be recomputed based on the salaries of active duty member of the State Police. A dependent entitled to receive a payment under this section prior to January 1, 1972, shall as of that date receive an amount equal to one half the monthly salary provided under this chapter to an active duty officer of the same rank as the decedent through whom the dependent claims. Thereafter, pensions of dependents eligible to receive payments under this section shall not be recomputed based on the salaries of active duty State Police members. Provided further, that as of July 1, 1974, the monthly amount payable to those eligible to receive payments under this section shall increase on July 1 of each year by any cumulative percentage increase in the national consumer price index average of the previous calendar year, plus the aggregated cumulative percentage change in the national consumer price index average of the previous consecutive years in which an increase was not granted. A cumulative percentage decrease in any calendar year shall not result in any reduction in the pension rates.

(11 Del. C. 1953, § 8326; 52 Del. Laws, c. 128; 54 Del. Laws, c. 89, § 4; 57 Del. Laws, c. 741, § 41C; 58 Del. Laws, c. 332, § 6; 67 Del. Laws, c. 20, § 3; 69 Del. Laws, c. 154, §§ 3, 4; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 384, §§ 7, 8.)

§ 8327. Limitations on pension benefits.

Sections 8323, 8324 and 8326 of this title shall apply to and be for the benefit of any member of the State Police retired as of June 28, 1963, or at any time thereafter, or to the surviving spouse, minor children or sole dependent parent, as the case may be, and such pension payments, as adjusted from time to time as provided in this subchapter, shall continue so long as any person is entitled thereto by virtue of this subchapter.

(11 Del. C. 1953, § 8327; 54 Del. Laws, c. 89, § 5; 56 Del. Laws, c. 115; 69 Del. Laws, c. 154, § 3; 70 Del. Laws, c. 186, § 1.)

§ 8328. Adjustment of benefits.

(a) On and after July 1, 1972, no pension which has been in effect for 3 years shall be subject to adjustment. This provision shall not apply to adjustments of pensions required to implement subsection (b) of this section.

(b) Effective September 1, 1972, the amount of any pension in effect on July 1, 1969, shall be the greater of: (1) The monthly pension rate paid in July, 1969, or (2) the recalculated amount determined as a result of audits made between May, 1971, and June 30, 1972,

inclusive of any increases provided between July 1, 1969, and June 30, 1972, provided that the minimum pension payable for any month after July, 1969, shall be the monthly pension rate paid in July, 1969.

(c) Any pension overpayments discovered as a result of audits made between May, 1971, and June 30, 1972, shall not be subject to recovery.

(11 Del. C. 1953, § 8328; 58 Del. Laws, c. 527, § 2.)

§ 8329. Withdrawal of pension contributions.

Upon the withdrawal from service of a member who is not eligible for a service or disability pension, the accumulated contributions with interest shall be paid to the member. This section shall be applied retrospectively to members who withdrew from service on or after July 1, 1976.

(62 Del. Laws, c. 397, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8330. Employer pickup of employee contributions.

(a) Each participating employer, pursuant to the provisions of § 414(h)(2) of the United States Internal Revenue Code [26 U.S.C. § 414(h)(2)], shall pick up and pay the contributions which would otherwise be payable by the members under § 8322 of this title. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the member's compensation.

(b) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each member's compensation equal to the amount of the member's contributions picked up by the employer. This deduction, however, shall not reduce the member's compensation for purposes of computing benefits under the retirement system pursuant to this chapter.

(c) Member contributions shall be credited to a separate account within the member's individual account so that the amount contributed prior to the effective date for the pickup of member contributions may be distinguished from the amounts contributed on or after the effective date.

(d) The contributions, although designated as employee contributions, are being paid by the employer in lieu of the contributions by the employee. The employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system.

(68 Del. Laws, c. 358, § 4.)

§ 8331. Burial benefits.

(a) Upon the death of an individual receiving a pension under this subchapter, a benefit will be paid from the Fund in the same manner as benefits provided under § 5546 of Title 29.

(b) The benefit granted under this section shall not be construed as a contractual obligation of the State or of the Pension Fund and may be revised or terminated by an Act of the General Assembly.

(70 Del. Laws, c. 77, § 1; 76 Del. Laws, c. 80, § 90.)

§ 8332. Payment of benefits.

Benefits shall be due and payable under this chapter only to the extent provided in this chapter, and neither the State nor the Closed State Police Retirement Fund shall be liable for any amount in excess of such sums.

(71 Del. Laws, c. 132, § 85.)

§ 8333. Attachment and assignment of benefits.

Except for orders of the Delaware Family Court for a sum certain payable on a periodic basis, the benefits provided by this chapter shall not be subject to attachment or execution and shall be payable only to the beneficiary designated and shall not be subject to assignment or transfer.

(71 Del. Laws, c. 337, § 6.)

§ 8334. Establishment of Fund.

There shall be established a State Police Retirement Fund, hereinafter referred to as "Fund," to which state appropriations and other employer contributions shall be deposited monthly and to which employee contributions shall be deposited upon deduction from the employee's paycheck and to which earnings on investments, any other contributions, gifts, donations, grants, refunds and reimbursements shall be deposited upon receipt and from which benefits shall be paid and fees and expenses authorized by the Board shall be paid. Subject to Internal Revenue Code § 401(a)(24) [26 U.S.C. § 401(a)(24)], the assets of the Fund will be commingled in the Delaware Public Employees' Retirement System as provided for by § 8308 of this title. The assets of the Fund are held in trust and may not be used for or diverted to any purpose other than for the exclusive benefit of the employees and their beneficiaries.

(76 Del. Laws, c. 279, § 9.)

Subchapter III
Service, Disability and Survivor's Pensions

§ 8351. Definitions.

For purposes of this subchapter:

(1) "Board" shall mean the Board of Pension Trustees established by § 8308 of Title 29.

(2) "Compensation" shall mean all salary or wages, excluding overtime payments and special payments for extra duties, payable to a member for service.

(3) "Credited service" shall mean, for any member:

a. Service as an employee; and

b. Equalized state service if the member elects a unified pension.

(4) "Dependent" shall mean a dependent child or dependent parent. A dependent child is a person who is unmarried and either:

a. Has not attained age 18; or

b. Has attained age 18 but not age 22 and is attending school on a full-time basis; or

c. Has attained age 18 and is permanently disabled as the result of a disability which began before the child attained age 18.

A dependent parent is the parent of a member who was receiving at least one half of the parent's support from the member at the time of the member's death.

(5) "Employee" shall mean an individual who is first employed by the State on or after July 1, 1980, on a full-time basis pursuant to an appointment as a State Police officer, as provided in § 8301 of this title.

(6) "Equalized state service" shall mean:

a. Years of service as an "employee" as defined in § 5501(f)(1), (f)(2), and (f)(3) of Title 29, multiplied by 25/30, provided that the individual is not accruing nor collecting benefits under Chapter 55 of Title 29. It does not include service for which the employee has received the withdrawal benefit provided under § 5530 of Title 29, or the refund provided under § 5523(b) of Title 29, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

b. Years of service as an "employee" as defined in § 5551(5) of Title 29, multiplied by 25/30, provided that the individual is not accruing nor collecting benefits under Chapter 55A of Title 29. It shall not include service for which the employee has received the withdrawal benefit provided by § 5580 of Title 29, or the refund provided by § 5573(b) of Title 29, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

c. Years of service as an "employee" as defined in § 8801(5) of this title multiplied by 25/25, provided that the individual is not accruing nor collecting benefits under Chapter 88 of this title. It shall not include service for which the employee has received the withdrawal benefit provided by § 8824 of this title, or the refund provided by § 8814(d) of this title, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

(7) "Final average compensation" shall mean $^{1}/_{36}$ of the compensation paid to an employee during any period of 36 consecutive months or any 36 months comprised of 3 periods of 12 consecutive months in the years of credited service in which the compensation was highest.

(8) "Fund" shall mean the Fund established by § 8393 of this title.

(9) "Inactive member" shall mean a member who:

a. Has terminated service;

b. Is not eligible to begin receiving a service or disability pension; and

c. Has neither applied for nor received a refund of the contributions.

(10) "Member" shall mean a person who is first hired as an employee on or after July 1, 1980, and whose compensation is not subject to the federal old-age, survivors and disability insurance tax.

(11) Normal retirement date'' shall mean the date at which a member is eligible for a service pension pursuant to § 8363(a) of this title. For a member who has received a disability benefit, the period of disability plus credited service, not to exceed 20 years, shall be used in determining normal retirement date.

(12) "Partial disability" shall mean a medically determined physical or mental impairment which renders the member unable to function as a State Police officer and which is reasonably expected to last at least 12 months.

(13) "Primary survivor" shall mean a person in the following order of priority, unless the priority is changed by the member on a form prescribed by the Board and filed with the Board at the time of the member's death:

a. The surviving spouse; or

b. If there is no eligible surviving spouse, a dependent child (or with the survivor's pension divided among them in equal shares, all such children, including any resulting from a pregnancy prior to the member's death); or

c. If there is no eligible surviving spouse, or eligible dependent child, a dependent parent (or, with the survivor's pension divided between them in equal shares, both such parents).

(14) "Retired member" shall mean a member who has terminated service, other than an inactive member, who is eligible to receive a service or disability pension under this subchapter.

(15) "Total disability" shall mean a medically determined physical or mental impairment which renders the member totally unable to work in any occupation for which the member is reasonably suited by training or experience, which is reasonably expected to last at least 12 months.

(62 Del. Laws, c. 361, § 1; 67 Del. Laws, c. 86, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 167, § 1; 79 Del. Laws, c. 140, § 1; 79 Del. Laws, c. 174, § 1; 82 Del. Laws, c. 87, § 1; 83 Del. Laws, c. 283, § 43.)

§ 8352. Employment of pensioners.

An individual shall not receive a pension under this subchapter for any month during which the individual is an employee, as defined in § 8351(5) of this title or § 5501 of Title 29, unless the individual is:

(1) An official elected by popular vote at a regular or special election; or

(2) An official appointed by the Governor; or

(3) A registration or election official, or a juror; or

(4) Receiving an ordinary service, disability or survivor's pension.

The employment, except employment as an elected official, may not be used for further retirement benefits.

(62 Del. Laws, c. 361, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 142, §§ 1, 2.)

§ 8353. Attachment and assignment of benefits.

Except for orders of the Delaware Family Court for a sum certain payable on a periodic basis, the benefits provided by this chapter shall not be subject to attachment or execution and shall be payable only to the beneficiary designated and shall not be subject to assignment or transfer.

(62 Del. Laws, c. 361, § 1; 71 Del. Laws, c. 337, § 1.)

§ 8354. Powers and duties of the Board.

The Board shall have the power and duty to appoint an Executive Secretary who shall be responsible for determining the eligibility for retirement pension benefits under this chapter.

(82 Del. Laws, c. 87, § 2.)

§ 8361. Mandatory retirement.

A member may retire after accumulating 20 years of credited service as defined in § 8351(3)a. of this title, or shall be retired upon reaching the age of 55 years.

(62 Del. Laws, c. 361, § 1; 66 Del. Laws, c. 192, § 2; 72 Del. Laws, c. 483, § 2.)

§ 8362. Retirement option.

When the member applies for a pension, the member shall choose either a unified pension or an ordinary pension.

(62 Del. Laws, c. 361, § 1; 67 Del. Laws, c. 86, § 9; 70 Del. Laws, c. 186, § 1.)

§ 8363. Eligibility for service pension.

(a) A member shall become eligible to receive a service pension, after the member has terminated employment, beginning with the month when:

(1) The member has 10 years of credited service, and has attained age 62; or

(2) The member's age plus credited service (but not less than 10 years) equals 75; or

(3) The member has 10 years of service and is retired due to age, pursuant to § 8361 of this title; or

(4) The member has 20 years of credited service.

(b) An inactive member with a vested right to a service pension shall become eligible to receive such pension, computed in accordance with this subchapter in effect when the member ceased to be an employee, beginning with the first month after attainment of age 62.

(c) For purposes of this section, credited service shall include any period during which a member is receiving a disability pension as provided by this subchapter.

(d) Any member of the Delaware River and Bay Authority Police Department, the University of Delaware Police Department or a municipal police department not covered under § 8351(6) of this title who is subsequently employed by the Delaware State Police may receive credit for such previous service upon payment to the Fund, on or before the date of issuance of the individual's first benefit check,

of a single lump sum payment equal to the actuarial value of the pension benefits to be derived from such service credits compiled on the basis of actuarial assumptions approved by the Board and the individual's attained age and final average compensation.

(62 Del. Laws, c. 361, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 483, § 1; 73 Del. Laws, c. 373, § 1; 74 Del. Laws, c. 412, § 1.)

§ 8364. Vested rights; cancellation of service credits.

(a) A member who has 10 years of credited service shall have a vested right to a service pension.

(b) If a member who has less than 10 years of credited service ceases to be an employee, the member's service credits to the date of termination shall be cancelled unless:

(1) The member again becomes an employee within 4 months after such cessation of employment; or

(2) The member subsequently acquires 5 years of credited service; or

(3) The member has joined the state employees' pension system; and provided that if the member has withdrawn contributions the member repays with interest at a rate determined by the Board.

(c) For purposes of this section, credited service shall include any period during which a member is receiving a disability pension as provided by this subchapter.

(d) A former employee's vested right shall be forfeited upon application for a refund of accumulated contributions.

(62 Del. Laws, c. 361, § 1; 67 Del. Laws, c. 86, § 12; 70 Del. Laws, c. 186, § 1.)

§ 8365. Eligibility for disability pension.

(a) A member who suffers a partial or total disability resulting from an individual and specific act the type of which would normally occur only while employed as a police officer shall be eligible for a duty-connected disability pension. If such act involves a traumatic event which directly causes an immediate cardiovascular condition which results in partial or total disability, the member shall be eligible for a partial or total duty-connected disability pension.

(b) A member with 5 years of credited service who suffers a partial or total disability and who is not eligible for a duty-connected disability pension shall be eligible for an ordinary partial or total disability pension.

(c) The determination of disability and its cause shall be made by the Board, or, if so delegated by the Board, by the Executive Secretary, after review of medical documentation submitted by the applicant in the form required by the Board.

(d) For the purposes of this section, whether a member is employed as an on-duty state trooper, as a municipal officer pursuant to a contract with the State, or on an authorized special duty function, the following duties shall be presumed to occur only while employed as a police officer, without limiting the scope of acts embraced by subsection (a) of this section:

(1) Engaging in a high-speed chase;

(2) Effecting an arrest (criminal or traffic);

(3) Pursuing a suspect (criminal or traffic);

(4) Patrolling (criminal or traffic);

(5) Directing traffic or removing traffic hazards;

(6) Assisting a civilian, for example, a motorist alongside of the highway or rendering aid in a life-threatening situation (fire, drowning);

(7) In-service training other than physical fitness;

(8) Performing police functions at a crime scene or in connection with the investigation thereof; or

(9) Being assaulted whether by a suspect, detainee, arrestee, prisoner or mental patient.

(62 Del. Laws, c. 361, § 1; 70 Del. Laws, c. 374, § 1; 82 Del. Laws, c. 87, § 3; 83 Del. Laws, c. 286, § 1.)

§ 8366. Payment of service pension.

Service pension payments shall be made to a retired member for each month beginning with the month in which the member becomes eligible to receive such pension and ending with the month in which the member dies.

(62 Del. Laws, c. 361, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8367. Payment of disability pension.

(a) Disability pension payments shall be made to a member for each month beginning with the month in which the member becomes eligible to receive such pension and ending with the month in which the member ceases to be eligible or dies.

(b) [Repealed.]

(c) If a member who is initially determined to be totally disabled recovers, yet is still partially disabled, the total disability pension shall be reduced to a partial disability pension for as long as the member shall remain partially disabled.

(d) If a member who is disabled recovers and is no longer totally or partially disabled, the disability pension shall be discontinued unless:

(1) The member has reached normal retirement date; or

(2) In the case of a duty-connected disability, the member is not offered employment by the State in a position for which the member is suited by training and experience.

(e) A member aggrieved by the reclassification or termination of disability pension pursuant to subsection (c) or (d) of this section may appeal such decision to the Superior Court within 30 days of the day the decision is mailed. The appeal shall be on the record, without a trial de novo. The Court may remand the case to the Board for further proceedings on the record if the Court determines that the record is insufficient for review. When factual determinations are at issue, the Court's review, in the absence of actual fraud, shall be limited to a determination of whether the Board's decision is supported by substantial evidence in the record.

(62 Del. Laws, c. 361, § 1; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 286, § 1.)

§ 8368. Amount of ordinary service pension [For application of this section, see 79 Del. Laws, c. 315, § 10].

(a) The amount of the monthly ordinary service pension payable to a retired member shall be the sum of 2.5% of final average compensation multiplied by years of service up to 20 years inclusive, plus 3.5% of final average compensation multiplied by years of service above 20 years.

(b) Notwithstanding provisions of this chapter to the contrary, a member may elect to have his or her service or disability pension computed under this chapter reduced by 2% thereby providing a survivor's pension equal to $^{2}/_{3}$ of such reduced amount to the employee's eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to the issuance of the employee's first benefit check and shall be irrevocable.

(c) Notwithstanding provisions of this chapter to the contrary, a member may elect to have his or her service or disability pension computed under this chapter reduced by 3% thereby providing a survivor's pension equal to 75% of such reduced amount to the employee's eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to the issuance of the employee's first benefit check and shall be irrevocable.

(d) Notwithstanding provisions of this chapter to the contrary, a member may elect to have his or her service or disability pension computed under this chapter reduced by 6% thereby providing a survivor's pension equal to 100% of such reduced amount to the employee's eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to the issuance of the employee's first benefit check and shall be irrevocable.

(62 Del. Laws, c. 361, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 483, § 4; 79 Del. Laws, c. 315, § 7.)

§ 8369. Amount of unified service, disability or survivor pension.

The amount of the unified pension payable to an employee, former employee or survivor shall be the sum of:

(1) The amount computed according to subchapter III of this chapter, exclusive of service credited under § 8351(6) of this title; plus

(2) The sum of the amounts computed, based on credited service as an employee, according to subchapter II of Chapter 55 of Title 29; subchapter II of Chapter 55A of Title 29; and Chapter 88 of this title.

(62 Del. Laws, c. 361, § 1; 67 Del. Laws, c. 86, § 7.)

§ 8370. Amount of duty-connected disability pension.

(a) The duty-connected total disability pension shall be 75% of compensation plus 10% of compensation for each dependent during the period of dependency, not to exceed a total of 25% of compensation for all dependents.

(b) The duty-connected partial disability pension shall be computed in the same manner as the service pension based on credited service accrued to the date of disability, subject to a minimum of 50% of compensation.

(c) Medical costs made necessary by reason of duty-connected disability shall be paid by the Fund.

(62 Del. Laws, c. 361, § 1.)

§ 8371. Amount of ordinary disability pension.

The ordinary disability pension shall be computed in the same manner as the service pension based on credited service accrued to the date of disability, subject to the following:

(1) In the case of total disability, the minimum pension shall be 50% of compensation plus 5% of compensation for each dependent during the period of dependency, not to exceed a total of 20% of compensation for all dependents; and

(2) In the case of partial disability, the minimum pension shall be 30% of compensation.

(62 Del. Laws, c. 361, § 1.)

§ 8372. Ordinary survivor's pension [For application of this section, see 79 Del. Laws, c. 315, § 10].

(a) Upon the death of a member in service, a monthly survivor's pension shall be payable to the primary survivor equal to $^{1}/_{2}$ of the member's compensation.

(b) Upon the death of a member in service, whose death occurred in the line of duty, a monthly survivor's pension shall be payable to the primary survivor equal to three-quarters of the member's compensation.

(c) Upon the death of a retired member, a monthly survivor's pension shall be payable to the primary survivor and surviving dependents equal to the greater of: (i) $^1/_2$ of such service or disability pension; (ii) if such pension was computed under the provisions of § 8368(b) of this title, $^2/_3$ of such service or disability pension; (iii) if such pension was computed under the provisions of § 8368(c) of this title, 75% of such service or disability pension; or (iv) if such pension was computed under the provisions of § 8368(d) of this title, 100% of such service or disability pension. If the primary survivor is the surviving spouse, such person must have been married to the deceased member:

(1) Prior to retirement; or

(2) For at least 1 year before the date of death, unless the death was the result of an accident.

(d) A survivor's pension shall begin with the month following the month in which the member or retired member dies. If payable to a surviving spouse who dies, it shall become payable in the following month to the next primary survivor as defined in § 8351(13) of this title or cease with that month in the absence of eligible dependents. If payable to a child who dies or fails to meet the conditions of eligibility in § 8351(4) of this title it shall become payable in the following month to a dependent parent or cease with that month in the absence of eligible parents. If payable to a parent, it shall cease with the month in which the parent dies.

(62 Del. Laws, c. 361, § 1; 67 Del. Laws, c. 86, § 16; 69 Del. Laws, c. 154, § 2; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 100, §§ 1, 2; 79 Del. Laws, c. 315, § 8.)

§ 8373. Death benefit.

Upon the death of a member, inactive member, retired member or individual receiving a survivor's pension, there shall be paid to the designated beneficiary or beneficiaries or, in the absence of a designated beneficiary, to the estate of the member, inactive member, retired member or survivor, a lump sum equal to the excess, if any, of the accumulated member contributions with interest over the aggregate of all pension payments made.

(62 Del. Laws, c. 361, § 1.)

§ 8374. Withdrawal benefit.

(a) The accumulated contributions with interest of a member who is neither eligible for a service nor disability pension, nor has a vested right to a service pension, shall be refunded upon withdrawal from service. There shall be a rebuttable presumption that a former member who fails to apply for a withdrawal benefit within 5 years after the date of withdrawal has waived the right to such benefit.

(b) If a member has a vested right to a service pension and withdraws from service and is not immediately eligible for a service or disability benefit, the member may request refund of accumulated contributions with interest. Refund of such contributions shall extinguish all rights to benefits under this subchapter.

(62 Del. Laws, c. 361, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8375. Adjustment of benefits.

(a) A pension payable under this subchapter shall be adjusted no less liberally than adjustments made for pensions payable under the State Employees' Pension Plan, taking into account adjustments to Social Security benefits payable to state employees.

(b) Any reduction in a member's salary, mandated as part of the FY 2010 Annual Appropriations Act [77 Del. Laws, c. 84] and implemented during FY 2010, shall not be used when computing an employee's final average compensation. Rather, the member's base salary as of June 30, 2009, shall be used in calculating the employee's final average compensation as defined in § 8351(7) of this title.

(c) If the final average compensation of an employee has been reduced because of a leave of absence resulting from presidential determinations to augment active forces, such employee shall have their final average compensation adjusted by their amount of military compensation. This adjustment will be no greater then what the employee would have received had they remained in employment for the period of leave. The employee will contribute 7% of the amount that was adjusted.

(62 Del. Laws, c. 361, § 1; 77 Del. Laws, c. 84, § 87; 77 Del. Laws, c. 167, § 2.)

§ 8376. Application for benefits.

(a) A service pension, disability pension, survivor's pension, death benefit or withdrawal benefit shall be paid only upon the filing of an application in a form prescribed by the Board. A monthly benefit shall not be payable for any month earlier than the second month preceding the date on which the application for such benefit is filed.

(b) The Board may require any member, inactive member, retired member or eligible survivor to furnish such information as may be required for the determination of benefits under this subchapter, or to authorize the Board to procure such information. The Board may withhold payment of any pension under this subchapter, whenever the determination of such pension is dependent upon such information and the member, inactive member, retired member or eligible survivor does not cooperate in the furnishing or procuring thereof.

(c) A service pension, disability pension, or survivor's pension applied for under this act may be paid into a Miller Trust Bank account, pursuant to the creation of an irrevocable income assignment trust ("Miller Trust"), established on behalf of an eligible pensioner or survivor covered under this chapter who is a person with disabilities, so long as the Miller Trust is established consistent with the laws

of the State of Delaware, the laws of the United States and in accordance with the rules and regulations of the local and federal agencies responsible for administering assistance programs for persons with disabilities.

(62 Del. Laws, c. 361, § 1; 77 Del. Laws, c. 408, § 5.)

§ 8377. Dual membership prohibited.

No member covered by this subchapter may be covered by subchapter II of this chapter.

(62 Del. Laws, c. 361, § 1.)

§§ 8378-8390. [Reserved.]

§ 8391. Member contributions.

Effective January 1, 2001, member contributions to the Fund shall be 7% of monthly compensation. Effective July 1, 1997, employee pension contributions made pursuant to this section shall not be subject to adjustment or recovery after the expiration of 3 full calendar years from December 31 of the year in which the contributions were made unless no contributions were paid during that calendar year.

(62 Del. Laws, c. 361, § 1; 71 Del. Laws, c. 165, § 7; 72 Del. Laws, c. 483, § 3.)

§ 8392. Actuarial valuations and appropriations.

(a) The actuary shall prepare an actuarial valuation of the assets and liabilities of the funds as of June 30, each year. On the basis of reasonable actuarial assumptions and tables approved by the Board, the actuary shall determine the normal cost required to meet the actuarial cost of current service and the unfunded actuarial accrued liability.

(b) The State's appropriation to the funds for fiscal year 2008, and for each fiscal year thereafter, shall be the percentage of covered payroll approved by the Board on the basis of the most recent actuarial valuation, and shall equal the sum of the normal cost plus the payment required to implement the provisions of subsection (c) of this section plus the payment required to amortize the unfunded actuarial accrued liability using an open amortization period of 20 years. The amortization payment shall be an amount computed as a level percentage of the prospective total covered payroll over the remainder of the amortization periods, with such prospective total covered payroll to be determined on the basis of a growth rate, as determined by the Board, compounded annually. Except as provided in subsection (c) of this section, all funds appropriated pursuant to this subsection shall be deposited into the Fund established by § 8393 of this title.

(c) In order to provide a fund for postretirement increases, the State shall include in its annual appropriation payments equal to 2.33% of covered payroll, subject to the limitations contained in § 5548(a)(2) of Title 29. Beginning with the fiscal year 94 budget, .70% of covered payroll shall be appropriated; in fiscal year 95, 1.11% of covered payroll shall be appropriated; in fiscal year 96, 1.52% of covered payroll shall be appropriated; in fiscal year 97, 1.93% of covered payroll shall be appropriated; in fiscal year 98 and each fiscal year thereafter 2.33% of covered payroll shall be appropriated. Funds appropriated to implement this subsection shall be deposited into the Post Retirement Fund established by § 5548 of Title 29.

(69 Del. Laws, c. 104, § 3; 76 Del. Laws, c. 80, § 68; 78 Del. Laws, c. 116, § 6.)

§ 8393. Establishment of Fund.

There shall be established a State Police Retirement Fund, hereinafter referred to as the "Fund," separate and distinct from the Fund established under subchapter II of this chapter, to which state appropriations and other employer contributions shall be deposited monthly, and to which member contributions shall be deposited upon deduction from the member's paycheck, and to which earnings on investments, refunds and reimbursements shall be deposited upon receipt, and from which benefits shall be paid and fees and expenses authorized by the Board shall be paid. Subject to Internal Revenue Code § 401(a)(24) [26 U.S.C. § 401(a)(24)], the assets of the Fund will be commingled in the Delaware Public Employees' Retirement System as provided for by § 8308 of this title. The assets of the Fund are held in trust and may not be used for or diverted to any purpose other than for the exclusive benefit of the employees and their beneficiaries.

(62 Del. Laws, c. 361, § 1; 71 Del. Laws, c. 121, § 5; 76 Del. Laws, c. 279, § 10.)

§ 8394. Employer pickup of member contributions.

(a) Each participating employer, pursuant to the provisions of § 414(h)(2) of the United States Internal Revenue Code [26 U.S.C. § 414(h)(2)], shall pick up and pay the contributions which would otherwise be payable by the members under § 8391 of this title. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the member's compensation.

(b) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each member's compensation equal to the amount of the member's contributions picked up by the employer. This deduction, however, shall not reduce the member's compensation for purposes of computing benefits under the retirement system pursuant to this chapter.

(c) Member contributions shall be credited to a separate account within the member's individual account so that the amount contributed prior to the effective date for the pickup of member contributions may be distinguished from the amounts contributed on or after the effective date.

(d) The contributions, although designated as employee contributions, are being paid by the employer in lieu of the contributions by the employee. The employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system.

(68 Del. Laws, c. 358, § 5.)

§ 8395. Burial benefits.

(a) Upon the death of an individual receiving a pension under this subchapter, a benefit will be paid from the Fund in the same manner as benefits provided under § 5546 of Title 29.

(b) The benefit granted under this section shall not be construed as a contractual obligation of the State or of the Pension Fund and may be revised or terminated by an act of the General Assembly.

(70 Del. Laws, c. 77, § 2; 76 Del. Laws, c. 80, § 91.)

§ 8396. Payment of benefits.

Benefits shall be due and payable under this chapter only to the extent provided in this chapter, and neither the State nor the New State Police Retirement Fund shall be liable for any amount in excess of such sums.

(71 Del. Laws, c. 132, § 86.)

§ 8397. Other post-employment benefits appropriations.

Funds appropriated to implement this section shall be deposited into the OPEB Fund as established by § 5281 of Title 29.

(76 Del. Laws, c. 70, § 9.)

Part V
Law-Enforcement Administration

Chapter 84
Police Officer Standards and Training Commission

(84 Del. Laws, c. 149, § 1.)

§ 8401. Definitions.

As used in this chapter:

(1) "Approved school" means a school authorized by the Commission to provide mandatory training and education for police officers as prescribed in this chapter.

(2) "Articulation agreement" means a written agreement for the transfer of academic credit.

(3) "Body-worn camera" means an electronic device that is worn by a law-enforcement officer and records audio and video data on the device itself or transmits audio and video data to another location for recording.

(4) "Commission" means the Police Officer Standards and Training Commission.

(5) "Permanent appointment" means appointment by the authority of any municipality or governmental unit in or of this State or the University of Delaware to permanent status as a police officer.

(6) "Police officer" means a sworn member of a police force or other law-enforcement agency of this State or of any county or municipality, whether employed full or part-time, who is responsible for the prevention and the detection of crime and the enforcement of laws of this State or other governmental units within the State.

a. For purposes of this chapter this term shall include permanent law-enforcement officers of the Department of Natural Resources and Environmental Control, state fire marshals, municipal fire marshals who are graduates of a Delaware Police Academy which is accredited/authorized by the Commission, sworn members of the City of Wilmington Fire Department who have graduated from a Delaware Police Academy which is authorized/accredited by the Commission, environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control, agents of the State Division of Alcohol and Tobacco Enforcement, officers or agents of the Delaware Police Sex Offender Task Force, agents employed by a state, county or municipal law-enforcement agency engaged in monitoring sex offenders, state detective or special investigator of the Department of Justice and officers of the University of Delaware Police Division, Delaware State University Police Department.

b. For purposes of this chapter this term does not include the following:

1. A sheriff, regular deputy sheriff or constable.

2. A security force for a state agency or other governmental unit; or, a seasonal, temporary or part-time law-enforcement officer of the Department of Natural Resources and Environmental Control.

3. A person holding police power by virtue of occupying any other position or office.

4. An animal welfare officer of the Office of Animal Welfare or the Department of Agriculture.

(7) "Seasonal appointment" means appointment for less than 6 months each year but more than 4 weeks for police duties necessitated by seasonal demands.

(11 Del. C. 1953, § 8401; 57 Del. Laws, c. 261; 57 Del. Laws, c. 670, § 1A; 63 Del. Laws, c. 31, § 1; 68 Del. Laws, c. 172, §§ 1, 2; 68 Del. Laws, c. 330, § 1; 72 Del. Laws, c. 367, § 2; 72 Del. Laws, c. 371, § 2; 72 Del. Laws, c. 379, § 3; 73 Del. Laws, c. 195, § 2; 73 Del. Laws, c. 249, § 2; 74 Del. Laws, c. 250, § 2; 74 Del. Laws, c. 331, § 1; 76 Del. Laws, c. 43, § 2; 76 Del. Laws, c. 163, § 1; 78 Del. Laws, c. 155, § 4; 79 Del. Laws, c. 200, § 1; 80 Del. Laws, c. 200, § 5; 83 Del. Laws, c. 83, § 2; 84 Del. Laws, c. 149, § 1.)

§ 8402. Members of Commission.

(a) The Commission shall be composed of 17 members.

(b) The Commission shall be composed of the following members:

(1) A chairperson to be appointed by and to serve at the pleasure of the Governor. The chairperson must have substantial practical experience in the field of law enforcement.

(2) Attorney General.

(3) The Superintendent of the Delaware State Police.

(4) The Chief of the City of Wilmington Police.

(5) The Chief of the New Castle County Police Department.

(6) The Chief of the City of Dover Police Department.

(7) The Chief of the City of Newark Police Department.

(8) The Secretary of Education.

(9) The President of the Delaware League of Local Governments.

(10) The mayor of an incorporated municipality in Kent County, to be appointed by the Governor.

(11) The mayor of an incorporated municipality in Sussex County, to be appointed by the Governor.

(12) The chairperson of the Delaware Association of Chiefs of Police.

(13) The chair of Public Safety Committee of the House of Representatives.

(14) The chair of the Corrections and Public Safety Committee of the Senate.

(15) Three members of the public appointed by the Governor as follows:

a. One religious leader from the community who has experience with reentry.

b. Two members of the community who have been impacted directly or are immediate family members or caregivers of those impacted by the juvenile or adult criminal justice system.

(c) Except for the chairperson, members appointed by the Governor may not be a current or former member of law enforcement or affiliated with law enforcement. The Governor shall consider nonbinding recommendations from the NAACP, Delaware Center for Justice, and other nonprofit organizations for the public members appointed under paragraph (b)(15) of this section.

(d) Members appointed by the Governor, except for the chairperson, shall serve for a 3-year term and may be reappointed for 1 additional term. Each term of office shall expire on the date specified in the appointment; however, the board member shall remain eligible to participate in board proceedings unless and until replaced by the Governor. Initial appointments may be for terms of less than 3 years in order to stagger the terms of the appointed members. The Governor shall consider geographic diversity in appointing public members to the Commission.

(e) Members appointed to the Commission, except for the chairperson, who have never served on the Commission may be appointed to the Commission for 2 consecutive terms, but no such person shall thereafter be eligible for 2 consecutive appointments. No public member who has been twice appointed to the Commission or who has served on the Commission for 6 years within any 9-year period shall again be appointed to the Commission until an interim period of at least 3 years has expired since such person last served.

(11 Del. C. 1953, § 8403; 57 Del. Laws, c. 261; 57 Del. Laws, c. 670, §§ 1B, 1C; 63 Del. Laws, c. 31, § 1; 65 Del. Laws, c. 492, §§ 1, 2; 68 Del. Laws, c. 49, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 65, § 9; 83 Del. Laws, c. 83, § 2; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 149, § 1.)

§ 8403. Organization of Commission.

(a) A vice-chairperson and a Secretary shall be elected from among the members of the Commission. The Commission shall hold no less than 4 regular meetings each year and may meet at such other times as it may determine. The chairperson shall fix the time and place of such meetings in the chair's discretion, but upon written request of any 3 members, the chairperson shall call a meeting pursuant to the terms of such request. Nine members shall constitute a quorum. Each member of the Commission may have a proxy to represent the member at Commission meetings.

(b) Notwithstanding any provision of law, Commission membership shall not disqualify a member from holding any other public or private employment or constitute a forfeit of such office.

(c) Commission members shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

(d) The Commission shall allow public comment at its meetings in accordance with § 10004 of Title 29.

(11 Del. C. 1953, § 8404; 57 Del. Laws, c. 261; 57 Del. Laws, c. 670, § 1C; 63 Del. Laws, c. 31, § 1; 65 Del. Laws, c. 492, § 3; 68 Del. Laws, c. 49, § 3; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 83, § 2; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 149, § 1.)

§ 8404. Powers and duties [Effective until Feb. 20, 2027].

(a) The Commission shall do all of the following:

(1) Establish minimum qualifications for applicants as police officers.

(2) Establish minimum educational and training qualifications requisite to permanent appointment as a police officer.

(3) Issue certification of completion of police officer training prescribed under this chapter.

(4) Suspend or revoke certification under any of the following circumstances:

a. A certificate was issued due to fraud, mistake, or deceit.

b. A police officer has failed to successfully complete any in-service or advanced training required by the Commission.

c. A police officer has been convicted of, or received a probation before judgment with respect to, a felony, or any local, state or federal criminal offense involving, but not limited to, theft, fraud, or violation of the public trust, or of any drug law.

d. A police officer has been found, after examination by a licensed psychologist or psychiatrist, to be psychologically or emotionally unfit to perform the duties or exercise the powers and authority of a police officer.

e. A police officer has received a hearing pursuant to Chapter 92 of this title, or who has knowingly and voluntarily waived that individual's right to such a hearing and has done any of the following:

1. Been discharged from employment with a law-enforcement agency for a breach of internal discipline.

2. Retired or resigned prior to the entry of findings of fact concerning an alleged breach of internal discipline for which the individual could have been legitimately discharged had the individual not retired from or resigned that individual's position prior to the imposition of discipline by the employing agency.

f. A police officer has been decertified in another jurisdiction.

(5) Prescribe standards for in-service or continued training of police officers, which shall include at least 2 hours every 4 years on the detection, prevention and prosecution of sexual assault for all police officers who perform uniformed patrol duties or are assigned to investigative units responsible for sex crimes, and which training shall be conducted on a staggered basis so that half of the eligible members of any law-enforcement or police organization receive said training in each 2-year period.

(6) Establish minimum educational and training qualifications for seasonal employment as a police officer.

(7) Establish certification and recertification requirements for police officer applicants who have previously been employed with permanent appointment as a police officer but have not been so employed within the 12 months prior to application.

(8) Prescribe equipment and facility standards for schools at which police training courses shall be conducted, including but not limited to existing county or municipal schools.

(9) Establish minimum training requirements, attendance requirements and standards of operations for police training schools.

(10) Prescribe minimum qualifications for instructors at such schools and certify, as qualified, or decertify such instructors to their particular courses of study.

(11) Approve and issue certificates of approval to such police training schools, to inspect such schools from time to time and to revoke for cause any approval or certificate issued to such schools.

(12) Consult and cooperate with all agencies of government, state and local, concerning the development and administration of the training and standard program and to contract with such agencies as it deems necessary to the performance of its powers and duties.

(13) Accept or receive grants or donations from any source, public or private, for the purposes of this chapter.

(14) Make such rules and regulations as may be necessary to carry out the purposes and objectives of this chapter.

(15) Provide a modification from the application of any provision of this chapter or the rules and regulations promulgated thereunder, for any police officer of a municipality if:

a. The police officer is employed on a seasonal basis; and

b. The municipality makes application for such modification and establishes that it will suffer a hardship if the modification is not granted.

(16) Establish an approved training program for seasonal police officers which shall be required prior to active police duty, and in addition, if the officer is to be armed, that the police officer be certified in the use of firearms at an approved police training school.

(17) Authorize articulation agreements between an approved school and an accredited institution of higher education located in the State for the provision of police officer training prescribed under this chapter.

(18) Establish the criteria to afford reciprocity to police officers certified in other states by an agency like the Commission or by the federal government by waiving some or all of the minimum education and training qualifications for police officers under this chapter if they have satisfied substantially equivalent education and training.

(19) Mandate training for all persons seeking permanent or seasonal appointment as a police officer in the detection, prosecution and prevention of child sexual and physical abuse, exploitation and domestic violence, and the obligations imposed by Delaware law, including § 903 of Title 16, and federal law in the prompt reporting thereof. Such training shall be coordinated under §§ 911 and 931(b)(4) of Title 16 to ensure consistent trainings across disciplines.

(20) Require that all police departments, establish either individually or in combination with other departments, police accountability committees or boards to provide advice to departments on policy, training, and other issues relating to or affecting the department and the communities served by the department. The requirement shall recommend that a police accountability committee or board must include in its membership a religious leader from the community and members of the community who have been impacted directly or are immediate family members or caregivers of those impacted by the juvenile or adult criminal justice system. Non-officer members shall be required, within 1 year of appointment, to complete 20 hours of community training with the departments overseen by the applicable board, which may include ride-alongs or a citizen's police academy. Additional mandates for membership or structure may be included. Police accountability committees or boards are subject to the requirements of the Freedom of Information Act, Chapter 100 of Title 29.

(21) Issue subpoenas for witnesses, documents, physical evidence, or other evidence needed in connection with a hearing conducted under this chapter.

(b) The Department of Safety and Homeland Security shall provide administrative support to the Commission and may hire personnel necessary for the effective administration of this chapter, including oversight of training programs administered by police training academies to ensure they meet minimum standards.

(c) The Commission, in collaboration with government, police union, and community stakeholders, shall periodically review and propose updates as needed to regulations and standards addressing the use and activation of body-worn cameras, including all of the following:

(1) The electronic storage of recordings derived from body-worn cameras.

(2) The dissemination of recordings derived from body-worn cameras.

(3) A victim's right to review the portion of body-worn camera footage that includes statements made by the victim, under § 9403(5) of this title.

(d) The Commission is responsible for providing feedback and recommendations regarding state-level police accreditation to the Delaware Police Accreditation Commission. The Commission shall ensure that every police agency is accredited by the Delaware Police Accreditation Commission no later than July 1, 2028.

(e) The Commission shall maintain a public website for the purposes of providing notice of hearings and meetings, publishing public documents, and enabling interaction and comments from the public.

(11 Del. C. 1953, § 8405; 57 Del. Laws, c. 261; 57 Del. Laws, c. 670, § 1D; 63 Del. Laws, c. 31, § 1; 67 Del. Laws, c. 313, § 1; 68 Del. Laws, c. 330, §§ 2-4; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 331, §§ 2-4; 77 Del. Laws, c. 323, § 3; 80 Del. Laws, c. 55, § 1; 80 Del. Laws, c. 187, § 8; 83 Del. Laws, c. 83, § 2; 84 Del. Laws, c. 149, § 1; 84 Del. Laws, c. 233, § 15; 84 Del. Laws, c. 514, § 21; 85 Del. Laws, c. 142, § 11.)

§ 8404. Powers and duties [Effective Feb. 20, 2027].

(a) The Commission shall do all of the following:

(1) Establish minimum qualifications for applicants as police officers.

(2) Establish minimum educational and training qualifications requisite to permanent appointment as a police officer.

(3) Issue certification of completion of police officer training prescribed under this chapter.

(4) Suspend or revoke certification under any of the following circumstances:

a. A certificate was issued due to fraud, mistake, or deceit.

b. A police officer has failed to successfully complete any in-service or advanced training required by the Commission.

c. A police officer has been convicted of, or received a probation before judgment with respect to, a felony, or any local, state or federal criminal offense involving, but not limited to, theft, fraud, or violation of the public trust, or of any drug law.

d. A police officer has been found, after examination by a licensed psychologist or psychiatrist, to be psychologically or emotionally unfit to perform the duties or exercise the powers and authority of a police officer.

e. A police officer has received a hearing pursuant to Chapter 92 of this title, or who has knowingly and voluntarily waived that individual's right to such a hearing and has done any of the following:

1. Been discharged from employment with a law-enforcement agency for a breach of internal discipline.

2. Retired or resigned prior to the entry of findings of fact concerning an alleged breach of internal discipline for which the individual could have been legitimately discharged had the individual not retired from or resigned that individual's position prior to the imposition of discipline by the employing agency.

f. A police officer has been decertified in another jurisdiction.

(5) Prescribe standards for in-service or continued training of police officers, which must be conducted on a staggered basis so that half of the eligible members of any law-enforcement or police organization receive said training in each 2-year period, and which must include the following:

a. At least 2 hours every 4 years on the detection, prevention and prosecution of sexual assault for all police officers who perform uniformed patrol duties or are assigned to investigative units responsible for sex crimes.

b. Training on the Juvenile Civil Citation Offender Program.

(6) Establish minimum educational and training qualifications for seasonal employment as a police officer.

(7) Establish certification and recertification requirements for police officer applicants who have previously been employed with permanent appointment as a police officer but have not been so employed within the 12 months prior to application.

(8) Prescribe equipment and facility standards for schools at which police training courses shall be conducted, including but not limited to existing county or municipal schools.

(9) Establish minimum training requirements, attendance requirements and standards of operations for police training schools.

(10) Prescribe minimum qualifications for instructors at such schools and certify, as qualified, or decertify such instructors to their particular courses of study.

(11) Approve and issue certificates of approval to such police training schools, to inspect such schools from time to time and to revoke for cause any approval or certificate issued to such schools.

(12) Consult and cooperate with all agencies of government, state and local, concerning the development and administration of the training and standard program and to contract with such agencies as it deems necessary to the performance of its powers and duties.

(13) Accept or receive grants or donations from any source, public or private, for the purposes of this chapter.

(14) Make such rules and regulations as may be necessary to carry out the purposes and objectives of this chapter.

(15) Provide a modification from the application of any provision of this chapter or the rules and regulations promulgated thereunder, for any police officer of a municipality if:

a. The police officer is employed on a seasonal basis; and

b. The municipality makes application for such modification and establishes that it will suffer a hardship if the modification is not granted.

(16) Establish an approved training program for seasonal police officers which shall be required prior to active police duty, and in addition, if the officer is to be armed, that the police officer be certified in the use of firearms at an approved police training school.

(17) Authorize articulation agreements between an approved school and an accredited institution of higher education located in the State for the provision of police officer training prescribed under this chapter.

(18) Establish the criteria to afford reciprocity to police officers certified in other states by an agency like the Commission or by the federal government by waiving some or all of the minimum education and training qualifications for police officers under this chapter if they have satisfied substantially equivalent education and training.

(19) Mandate training for all persons seeking permanent or seasonal appointment as a police officer in the detection, prosecution and prevention of child sexual and physical abuse, exploitation and domestic violence, and the obligations imposed by Delaware law, including § 903 of Title 16, and federal law in the prompt reporting thereof. Such training shall be coordinated under §§ 911 and 931(b)(4) of Title 16 to ensure consistent trainings across disciplines.

(20) Require that all police departments, establish either individually or in combination with other departments, police accountability committees or boards to provide advice to departments on policy, training, and other issues relating to or affecting the department and the communities served by the department. The requirement shall recommend that a police accountability committee or board must include in its membership a religious leader from the community and members of the community who have been impacted directly or are immediate family members or caregivers of those impacted by the juvenile or adult criminal justice system. Non-officer members shall be required, within 1 year of appointment, to complete 20 hours of community training with the departments overseen by the applicable board, which may include ride-alongs or a citizen's police academy. Additional mandates for membership or structure may be included. Police accountability committees or boards are subject to the requirements of the Freedom of Information Act, Chapter 100 of Title 29.

(21) Issue subpoenas for witnesses, documents, physical evidence, or other evidence needed in connection with a hearing conducted under this chapter.

(b) The Department of Safety and Homeland Security shall provide administrative support to the Commission and may hire personnel necessary for the effective administration of this chapter, including oversight of training programs administered by police training academies to ensure they meet minimum standards.

(c) The Commission, in collaboration with government, police union, and community stakeholders, shall periodically review and propose updates as needed to regulations and standards addressing the use and activation of body-worn cameras, including all of the following:

(1) The electronic storage of recordings derived from body-worn cameras.

(2) The dissemination of recordings derived from body-worn cameras.

(3) A victim's right to review the portion of body-worn camera footage that includes statements made by the victim, under § 9403(5) of this title.

(d) The Commission is responsible for providing feedback and recommendations regarding state-level police accreditation to the Delaware Police Accreditation Commission. The Commission shall ensure that every police agency is accredited by the Delaware Police Accreditation Commission no later than July 1, 2028.

(e) The Commission shall maintain a public website for the purposes of providing notice of hearings and meetings, publishing public documents, and enabling interaction and comments from the public.

(11 Del. C. 1953, § 8405; 57 Del. Laws, c. 261; 57 Del. Laws, c. 670, § 1D; 63 Del. Laws, c. 31, § 1; 67 Del. Laws, c. 313, § 1; 68 Del. Laws, c. 330, §§ 2-4; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 331, §§ 2-4; 77 Del. Laws, c. 323, § 3; 80 Del. Laws, c. 55, § 1; 80 Del. Laws, c. 187, § 8; 83 Del. Laws, c. 83, § 2; 84 Del. Laws, c. 149, § 1; 84 Del. Laws, c. 233, § 15; 84 Del. Laws, c. 514, § 21; 85 Del. Laws, c. 142, § 11; 85 Del. Laws, c. 140, § 2.)

§ 8404A. Hearings.

In all situations where the provisions of § 8404(a)(4) or § 8410(b) of this title are to be applied to or invoked against any agency or individual, that agency or individual shall be entitled to a hearing in the manner prescribed herein:

(1) The chairperson shall select 3 members of the Commission to comprise a board which will hear evidence on the allegation (hereinafter "board").

(2) Upon conclusion of the hearing provided for in this section, the board shall submit its findings and recommendation to the full Commission in writing for consideration and vote.

(3) The ultimate findings of the Commission shall be final, except that any ruling adverse to any party participating in the hearing may be appealed to the Superior Court within 15 days of receipt of written notification of said finding. Absent an appeal, all findings of the Commission shall become final upon expiration of said appeal deadline.

(4) All hearings shall be conducted in accordance with the Administrative Procedures Act [Chapter 101 of Title 29].

(5) Summaries of the Commission's decisions shall be published on the Commission's websites and are public records for purposes of the Freedom of Information Act (Chapter 100 of Title 29).

(67 Del. Laws, c. 313, § 2; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 149, § 1.)

§ 8405. Mandatory training; exceptions.

(a) Except as provided in subsection (e) of this section, every municipality or other governmental unit of this State employing or intending to employ police officers shall require their attendance at an approved school. Every such municipality, other governmental unit or the University of Delaware or Delaware State University shall require that no person be given or accept an appointment as a police officer unless such person has successfully completed the required police training and education course at an approved school.

(b) [Repealed.]

(c) All police officers and all persons seeking permanent appointment as a police officer shall undergo training to assist them in identifying symptoms of mental illness, mental disability, and/or physical disability and in responding appropriately to situations involving persons having a mental illness, mental disability, and/or physical disability. The training must include instruction concerning the interaction between police officers and minors that have a mental illness, mental disability and/or physical disability.

(d) A component of training for all persons enrolled in an approved school must be a course in the detection, prosecution, and prevention of sexual assault. Such evidence-based training must be victim-centered, and trauma-informed.

(e) [Repealed.]

(11 Del. C. 1953, § 8406; 57 Del. Laws, c. 261; 57 Del. Laws, c. 670, § 1D; 63 Del. Laws, c. 31, § 1; 67 Del. Laws, c. 230, §§ 1, 2; 68 Del. Laws, c. 330, § 5; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 367, § 3; 75 Del. Laws, c. 292, § 1; 80 Del. Laws, c. 55, § 1; 83 Del. Laws, c. 37, § 12; 84 Del. Laws, c. 149, § 1.)

§ 8406. [Reserved.]

§ 8407. Compensation.

During any training program, the compensation or wages of any trainee police officer shall be the responsibility of the employing authority. The responsibility for providing all other costs, including but not limited to tuition, living expenses, books and equipment excluding transportation costs of any trainee police officer shall be that of the Commission.

(11 Del. C. 1953, § 8408; 57 Del. Laws, c. 261; 57 Del. Laws, c. 670, § 1D; 63 Del. Laws, c. 31, § 1; 84 Del. Laws, c. 149, § 1.)

§ 8408. Appropriations.

The General Assembly shall appropriate each year to the Commission through the Department of Safety and Homeland Security such funds as are necessary for the purpose of carrying out this chapter.

(11 Del. C. 1953, § 8410; 57 Del. Laws, c. 261; 57 Del. Laws, c. 670, § 1E; 63 Del. Laws, c. 31, § 1; 74 Del. Laws, c. 110, § 138; 84 Del. Laws, c. 149, § 1.)

§ 8409. Reimbursement [For application of this section, see 84 Del. Laws, c. 52, § 2].

(a) Every municipality or other governmental unit of this State or the University of Delaware or Delaware State University intending to employ on a permanent basis police officers who have satisfactorily completed the mandatory training as required under this chapter and who have completed their training while in the employ of another municipality or another governmental unit of this State or the University of Delaware or Delaware State University within 4 years from the date of satisfactory completion of such mandatory training, shall reimburse the municipality or other governmental unit or the University of Delaware or Delaware State University with whom the police officer was employed at the time of attending the mandatory training program for the cost of training such officer, which shall include the salary, uniforms and equipment and other training expenses, and all employment benefit expenses, testing, and other expenses, such as medical testing, and ammunition, required to attend the police academy, incurred while the officer was attending the mandatory training program. During the first year after completion of the mandatory training program the municipality or other governmental unit or the University of Delaware or Delaware State University by whom the police officer was employed at the time of attending the mandatory training program shall be reimbursed $40,000 for those expenses. During the second year the municipality or other governmental unit shall be reimbursed $30,000 for those expenses. During the third year the municipality or other government unit shall be reimbursed $20,000 for those expenses. During the fourth year the municipality or other government unit shall be reimbursed $10,000 for those expenses.

(b) After November 7, 2022, the 4-year time period described in subsection (a) of this section shall be determined as follows:

(1) The start of the 4-year time period shall be the date the employee graduates from the police academy.

(2) The end of the 4-year time period shall be the last day the employee works for the employer who is seeking reimbursement.

(11 Del. C. 1953, § 8411; 59 Del. Laws, c. 102, § 1; 63 Del. Laws, c. 31, § 1; 72 Del. Laws, c. 367, § 4; 83 Del. Laws, c. 534, § 1; 84 Del. Laws, c. 52, § 1.)

§ 8410. Uncertified police officers.

(a) Police officers of the State or any county or municipality or the University of Delaware or Delaware State University who do not meet the requirements of this chapter and the criteria as established by the Commission have no authority to enforce the laws of the State.

(b) A police force of any county or municipality which does not meet the requirements of this chapter and the criteria established by the Commission will be ineligible to apply for or receive state aid to local law-enforcement funds.

(63 Del. Laws, c. 31, § 1; 72 Del. Laws, c. 367, § 5; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 149, § 1.)

§ 8411. Transition and continuity.

As of August 7, 2023 all powers and duties formerly vested in the Council on Police Training, shall instead be invested in the Police Officer Standards and Training Commission.

(84 Del. Laws, c. 149, § 1.)

Part V
Law-Enforcement Administration

Chapter 84A
Body-Worn Cameras for Law-Enforcement Officers

(83 Del. Laws, c. 83, § 3.)

§ 8401A. Definitions.

For the purposes of this chapter all terms mean as defined as in § 8401 of this title.

(83 Del. Laws, c. 83, § 3.)

§ 8402A. Body-worn camera requirements.

(a) In accordance with the regulations established in §§ 8404, 4321, and 9003 of this title, a police officer, a probation and parole officer of the Department of Correction assigned to a law-enforcement task force, and an employee of the Department of Services for Children, Youth, and Their Families designated as a special investigator or serious juvenile offender officer shall wear a body-worn camera while on duty in a role that is likely to result in interactions with the public.

(b) A police officer, a probation and parole officer of the Department of Correction assigned to a law-enforcement task force, and an employee of Department of Services for Children, Youth, and Their Families designated as a special investigator or serious juvenile offender officer required to wear a body-worn camera under subsection (a) of this section shall use the body-worn camera to record interactions with the public while on duty in accordance with the regulations established in §§ 8404, 4321, and 9003 of this title.

(c) The Department of Safety and Homeland Security, Office of Management and Budget, Department of Technology, Department of Justice, and Office of Defense Services shall work to implement a statewide body-worn camera program as funding is made available to procure body-worn cameras for law-enforcement officers where necessary, to establish a central data storage program to house body-worn camera footage, and to provide adequate personnel to administer the program.

(83 Del. Laws, c. 83, § 3.)

Part V
Law-Enforcement Administration

Chapter 84B
Prohibited Police Practices

(85 Del. Laws, c. 75, § 1.)

§ 8401B. Definitions.

As used in this chapter "law-enforcement agency" means the Delaware State Police, the Wilmington City Police Department, the New Castle County Police, the University of Delaware Police Division, the Delaware State University Police Department, the police force established by the Delaware River and Bay Authority, the police department, bureau of police, or police force of any incorporated municipality, city, or town within this State, the Department of Natural Resources and Environmental Control, the Delaware Capitol Police, Probation and Parole Office of the Department of Correction, Probation and Parole of the Department of Services for Children, Youth and their Families, State Fire Marshal, the Department of Justice, the State Police Drug Diversion Unit, or the State Division of Alcohol and Tobacco Enforcement.

(85 Del. Laws, c. 75, § 1.)

§ 8402B. Law-enforcement agency agreements; prohibitions.

(a) A law-enforcement agency may not enter into, modify, renew, or extend an agreement for either of the following:

(1) To exercise federal civil immigration authority under § 287(g) of the Immigration and Nationality Act [8 U.S.C. §1357(g)].

(2) To detain or house individuals who are in the custody of a federal immigration authority for violations of federal immigration law.

(b) Each unit of local government, law-enforcement agency, and Delaware agency with an existing immigration enforcement agreement must exercise the termination provision contained in the immigration enforcement agreement by August 13, 2025.

(c) Nothing in this section is intended to limit a law-enforcement agency from enforcing any valid court-issued warrants or orders, nor does this section prohibit a law-enforcement agency from complying with other federal statutory or regulatory requirements regarding disclosure of criminal history record information under 28 C.F.R. § 20.1 et seq.

(85 Del. Laws, c. 75, § 1.)

Part V
Law-Enforcement Administration
Chapter 85
State Bureau of Identification
Subchapter I
General Provisions

§ 8501. Purpose of subchapter.

(a) The purpose of this subchapter is to create and maintain an accurate and efficient criminal justice information system in Delaware consistent with this chapter and applicable federal law and regulations, the need of criminal justice agencies and courts of the State for accurate and current criminal history record information, and the right of individuals to be free from improper and unwarranted intrusions into their privacy.

(b) In order to achieve this result, the General Assembly finds that there is a need:

(1) To designate the State Bureau of Identification as the central state repository for criminal history record information;

(2) To require the rapid identification, classification and filing of fingerprints;

(3) To require the reporting of accurate, relevant and current information to the central repository by all criminal justice agencies;

(4) To insure that criminal history record information is kept accurate and current; and

(5) To prohibit the improper dissemination of such information.

(c) This subchapter is intended to provide a basic statutory framework within which these objectives can be attained.

(63 Del. Laws, c. 188, § 1.)

§ 8502. Definitions.

The following words, terms and phrases, when used in this subchapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Administration of criminal justice" shall mean performance of any of the following activities: Detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correction supervision, or rehabilitation of accused persons or criminal offenders, criminal identification activities, and the collection, storage and dissemination of criminal history record information.

(2) "Conviction data" means any criminal history record information relating to an arrest which has led to a conviction or other disposition adverse to the subject. "Conviction or other disposition adverse to the subject" means any disposition of charges, except a decision not to prosecute, a dismissal or acquittal; provided, however, that a dismissal entered after a period of probation, suspension or deferral of sentence shall be considered a disposition adverse to the subject.

(3) "Criminal history background check" means the acquisition of state or federal criminal history record information for an individual.

(4) "Criminal history record information" shall mean information collected by state or federal criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations or other formal criminal charges and any disposition arising therefrom, sentencing, correctional supervision and release. "Criminal history record information" shall include the names and identification numbers of police, probation, and parole officers, and such information shall not be within the definition of a "public record" for purposes of the Freedom of Information Act, Chapter 100 of Title 29. Pursuant to the provisions of this subchapter, upon application the State Bureau of Identification shall release to members of the news media, and to individuals and agencies as defined by this subchapter, a random number that is unique and permanent to each arresting officer as a surrogate for the officer's agency or department-issued identification number. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. Nor shall the term include information contained in:

a. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

b. Original records of entry such as police blotters or other electronically stored information sources maintained by criminal justice agencies which are required by law with long-standing custom to be made public. Notwithstanding any other provision of this title, the arresting criminal justice agency may disclose to the public arrest data that is reasonably contemporaneous to the event for which an individual is currently involved in the criminal justice system;

c. Court records of public judicial proceedings;

d. Published court or administrative opinions or public judicial, administrative or legislative proceedings;

e. Records of traffic offenses maintained by the Division of Motor Vehicles for the purpose of regulating the issuance, supervision, revocation or renewal of driver's, pilot's or other operator's licenses;

f. Announcements of executive clemency.

(5) “Criminal justice agency” shall mean:

a. Every court of this State and of every political subdivision thereof;

b. A government agency or any sub-unit thereof which performs the administration of criminal justice pursuant to statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. Such agencies shall include, but not be limited to, the following:

1. The Delaware State Police.

2. All law-enforcement agencies and police departments of any political subdivision of this State.

3. The State Department of Justice.

4. The Office of the Solicitor of the City of Wilmington.

5. The Delaware Criminal Justice Information System, Office of the Director.

6. The Department of Correction.

7. The Division of Youth Rehabilitative Services.

8. The Division of Family Services.

9. The Division of Alcohol and Tobacco Enforcement.

10. The Federal Bureau of Investigation.

11. The Division of Professional Regulation.

12. The Office of Animal Welfare.

13. The Division of Management Support Services in the Department of Services for Children, Youth and Their Families.

14. The Office of the Child Advocate.

(6) “Criminal Justice Information System” shall mean the computer hardware, software and communications network managed, operated and/or maintained for the Delaware Criminal Justice Information System.

(7) “Disposition” shall include, but not be limited to, trial verdicts of guilty or not guilty, nolle prosequis, Attorney General probations, pleas of guilty or nolo contendere, dismissals, incompetence to stand trial, findings of delinquency or nondelinquency and initiation and completion of appellate proceeding.

(8) “Dissemination” shall mean the transmission of criminal history record information, or the confirmation of the existence or nonexistence of such information. The term shall not include:

a. Internal use of information by an officer or employee of the agency which maintains such information;

b. Transmission of information to the State Bureau of Identification;

c. Transmission of information to another criminal justice agency in order to permit the initiation of subsequent criminal justice proceedings;

d. Transmission of information in response to inquiries from criminal justice agencies via authorized system terminals, which agencies provide and/or maintain the information through those terminals.

e. Whenever a “peace officer” as defined in § 1901 of this title or an “emergency-care provider” as defined in § 2503A of Title 16 alerts a school district or charter school about the presence of a minor child or a child that has reached the age of 18 that continues to be enrolled in high school that has been identified at the scene of a traumatic event. The peace officer or emergency-care provider may only release the student’s name directly to the school district or charter school and state that the student was present at the scene of a traumatic event.

(9) “FBI criminal history systems” shall mean the electronic clearinghouse of crime data accessible to criminal justice agencies nationwide that is maintained by the Federal Bureau of Investigation.

(10) “Governmental agency” shall mean any agency of the government of the United States or the State of Delaware or any political subdivision thereof. It does not include a private individual, any private corporate entity or other nongovernmental entity.

(11) “Law-enforcement officer” shall include police officers, special investigators pursuant to § 9016 of Title 29, the Attorney General and the Attorney General’s deputies, state fire marshals, municipal fire marshals that are graduates of a Delaware Police Academy which is accredited/authorized by the Police Officer Standards and Training Commission, sworn members of the City of Wilmington Fire Department who have graduated from a Delaware Police Academy which is authorized/accredited by the Police Officer Standards and Training Commission, environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control, environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control, sheriffs and their regular deputies, agents of the State Division of Alcohol and Tobacco Enforcement, correctional officers, animal welfare officers of the Office of Animal Welfare, and constables. For purposes of this subchapter, sheriffs and their regular deputies shall not have any arrest authority.

(12) “Nonconviction data” means arrest information without disposition if an interval of 1 year has elapsed from the date of arrest and no active prosecution of the charge is pending, or information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals.

(13) “Rap Back System” shall mean a service maintained by the FBI to provide authorized noncriminal and criminal justice agencies ongoing status notifications of any criminal history subsequently reported to the FBI in its criminal history system after the initial criminal or civil transaction thus eliminating the need for repeated background checks on a person from the same applicant agency.

(14) “Recipient agency” means any government agency which is directed or authorized by law to conduct a criminal history background check for the purposes of employing or licensing any individual in this State.

(15) “Release status” shall mean information concerning whether or not an individual is incarcerated and the reason therefor, which shall include but is not limited to information concerning releases on bail, or on own recognizance, commitments in default of bail, referrals to other agencies, decision of prosecutors not to commence or to postpone criminal proceedings, release from institutions and any conditions imposed concerning those released.

(63 Del. Laws, c. 188, § 1; 65 Del. Laws, c. 452, §§ 1-3; 68 Del. Laws, c. 101, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 199, §§ 12, 13; 71 Del. Laws, c. 205, § 1; 72 Del. Laws, c. 50, § 1; 72 Del. Laws, c. 371, § 3; 72 Del. Laws, c. 379, §§ 4, 5; 73 Del. Laws, c. 249, § 3; 73 Del. Laws, c. 252, §§ 1-5; 74 Del. Laws, c. 224, § 1; 74 Del. Laws, c. 250, § 2; 77 Del. Laws, c. 326, § 1; 78 Del. Laws, c. 266, § 5; 80 Del. Laws, c. 200, § 6; 81 Del. Laws, c. 348, § 1; 82 Del. Laws, c. 165, § 1; 83 Del. Laws, c. 492, § 1; 84 Del. Laws, c. 149, § 8.)

§ 8503. Function; administration; appointment of Director.

(a) The State Bureau of Identification, hereinafter referred to as the “Bureau,” is continued within the Division of State Police. The Bureau shall be the central state repository for criminal history record information (CHRI) and such additional information as specified in this subchapter.

(b) Subject to this subchapter, the Bureau shall be administered by the Superintendent of State Police. It shall be equipped and maintained by the State Police as a separate budget unit within the Department of Safety and Homeland Security.

(c) The Superintendent of State Police shall appoint, subject to the approval of the Department of Safety and Homeland Security, a Director of the Bureau. The Director shall be a regularly appointed member of State Police, who shall be trained and experienced in the classification and filing of fingerprints, and the Director and all other employees of the Bureau shall be subject to the same rules and regulations governing the State Police.

(d) A representative of the Bureau to be designated by the Superintendent shall be a member of any board or regulatory body established for the collection, retention and dissemination of criminal history information.

(42 Del. Laws, c. 181, § 1; 11 Del. C. 1953, § 8501; 57 Del. Laws, c. 670, §§ 4A, 4B; 63 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 138.)

§ 8504. Personnel.

The Bureau personnel shall consist of regular appointed members of the State Police, and such other personnel as may be deemed necessary to carry out this chapter. The personnel so appointed shall each be experienced in the work to be performed by them.

(42 Del. Laws, c. 181, § 2; 11 Del. C. 1953, § 8502; 63 Del. Laws, c. 188, § 1.)

§ 8505. Duty to provide security of criminal history record information and security investigations.

(a) The Director shall provide security of criminal history record information contained in the facilities of the Bureau.

(b) The Director shall establish procedures to assure that Bureau records, under the control or custody of any authorized agency, shall be protected from unauthorized access, disclosure or dissemination.

(c) Each employee of the Bureau working with or having access to criminal history record information shall be made familiar with the substance and intent of this chapter.

(d) Direct access to criminal history record information from the Bureau shall be available only to authorized officers or employees of a criminal justice agency, and, as necessary, to other authorized personnel essential to the proper operation of the criminal history record information system.

(e) The Director shall be responsible for investigations of violations of this chapter.

(63 Del. Laws, c. 188, § 1; 68 Del. Laws, c. 101, § 2.)

§ 8506. Duty to maintain complete and accurate records; performance of annual audit.

(a) The Bureau shall maintain in a complete and accurate manner information received pursuant to this subchapter to the maximum extent feasible.

(b) Any and all criminal history records and other information which is transmitted directly by computer terminal by a criminal justice agency shall be deemed to have been transmitted to the Bureau within the meaning of this subchapter.

(c) The Bureau shall file all information received by it and shall make a systematic record and index thereof, to the end of providing a method of convenient reference and consultation. No information identifying a person received by the Bureau may be destroyed by it until 10 years after the person identified is known or reasonably believed to be dead, or until that person reaches age 80 or reaches age 75 with no criminal activity listed on the person’s record in the past 40 years, whichever shall first occur, except as otherwise provided by statute.

(d) A criminal justice agency shall, upon finding inaccurate criminal history record information of a material nature, notify all criminal justice agencies, and all other persons and agencies, known to have received such information.

(e) When a criminal justice agency receives notification that an inaccuracy appears in criminal history record information having originated with that agency, such agency shall take appropriate steps to correct the inaccuracy.

(f) The Bureau shall assure that an annual audit is conducted of a representative sample of agencies accessing or maintaining data files as provided in this subchapter. This audit shall encompass both manual and computerized data systems, and shall be conducted at such time and according to procedures as the Bureau shall prescribe. A full report of the findings of each audit made pursuant to this subsection shall be communicated to the individual agency so audited.

(42 Del. Laws, c. 181, § 9; 11 Del. C. 1953, § 8509; 63 Del. Laws, c. 188, § 1; 67 Del. Laws, c. 379, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8507. Information to be supplied by law-enforcement officers.

(a) Every law-enforcement officer of the State and of any political subdivision thereof shall transmit to the Bureau:

(1) Within 48 hours after the arrest of any individual, the names, fingerprints if taken and such other data as the Director may from time to time prescribe of all individuals arrested for a criminal offense, including, but not limited to:

a. An indictable offense, or such nonindictable offense as is, or may hereafter be, included in the compilations of the United States Department of Justice;

b. Being a fugitive from justice;

(2) The fingerprints, photographs and other data prescribed by the Director concerning unidentified dead persons;

(3) The fingerprints, photographs and other data prescribed by the Director of all individuals making application for a permit to buy or possess illegal weapons or firearms or to carry concealed a deadly weapon;

(4) A record of the indictable offenses and such nonindictable offenses as are committed within the jurisdiction of the reporting officer, including a statement of the facts of the offense and a description of the offender, so far as known, the offender's method of operation, changes in release status and such other information as the Director may require;

(5) Copies of such reports as are required by law to be made, and as shall be prescribed by the Director, to be made by pawnshops, second-hand dealers and dealers in weapons.

(b) All photographs submitted of individuals described in this section shall be of a recent date, taken while such individuals are attired in civilian clothes.

(42 Del. Laws, c. 181, §§ 3, 6; 11 Del. C. 1953, §§ 8503, 8506; 61 Del. Laws, c. 321, § 1; 63 Del. Laws, c. 188, § 1.)

§ 8508. Information to be supplied by court officials.

Every court of this State or of any political subdivision thereof having original or appellate jurisdiction over indictable offenses, or over such nonindictable offenses as are herein mentioned, shall transmit to the Bureau in such manner as the Director shall designate such information regarding every indictment, information, petitions or complaints of delinquency, or other formal criminal charge, and every change in release status, disposition and sentencing made thereof within 90 days of said action.

(42 Del. Laws, c. 181, § 4; 11 Del. C. 1953, § 8504; 63 Del. Laws, c. 188, § 1; 68 Del. Laws, c. 101, § 3.)

§ 8509. Information to be supplied by heads of institutions.

Every person in responsible charge of an institution to which there are committed individuals convicted of crime, or persons declared to be not guilty by reason of mental illness, or declared incompetent to stand trial for criminal offenses or involuntarily committed for mental illness pursuant to Chapter 50 of Title 16, shall:

(1) Transmit to the Bureau the names, dates of birth and Social Security numbers of all adults so committed and shall report any subsequent change in release status. Every person in responsible charge of such institutions shall also forward to the Bureau the names and photographs of all individuals who are to be discharged from such institutions, after having been confined in such institutions. Such photographs shall be taken immediately before release of such individuals, and the individual shall be attired in civilian clothes.

(2) Pursuant to § 1448A of this title, cause to be transmitted to the Federal Bureau of Investigation, National Instant Criminal Background Check System, such information as may be required to comply with federal laws and regulations relating to background checks for the purchase or transfer of firearms.

(42 Del. Laws, c. 181, § 5; 11 Del. C. 1953, § 8505; 63 Del. Laws, c. 188, § 1; 69 Del. Laws, c. 224, § 2; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 137, §§ 3, 4.)

§ 8510. Information to be supplied by Department of Correction and Division of Youth Rehabilitative Services.

The Department of Correction and the Division of Youth Rehabilitative Services shall, within 48 hours, transmit to the Bureau:

(1) The names, fingerprints, photographs and other data prescribed by the Director, concerning all persons who are received or committed to such penal institution, or who are placed on parole or probation for any offense. Such photographs shall be of a recent date, and taken while such individuals are attired in civilian clothes;

(2) The names and photographs of all prisoners who are to be released or discharged from such institutions, after having been confined in such institutions. Such photographs shall be taken immediately before release of such persons, and the person shall be attired in civilian clothes;

(3) Notice of all paroles granted, revoked or completed, changes in release status, conditional releases, commutations of sentence, pardons and deaths of all persons described in paragraphs (1) and (2) of this section.

(63 Del. Laws, c. 188, § 1; 65 Del. Laws, c. 452, § 4; 70 Del. Laws, c. 186, § 1.)

§ 8510A. Information to be supplied by Division of Professional Regulation.

The Division of Professional Regulation shall transmit to the Bureau, in such manner as the Director shall designate, certain information regarding the Division's investigations, civil enforcement actions or complaints, and changes in license status when such information is related to alleged criminal conduct. By December 27, 2010, the Division, in cooperation with the Executive Director of the Delaware Criminal Justice Information System, shall promulgate regulations governing what information the Division must supply to the Bureau, and the time period in which it must do so.

(77 Del. Laws, c. 326, § 2.)

§ 8511. Time period for submission of required information.

If no time period is prescribed in this subchapter for the submission of information to the Bureau, the information required shall be submitted within such time period and in such manner as the Director shall designate.

(42 Del. Laws, c. 181, § 7; 11 Del. C. 1953, § 8507; 63 Del. Laws, c. 188, § 1.)

§ 8512. Access to institutions and public records.

Any employee of the Bureau, upon written authorization by the Director, may enter any correctional center or mental institution to take or cause to be taken fingerprints or photographs or to conduct investigations relative to any person confined therein, for the purpose of obtaining information which may lead to the identification of criminals; and every person who has charge or custody of public records or documents from which it may reasonably be supposed that information described in this subchapter can be obtained, shall grant access thereto to any employee of the Bureau upon written authorization by the Director or shall produce such records or documents for the inspection and examination of such employee.

(42 Del. Laws, c. 181, § 8; 11 Del. C. 1953, § 8508; 63 Del. Laws, c. 188, § 1.)

§ 8513. Dissemination of criminal history record information.

(a) Upon application, the Bureau shall furnish a copy of all information available pertaining to the identification and criminal history of any person or persons of whom the Bureau has a record to:

(1) Criminal justice agencies and/or courts of the State or of any political subdivision thereof or to any similar agency and/or court in any State or of the United States or of any foreign country for purposes of the administration of criminal justice and/or criminal justice employment;

(2) Any person or the person's attorney of record who requests a copy of the person's own Delaware criminal history record, provided that such person:

a. Submits to a reasonable procedure established by standards set forth by the Superintendent of the State Police to identify one's self as the person whose record this individual seeks; and

b. Pays a reasonable fee as set by the Superintendent, payable to the Delaware State Police;

(3) The Office of Defense Services when requesting information about an individual for whom the Office of Defense Services is attorney of record;

(4) The Commissioner of Elections when requesting the results of a criminal history background check concerning an individual who seeks to become a candidate for an elected office and, who is required to obtain a criminal history background check under Title 15.

(b) Upon application, the Bureau shall, based on the availability of resources and priorities set by the Superintendent of State Police, furnish information pertaining to the identification and criminal history of any person or persons of whom the Bureau has a record, provided that the requesting agency or individual submits to a reasonable procedure established by standards set forth by the Superintendent of the State Police to identify the person whose record is sought. These provisions shall apply to the dissemination of criminal history record information to all of the following:

(1) Individuals and public bodies for any purpose authorized by Delaware state statute or executive order, court rule or decision or order.

(2) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. Said agreement shall embody an agency agreement as prescribed in § 8611 of this title.

(3) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to a specific agreement with a criminal justice agency. Said agreement shall embody an agency agreement as prescribed in 8611 of this title.

(4) Individuals and agencies for purposes of international travel.

(5) Individuals and agencies required to provide a security clearance for matters of national security.

(c) Upon application the Bureau may, based upon the availability of resources and priorities set by the Superintendent of State Police, furnish information pertaining to the identification and conviction data of any person or persons of whom the Bureau has record, provided that the requesting agency or individual submits to a reasonable procedure established by standard set forth by the Superintendent of State Police to identify the person whose record is sought. These provisions shall apply to the dissemination of conviction data to:

(1) Individuals and agencies for the purpose of employment of the person whose record is sought, provided:

a. The requesting individual or agency pays a reasonable fee as set by the Superintendent, payable to the Delaware State Police; and

b. The use of the conviction data shall be limited to the purpose for which it was given;

(2) Members of the news media, provided that the use of conviction data shall be limited to the purpose for which it was given, and the requesting media or news agency pays a reasonable fee as set by the Superintendent, payable to the Delaware State Police.

(d) Dissemination of criminal history record information, by any person or agency other than the Bureau or its designee is prohibited. Notwithstanding this prohibition, the dissemination of criminal history record information by any criminal justice agency is authorized:

(1) In those cases in which time is of the essence and the Bureau is technologically incapable of responding within the necessary time period, or

(2) Whenever dissemination of arrest data to members of the public is authorized by this chapter.

(e) Appropriate records of dissemination shall be retained by the Bureau and criminal justice agencies storing, collecting and disseminating criminal history record information to facilitate audits. Such records shall include, but not be limited to, the names of persons and agencies to whom information is disseminated and the date upon which such information is disseminated.

(f) Unless otherwise specified by the court order directing that a record be sealed, such sealing shall not preclude dissemination of the arrest or conviction information concerning the subject of the court order, nor shall it preclude dissemination of the fact a sealed record exists, providing any dissemination made is pursuant to this chapter and Chapter 43 of this title.

(g) Notwithstanding any law or court rule to the contrary, the dissemination to the defendant or defense attorney in a criminal case of criminal history record information pertaining to any juror in such case is prohibited. For the purposes of this subsection, "juror" includes any person who has received notice or summons to appear for jury service. This subsection shall not prohibit the disclosure of such information as may be necessary to investigate misconduct by any juror.

(42 Del. Laws, c. 181, § 11; 11 Del. C. 1953, § 8511; 59 Del. Laws, c. 551; 63 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 385, § 1; 76 Del. Laws, c. 392, § 5; 77 Del. Laws, c. 348, § 8; 80 Del. Laws, c. 26, § 3; 80 Del. Laws, c. 169, § 11; 81 Del. Laws, c. 348, § 1; 84 Del. Laws, c. 185, § 1.)

§ 8513A. Governmental agency access to the Criminal Justice Information System (CJIS) [Repealed].

(71 Del. Laws, c. 205, § 2; repealed by 80 Del. Laws, c. 169, § 11, eff. Aug. 17, 2015.)

§ 8514. User agreements [Transferred].

Transferred to § 8611 of this title by 80 Del. Laws, c. 169, § 1, effective August 17, 2015.

§ 8515. Furnishing information of injured or deceased persons.

If a law-enforcement officer or the Division of Forensic Science transmits to the Bureau the identification data of any unidentified deceased or injured person or any person suffering from loss of memory, the Bureau shall furnish to such officer or the Division any information available pertaining to the identification of such person.

(42 Del. Laws, c. 181, § 12; 11 Del. C. 1953, § 8512; 63 Del. Laws, c. 188, § 1; 79 Del. Laws, c. 265, § 11.)

§ 8516. Furnishing information without application.

Although no application for information has been made to the Bureau as provided in § 8513 of this title, the Bureau may transmit such information as the Director, in the Director's discretion, designates to such persons as are authorized by § 8513 of this title to make application for it and as are designated by the Director.

(42 Del. Laws, c. 181, § 13; 11 Del. C. 1953, § 8513; 63 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8517. Local assistance.

(a) At the request of any officer or official described in §§ 8507, 8509 and 8510 of this title, the Superintendent of State Police may direct the Director to assist such officer:

(1) In the establishment of local identification and record system;

(2) In investigating the circumstances of any crime and in the identification, apprehension and conviction of the perpetrator or perpetrators thereof, and for this purpose may detail such employee or employees of the Bureau, for such length of time as the Director deems fit; and

(3) Without such request the Director shall, at the direction of the Governor, detail such employee or employees, for such time as the Governor deems fit, to investigate any crime within this State, for the purpose of identifying, apprehending and convicting the perpetrator or perpetrators thereof.

(b) The Governor may, in the Governor's discretion, delegate to the Secretary of Public Safety the powers, duties or functions set forth in this section.

(42 Del. Laws, c. 181, § 14; 11 Del. C. 1953, § 8514; 57 Del. Laws, c. 670, § 4C; 63 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8518. Scientific crime detection laboratory.

To the end that the Bureau may be able to furnish the assistance and aid specified in § 8517 of this title, the Superintendent of the State Police may direct the Director to organize in the Bureau and maintain therein scientific crime detection laboratory facilities.

(42 Del. Laws, c. 181, § 15; 11 Del. C. 1953, § 8515; 63 Del. Laws, c. 188, § 1.)

§ 8519. Certified copies of records.

Any copy of a record, picture, photograph, fingerprint or other paper or document in the files of the Bureau certified by the Director or the Director's designee to be a true copy of the original shall be admissible in evidence in any court of this State in the same manner as the original might be.

(42 Del. Laws, c. 181, § 16; 11 Del. C. 1953, § 8516; 63 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8520. Annual report.

The Director shall submit to the Superintendent of State Police an annual report of the conduct of the office. This report shall present summary statistics of the information collected by the Bureau.

(42 Del. Laws, c. 181, § 17; 11 Del. C. 1953, § 8517; 63 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8521. Access to files.

Only employees of the Bureau and persons specifically authorized by the Director shall have access to the files or records of the Bureau. No such file or record or information shall be disclosed by any person so authorized except to officials as in this subchapter provided.

(42 Del. Laws, c. 181, § 18; 11 Del. C. 1953, § 8518; 63 Del. Laws, c. 188, § 1.)

§ 8522. Authority to take fingerprints, photographs and other data.

(a) To the end that the officers and officials described in §§ 8507, 8509, 8510 and 8525 of this title may be enabled to transmit the reports required of them, such officers and officials shall have the authority and duty to take, or cause to be taken, fingerprints, photographs and other data of persons described in such section. A like authority shall be had by employees of the Bureau who are authorized to enter any institution under § 8512 of this title, as to persons confined in such institutions.

(b) Every person arrested for a crime or crimes enumerated in § 8507 of this title shall submit to being fingerprinted, photographed and shall supply such information as required by the Superintendent. Whoever shall fail to comply with this section shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title. The Justice of the Peace Court shall have jurisdiction over violations of this section.

(42 Del. Laws, c. 181, § 19; 11 Del. C. 1953, § 8519; 63 Del. Laws, c. 188, § 1; 74 Del. Laws, c. 322, § 6.)

§ 8523. Penalties.

(a) Whoever intentionally neglects or refuses to make any report lawfully required of the person under this subchapter, or to do or perform any other act so required to be done or performed by the person, or hinders or prevents another from doing an act so required to be done by such person, shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title.

(b) Any person who knowingly and wrongfully destroys or falsifies by addition or deletion any computerized or manual record of the Bureau or of a criminal justice agency, which contains criminal history record information, or who knowingly permits another to do so, shall be guilty of a class E felony and shall be punished according to Chapter 42 of this title.

(c) Any person who knowingly provides CHRI to another for profit is guilty of a class E felony and shall be punished according to Chapter 42 of this title.

(d) Any person who knowingly provides criminal history record information to a person or agency not authorized by this subchapter to receive such information or who knowingly and wrongfully obtains or uses such information shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title.

(e) Conviction of a violation of this section shall be prima facie grounds for removal from employment by the State or any political subdivision thereof, in addition to any fine or other sentence imposed.

(42 Del. Laws, c. 181, §§ 20, 21; 11 Del. C. 1953, §§ 8520, 8521; 63 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8524. Admissible evidence.

Nothing in this subchapter, or amendments adopted pursuant thereto, shall provide the basis for exclusion or suppression of otherwise admissible evidence in any proceeding before a court, or other official body empowered to subpoena such evidence.

(63 Del. Laws, c. 188, § 1.)

§ 8525. Information voluntarily supplied by individuals.

Whenever a person appears before any of the officers mentioned in § 8507 of this title, and requests an impression of the person's fingerprints, such mentioned officer shall comply with the request, and make at least 2 copies of the impressions on forms supplied by the Bureau. One copy shall be forwarded to the Federal Bureau of Investigation at Washington, D.C., and 1 copy shall be forwarded promptly to the Bureau, subject to § 8513 of this title, together with any personal identification data obtainable. The Bureau shall accept and file such fingerprints and personal identification data submitted voluntarily by such resident in a separate filing system, for the purpose of securing a more certain and easy identification in case of death, injury, loss of memory or change of appearance.

(42 Del. Laws, c. 181, § 10; 11 Del. C. 1953, § 8510; 63 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8526. Voluntary fingerprinting of certain school children.

(a) The Superintendent of State Police shall provide for the training on a time-available basis of volunteers who are nominated by the board of education of each reorganized school district or board of trustees of each private school from parent teacher associations, parent teacher organizations, citizens' advisory councils or other involved groups such as the Girls' Clubs of Delaware, Incorporated, who are involved in student activities or pilot programs dealing with the subject at hand, or as individuals for the purpose of voluntary fingerprinting of pupils in any grades from kindergarten through grade 9. Upon completion of such training prescribed by the Superintendent of State Police, such volunteers may take fingerprints pursuant to this section.

(b) Public and private school officials shall cooperate with the aforesaid organizations in the nomination of volunteers and in setting dates for fingerprinting pupils pursuant to this section and providing school facilities and personnel to assist the volunteers in the fingerprinting process; provided, however, unless otherwise approved by the local board of education that fingerprinting of a pupil shall not occur during school hours for said pupil.

(c) Each school shall provide a form authorizing a pupil's participation in the fingerprinting program upon the signature of the pupil's parent or guardian. No pupil shall be fingerprinted unless a signed authorization form is in the possession of school officials or person conducting the fingerprinting.

(d) School officials shall notify the parents or guardians of eligible pupils of the date set for the fingerprinting program at least 2 weeks prior thereto. For purposes of this subsection, "eligible pupils" means pupils who have not been fingerprinted previously pursuant to this section.

(e) Fingerprinting pursuant to this section shall be done on a fingerprint card provided by the school with the form thereof approved by the Superintendent of State Police. In addition to fingerprints the card shall contain the following information: Name, address, race, sex, date of birth, birthplace, height, weight, color of hair, color of eyes, complexion, scars and the name of the parent or guardian of the pupil.

(f) The completed fingerprint card and any duplicate shall be given to the pupil's parent or guardian. Only upon the request of the pupil's parent or guardian may a duplicate fingerprint card be made.

(64 Del. Laws, c. 201, § 1.)

§ 8527. Criminal history background checks; state and/or federal CHRI reports; receipt by government agencies; procedures.

(a) Notwithstanding any other provision of the law to the contrary, any recipient agency seeking a criminal history background check for the purposes of employing or licensing any individual in this State pursuant to a statutory mandate or authorization shall submit to the Bureau, in the manner and form designated by the Superintendent of State Police, fingerprints and other necessary information in order to obtain the following:

(1) A report of the individual's entire state criminal history record information from the Bureau or a statement from the Bureau that the State Bureau of Identification Central Repository contains no such information relating to that person (state CHRI report);

(2) A report of the individual's entire federal criminal history record information from the Federal Bureau of Investigation (federal CHRI report); and

(3) A report of an individual's subsequent criminal history record information as part of ongoing monitoring and reporting through the Bureau, the FBI's criminal history systems or the Rap Back System.

(b) Unless otherwise specified by statute, the recipient agency shall pay to the Bureau all fees associated with the acquisition of state and federal CHRI reports.

(c) All CHRI reports obtained pursuant this section shall be forwarded to the recipient agency for review associated with the employment and/or licensing of the individual for whom the CHRI reports are sought. For the purposes of this section the Bureau shall be the intermediary and the recipient agency shall be the screening point for the receipt of CHRI reports.

(d) All CHRI reports obtained pursuant to this section are confidential and may only be disclosed to the chief officer of the recipient agency, or the chief officer's designee, or to the individual employed by the recipient agency who has been designated by statute to receive CHRI reports. If disclosed to a designee of the chief officer of the recipient agency, then prior to processing any state or federal CHRI reports, said designee shall receive training in confidentiality and shall sign an agreement to keep such information confidential. Notwithstanding the foregoing and unless otherwise specified by statute, any recipient agency to whom a CHRI report has been disclosed pursuant to this section shall review such CHRI report with the individual for whom it was sought upon the individual's request.

(e) The State Bureau of Identification may release any subsequent CHRI reports to a recipient agency when properly requested. No federal CHRI report shall be disclosed to any private entity at any time except as expressly authorized by the Federal Bureau of Investigation.

(f) Information provided to the recipient agency pursuant this section by the individual for whom any CHRI report is being sought shall be accompanied by an oath or affirmation provided by the recipient agency and signed by the individual under penalty of perjury:

(1) Indicating that said information is true and complete to the best of the individual's knowledge; and

(2) Acknowledging that knowingly and intentionally providing false, incomplete or inaccurate information is a felony.

(g) Any person for whom a CHRI report is being sought pursuant to this section who knowingly and intentionally provides a recipient agency or the Bureau with false, incomplete or inaccurate information shall be guilty of a class F felony and shall be punished according to Chapter 42 of this title. Conviction pursuant to this subsection shall not preclude prosecution for perjury in the second degree pursuant to Chapter 5 of this title.

(h) Fingerprints and other associated information/biometrics collected within this section will be retained for the purpose of continuous comparison to other fingerprints, associated information/biometrics, which are maintained by the Bureau and in the FBI's Next Generation Identification (NGI) system or its successor systems (including civil, criminal, and latent fingerprint repositories).

(i) This section shall apply to any recipient agency seeking a state or federal CHRI report for the purposes of employing or licensing any individual in this State.

(73 Del. Laws, c. 252, § 6; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 348, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 255, § 1.)

Subchapter II
Missing Persons

§ 8531. Definitions.

For purposes of this subchapter:

(1) "Complaint" means a report, notification, or information given to a law-enforcement officer that a person is missing or cannot, with reasonable care, be located.

(2) "Missing person" means a person who is missing, and who also meets 1 of the following characteristics:

a. Is a person with physical, intellectual, or developmental disabilities.

b. The person was, or is, in the company of another person under circumstances indicating that the missing person's safety may be in danger.

c. The person is missing under circumstances indicating that the disappearance was not voluntary.

d. The person is a child.

(3) "Verified location" means the location where it has been confirmed that the missing person was last seen. For purposes of this paragraph (3), "confirmed" includes credible witness identification and verification by video surveillance or similar technology.

(65 Del. Laws, c. 48, § 2; 78 Del. Laws, c. 327, § 1; 84 Del. Laws, c. 219, § 1; 84 Del. Laws, c. 514, § 22.)

§ 8532. Original complaint.

A missing person complaint may be made to any county, town, city or state law-enforcement agency or any other appropriate state agency. The law-enforcement agency having primary jurisdiction over the verified location where a missing person was last seen shall be responsible for receiving a missing person complaint and initiating the investigation. If the location where the missing person was last seen cannot be verified, the law-enforcement agency having primary jurisdiction over the missing person's last known place of residence shall be responsible for receiving a missing person complaint and initiating the investigation. Such complaint shall state the age of the missing person. When an agency has received a missing person complaint, such agency shall immediately disseminate all known facts concerning the missing person to all county and state law-enforcement agencies, and to any other law-enforcement agency which may be appropriate. A new missing person complaint shall have high priority.

(65 Del. Laws, c. 48, § 2; 78 Del. Laws, c. 327, § 1.)

§ 8533. Law-enforcement reports.

The law-enforcement agency which has primary jurisdiction in the area from which a missing person complaint has been filed shall prepare, as soon as practicable, a report on the missing person. Such report shall include, but is not limited to, the following:

(1) All information contained in the original complaint;

(2) All information or evidence gathered by the preliminary investigation, if one was made;

(3) A statement, by the law-enforcement officer in charge, setting forth that officer's assessment of the case, based upon all evidence and information received;

(4) Any additional, supplemental or unusual information which the agency feels may be of importance in locating the missing person.

(65 Del. Laws, c. 48, § 2.)

§ 8534. Dissemination of missing person report.

Upon completion of the missing person report, the law-enforcement agency shall send a copy of the report to:

(1) Each law-enforcement officer having jurisdiction over the location in which the missing person was last seen, or the missing person's last known place of residence;

(2) Each state agency which the reporting law-enforcement agency considers to be potentially involved, and each private agency known to the law-enforcement agency which has, as a part of its functions, the searching for or location of missing persons;

(3) Each state agency to which the nearest relative to the missing person, or the complaint if no relative is located, requests that the report be sent; provided, however, that the forwarding of any report under this section shall be at the discretion of the law-enforcement agency;

(4) Each law-enforcement agency which requests a copy of the missing person report.

(65 Del. Laws, c. 48, § 2; 78 Del. Laws, c. 327, § 2.)

§ 8535. Missing person report involving a child.

(a) If a report of a missing person under § 8532 of this title involves a child, the law-enforcement agency preparing the report under § 8533 of this title shall comply with § 8544 of this title.

(b) If a report of a missing person under § 8532 of this title involves a child, the law-enforcement agency may not prevent an immediate active investigation based on an agency rule that specifies an automatic time limitation for a missing person investigation.

(65 Del. Laws, c. 48, § 2; 84 Del. Laws, c. 219, § 2.)

§ 8536. Dental records.

(a) Each law-enforcement agency shall be provided with dental authorization forms, promulgated by the Attorney General, which when signed by a parent, guardian, or legal custodian of a child permits the release of dental records to law-enforcement authorities.

(b) If the missing person complaint indicates that the missing person is a child, a properly executed dental authorization must be taken to the family dentist and any other dentist who has records that would assist in identification of the missing person. The dental identification must be disseminated to the Medical Examiner and all other appropriate state agencies.

(65 Del. Laws, c. 48, § 2; 84 Del. Laws, c. 219, § 3.)

§ 8537. Unidentified deceased persons — Duties of law-enforcement agency.

A law-enforcement agency shall do all of the following:

(1) Acquire, collect, classify, and preserve any information that would assist in the identification of any deceased individual who has not been identified after the discovery of the deceased individual.

(2) Acquire, collect, classify, and preserve immediately any information that would assist in the location of any missing person, including any child, and provide confirmation as to any entry to the parent, guardian, legal custodian, or next of kin; and the agency shall acquire, collect, classify, and preserve the information as it deems necessary from each parent, guardian, legal custodian, or next of kin.

(3) Exchange the records and information as are provided for in this section with other law-enforcement agencies of this State, of any other state, or of the United States. With respect to missing children, the records and information must be transmitted immediately to other law-enforcement agencies.

(65 Del. Laws, c. 48, § 2; 84 Del. Laws, c. 219, § 4.)

§ 8538. Unidentified deceased persons — Fingerprints.

The Medical Examiner shall promptly furnish the Department of Safety and Homeland Security with copies of the fingerprints of each unidentified deceased person. The copies of such fingerprints shall be on standardized cards, and shall be accompanied by descriptions and other identifying data, including any available information concerning the date and place of death. In any instance where it is not physically possible to furnish prints of all 10 fingers, the prints or partial prints of any fingers, together with identifying data, shall be forwarded by the Medical Examiner to the Department.

(65 Del. Laws, c. 48, § 2; 74 Del. Laws, c. 110, § 138.)

Subchapter III

Missing Children Information Clearinghouse

§ 8541. Established.

The Missing Children Information Clearinghouse, hereinafter referred to as "Clearinghouse," is created within the State Bureau of Identification. The Clearinghouse is established as a central repository of information regarding missing children. Such information shall be collected and disseminated to assist in the location of missing children. The Director of the State Bureau of Identification shall establish services deemed appropriate by the Superintendent of State Police to aid in the location of missing children.

(64 Del. Laws, c. 388, § 1; 65 Del. Laws, c. 48, § 1.)

§ 8542. Definitions.

As used in this subchapter:

(1) "Missing child" means any person who is under the age of 18 years, whose temporary or permanent residence is in Delaware, or is believed to be in Delaware, whose location has not been determined, and who has been reported as missing to a law-enforcement agency.

(2) "Missing child report" is a report prepared on a form designed by the Clearinghouse for use by private citizens and law-enforcement agencies to report missing children information to the Clearinghouse.

(64 Del. Laws, c. 388, § 1; 65 Del. Laws, c. 48, § 1.)

§ 8543. Duties.

(a) The Clearinghouse shall do all of the following:

(1) Provide a form of missing child report for use by private citizens and law-enforcement agencies.

(2) Establish a system of interstate communication of information relating to children determined to be missing.

(3) Provide a centralized file for the exchange of information of missing children within the State.

(4) Interface with the National Crime Information Center ("NCIC") for the exchange of information on a missing child suspected of interstate travel.

(5) Collect, process, maintain, and disseminate information on missing children and strive to maintain or disseminate only accurate and complete information.

(6) Publish the name of and relevant available information on a missing child.

(7) Publish annual statistics regarding missing children.

(b) The Clearinghouse may establish and maintain a list of organizations and groups that provide volunteer search teams for resources relating to missing children.

(64 Del. Laws, c. 388, § 1; 65 Del. Laws, c. 48, § 1; 84 Del. Laws, c. 219, § 5.)

§ 8544. Filing missing child reports; notification upon location; purging information; return of fingerprints.

(a) Every constable, chief police officer, officer in charge, member of the State Police and other law-enforcement agency, and officer of the State and of any local governmental unit shall do all of the following:

(1) Immediately accept and act on information on any missing child by police radio broadcasts and by causing missing child entries to be made into the Delaware Criminal Justice Information System ("DELJIS") and NCIC.

(2) Transmit information to the Clearinghouse, so far as available, on a missing child report concerning a missing child within 24 hours after receipt of the information.

(3) Notify the Delaware Information Analysis Center ("DIAC"). At the request of the law-enforcement agency, DIAC shall assist by providing intelligence and disseminating information on the missing child to the appropriate law-enforcement partners.

(4) Institute appropriate search procedures, including the coordination of volunteer search teams.

(5) Notify the National Center for Missing and Exploited Children.

(b) Any person may submit a missing child report to a local law-enforcement agency having jurisdiction for investigation and referral of the missing child report to the Clearinghouse on any child whose whereabouts is unknown, regardless of the circumstances, and the report must be included in the Clearinghouse database.

(c) The person responsible for notifying the Clearinghouse or a law-enforcement agency of a missing child shall immediately notify the Clearinghouse or the law-enforcement agency of any child whose location has been determined.

(d) Information received under this section must be purged by the appropriate law-enforcement agency and the Clearinghouse immediately on location of a missing child who has been included in the Clearinghouse database. Fingerprints of a missing child provided to a law-enforcement agency or the Clearinghouse must be returned to the person providing the fingerprints on location of the missing child.

(e) The Delaware State Police shall adopt rules and regulations for the utilization of DIAC to assist investigative law-enforcement agencies during their investigation as a resource for the receipt, analysis, and dissemination of information to those entities that have a need and right to know about the missing child.

(64 Del. Laws, c. 388, § 1; 65 Del. Laws, c. 48, § 1; 76 Del. Laws, c. 385, §§ 1, 2; 78 Del. Laws, c. 266, § 6; 84 Del. Laws, c. 219, § 6.)

Subchapter IV
Child Sex Abuse Information Repository

§ 8550. Definitions.

The following words, terms and phrases, when used in this subchapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Child" shall mean any person who is less than 18 years old;

(2) “Child sexual abuse” means any of the following crimes committed against a child:

a. Any sexual offense or child exploitation in violation of any offense within subchapter II, subpart D, and subchapter V of Chapter 5 of this title committed by an adult;

b. Notwithstanding § 1009 of Title 10, any adjudication of delinquency which, if the person had been charged as an adult, would constitute an offense in violation of any offense within subchapter II, subpart D, and subchapter V of Chapter 5 of this title committed by a juvenile; or

c. Any conviction, plea or adjudication of delinquency under the laws of another state, territory or jurisdiction which is the same as or equivalent to the preceding specified offenses.

(3) The term “child sex abuser information” means the following information concerning a person who has been convicted of a violation of the criminal child sex abuse laws of this State:

a. Name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, address of legal residence and a brief description of the crime or crimes committed by the offender;

b. A copy of the fingerprints of the offender; and

c. Any information that the State Bureau of Identification, the Federal Bureau of Investigation or the National Crime Information Center determines may be useful in identifying child sex abusers;

(4) The term “criminal child sex abuse laws of this State” means those sections of the Delaware Criminal Code which establish criminal penalties for the commission of child sex abuse by a parent or other family member of a child or by any other person;

(5) “National Crime Information Center” means the division of the Federal Bureau of Investigation that serves as a computerized information source on wanted criminals, persons named in arrest warrants, runaways, missing children and stolen property for use by federal, state and local law-enforcement authorities.

(68 Del. Laws, c. 441, § 1; 73 Del. Laws, c. 45, § 1.)

§ 8551. Establishment of Child Sex Abuse Information Repository.

The Child Sex Abuse Information Repository is hereby created within the State Bureau of Identification. The Child Sex Abuse Information Repository is established as a central repository of child sex abuser information.

(68 Del. Laws, c. 441, § 1.)

§ 8552. Guidelines.

(a) The Director of the State Bureau of Identification shall coordinate the reporting of child sex abuser information to the Child Sex Abuse Information Repository and shall issue guidelines to all law-enforcement agencies in the State to ensure reporting accuracy.

(b) The guidelines established under subsection (a) of this section shall require that all convictions under the criminal child sex abuse laws of this State are reported to the Child Sex Abuse Information Repository.

(68 Del. Laws, c. 441, § 1.)

§ 8553. Duties.

The Director of the State Bureau of Identification shall ensure that:

(1) Reports of all convictions under the criminal child sex abuse laws of this State are maintained by the Child Sex Abuse Information Repository;

(2) The Child Sex Abuse Information Repository works closely with schools, daycare centers and the Department of Services for Children, Youth and Their Families in providing child sex abuser information;

(3) The Child Sex Abuse Information Repository reports child sex abuser information to the National Crime Information Center; and

(4) The Child Sex Abuse Information Repository maintains close liaison with the National Center on Child Abuse and Neglect and the National Center for Missing and Exploited Children for exchange of information.

(68 Del. Laws, c. 441, § 1.)

Subchapter V

Criminal Background Check for Child Care Providers

§ 8560. Definitions [Repealed].

(68 Del. Laws, c. 441, § 1; 69 Del. Laws, c. 144, §§ 1, 2; 70 Del. Laws, c. 577, §§ 5, 6; repealed by 80 Del. Laws, c. 154, § 2, eff. Apr. 7, 2016.)

§ 8561. Information to be provided to child care providers.

(68 Del. Laws, c. 441, § 1; 69 Del. Laws, c. 144, § 3; 69 Del. Laws, c. 316, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 577, §§ 1-4; 73 Del. Laws, c. 45, § 2; 73 Del. Laws, c. 412, §§ 8, 9; repealed by 80 Del. Laws, c. 154, § 2, eff. Apr. 7, 2016.)

§ 8562. Penalties.

(68 Del. Laws, c. 441, § 1; repealed by 80 Del. Laws, c. 154, § 2, eff. Apr. 7, 2016.)

§ 8563. Child Protection Registry check for health care.

(a) *Definitions.* — (1) "Direct access" means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

(2) "Health-care facility" means any custodial or residential facility where health, nutritional or personal care is provided for persons, including nursing homes, hospitals, home health-care facilities and adult day-care facilities.

(3) "Person seeking employment" means any person applying for employment in a health-care facility.

(b) No employer who operates a health-care facility may hire any person seeking employment without requesting and receiving a Child Protection Registry check for the person. Notwithstanding any provision to the contrary, no person seeking employment with such an employer may be hired if the person seeking employment is currently on the Child Protection Registry at Child Protection Level III or IV as provided in subchapter II of Chapter 9 of Title 16, or has been convicted of any offense contained in Child Protection Level IV, or for 7 years after the conviction date if the person has been convicted of any Level III offense in which a child was the victim. A person who is employed in a health-care facility has an affirmative duty to inform, and shall inform, that person's own employer of any criminal conviction or of any entry on the Child Protection Registry.

(c) Any employer who is required to request a Child Protection Registry check under this section shall obtain a statement signed by the person seeking employment wherein the person authorizes a full release for the employer to obtain the information provided pursuant to such a check.

(d) Notwithstanding the provisions of this section, when exigent circumstances exist which require an employer to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested a Child Protection Registry check. The employment of the person pursuant to this subsection shall be conditional and contingent upon the receipt of the Child Protection Registry check by the employer. Any person hired pursuant to this subsection shall be informed in writing, and shall acknowledge in writing, that the person's own employment is conditional, and contingent upon receipt of the Child Protection Registry check.

(e) The Department of Services for Children, Youth and Their Families shall promulgate regulations giving guidance for a procedure to notify employers of any relevant matters indicated in the Child Protection Registry check.

(f) Costs associated with providing a Child Protection Registry check shall be borne by the State.

(g) Any employer who hires a person seeking employment without requesting and receiving a Child Protection Registry check for such person shall be subject to a civil penalty or not less than $1,000 nor more than $5,000 for each violation.

(h) [Repealed.]

(71 Del. Laws, c. 199, § 15; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 200, § 2; 73 Del. Laws, c. 412, §§ 10-19; 80 Del. Laws, c. 154, § 2.)

§ 8564. Adult Abuse Registry check.

(a) *Definitions.* — As used in this section:

(1) "Adult abuse" means:

a. Physical abuse by unnecessarily inflicting pain or injury to an adult who is impaired. This includes, but is not limited to, hitting, kicking, pinching, slapping, pulling hair or any sexual molestation. When any act constituting physical abuse has been proven, the infliction of pain shall be assumed.

b. Emotional abuse which includes, but is not limited to, ridiculing or demeaning an adult who is impaired, making derogatory remarks to an adult who is impaired or cursing directed towards an adult who is impaired, or threatening to inflict physical or emotional harm on an adult who is impaired.

(2) "Adult who is impaired" means any person 18 years of age or older who, because of physical or mental disability, is substantially impaired in the ability to provide adequately for the person's own care and custody or any person who is a patient or resident of a nursing facility and similar facility.

(3) "Child care facility" means any child care facility that is required to be licensed by the Department of Education, Office of Child Care Licensing.

(4) "Direct access" means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

(5) "Financial exploitation" means the illegal or improper use or abuse by another person, whether for profit or other advantage, of the resources or financial rights of an adult who is impaired.

(6) "Health-care service provider" means any person or entity that provides services in a custodial or residential setting where health, nutritional or personal care is provided for persons receiving care, including, but not limited to, hospitals, home health-care agencies, adult care facilities, temporary employment agencies and contractors that place employees or otherwise provide services in custodial or residential settings for persons receiving care, and hospice agencies. "Health-care services provider" does not include any private individual who is seeking to hire a self-employed health caregiver in a private home.

(7) “Long-term care facility” means any facility required to be licensed under Chapter 11 of Title 16; the Delaware Psychiatric Center; and hospitals certified by the Department of Health and Social Services under § 5001 of Title 16.

(8) “Mistreatment” includes the inappropriate use of medications, isolation, or physical or chemical restraints on or of an adult who is impaired.

(9) “Neglect” means:

a. Lack of attention to physical needs of the adult who is impaired including, but not limited to, toileting, bathing, meals and safety;

b. Failure to report the health problems or changes in health problems or changes in health condition of an adult who is impaired to an immediate supervisor or nurse;

c. Failure to carry out a prescribed treatment plan for an adult who is impaired; or

d. A knowing failure to provide adequate staffing which results in a medical emergency to any adult who is impaired where there has been documented history of at least 2 prior cited instances of such inadequate staffing levels in violation of staffing levels required by statute or regulations promulgated by the Department of Health and Social Services, all so as to evidence a wilful pattern of such neglect.

(10) “Person receiving care” means a person who, because of that person’s physical or mental condition, requires a level of care and services suitable to that person’s needs to contribute to that person’s health, comfort and welfare.

(11) “Person seeking employment” means any person applying for employment with or in a health-care service provider, nursing facility or similar facility or child care facility where the employment may afford direct access, or a person applying for licensure to operate a child care facility. It shall also include a self-employed health caregiver who has direct access in any private home.

(b) The name of any person found, after investigation by the Department of Health and Social Services, to have committed adult abuse, neglect, mistreatment or financial exploitation shall be entered on the Adult Abuse Registry; provided, however, that such person may request an administrative hearing pursuant to Department of Health and Social Services regulations before such entry becomes final. The hearing officer for the administrative hearing shall have the power to compel the attendance of witnesses and the production of evidence. The finding by the hearing officer shall constitute the final decision of the Department of Health and Social Services and shall be appealable, on the record, by either party to Superior Court.

(c) No health-care service provider, nursing home or similar facility, or child care facility shall hire any person seeking employment without first checking the Adult Abuse Registry. For purposes of this subsection, the Adult Abuse Registry shall be the central registry of information maintained pursuant to Chapter 79 of Title 29 relating to the individuals against whom a charge of patient abuse, neglect, mistreatment or financial exploitation has been substantiated.

(d) Notwithstanding the provisions of this section, when exigent circumstances exist which require an employer subject to this section to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested an Adult Abuse Registry check. Any person hired pursuant to this subsection shall be informed in writing, and shall acknowledge in writing, that the person’s employment is conditional and contingent upon receipt of the Adult Abuse Registry check.

(e) Records relating to the Adult Abuse Registry are not public records and are not subject to disclosure under Chapter 100 of Title 29. Regulations promulgated by the Department of Health and Social Services may authorize online access to the names of those actively listed on the Adult Abuse Registry and whether the listing is due to a substantiated finding of abuse, neglect, mistreatment or financial exploitation.

(f) The Delaware Department of Health and Social Services shall promulgate regulations to implement this section. Such regulations may include regulations for Adult Abuse Registry checks of contractors providing services in a custodial or residential setting for persons receiving care, regulations for the disclosure of Adult Abuse Registry records, regulations to establish hearing procedures and length of time on the Adult Abuse Registry, and regulations for the removal of a person from the Adult Abuse Registry before the expiration of the person’s registration period where the Delaware Department of Health and Social Services deems that the person no longer poses a threat to any person receiving care.

(g) Costs associated with providing an Adult Abuse Registry check shall be borne by the State.

(h) Any employer who is required to request and receive an Adult Abuse Registry check and fails to do so shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation. The Justice of the Peace Courts shall have jurisdiction over this offense.

(71 Del. Laws, c. 201, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 476, § 1; 75 Del. Laws, c. 147, § 1; 77 Del. Laws, c. 89, §§ 1-3, 5; 78 Del. Laws, c. 224, § 25; 79 Del. Laws, c. 442, § 2; 81 Del. Laws, c. 79, § 16; 81 Del. Laws, c. 207, § 2; 83 Del. Laws, c. 280, § 2.)

Subchapter VI

Firearm Transaction Approval Program (FTAP)

(83 Del. Laws, c. 330, § 1.)

§ 8570. Purpose and intent.

The purpose and intent of this subchapter is to establish the Delaware Firearm Transaction Approval Program that is compliant with the federal Brady Act, P.L. 103-159, 107 Stat. 1536, 18 U.S.C. § 921 et seq., and to make this State a federally-compliant point of contact state in conjunction with the federal National Instant Criminal Background Check System.

(83 Del. Laws, c. 330, § 1.)

§ 8571. Definitions.

As used in this subchapter:

(1) "FBI" means the Federal Bureau of Investigation.

(2) "Federal firearms licensee" or "FFL" means a person licensed by the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives as a manufacturer, importer, or dealer of firearms.

(3) "Firearm" means as defined under 18 U.S.C. § 921(a)(3).

(4) "Licensed dealer" means as defined under 27 C.F.R. § 478.11.

(5) "Licensed importer" means as defined under 27 C.F.R. § 478.11.

(6) "Licensed manufacturer" means as defined under 27 C.F.R. § 478.11.

(7) "National Crime Information Center" or "NCIC" means the nationwide computerized federal information system of criminal justice data established by the FBI as a service to local, state, and federal criminal justice agencies.

(8) "NICS" means the National Instant Criminal Background Check System.

(9) "NICS POC" means as point of contact is defined under this section.

(10) "NICS POC Guidelines" means the guidelines established and published by the federal government for the operation and implementation of the NICS program by a POC agency.

(11) "Point of contact" or "POC" means a state or local law-enforcement agency serving as an intermediary between an FFL and the federal databases checked by NICS.

(12) "SBI" means the State Bureau of Identification of the Delaware State Police.

(83 Del. Laws, c. 330, § 1.)

§ 8572. SBI as point of contact for NICS, entity to conduct required background checks.

(a) (1) The SBI shall serve as the NICS POC for this State.

(2) Except as provided by other laws of this State, SBI's NICS POC operations are governed by and shall strictly adhere to 28 C.F.R. Part 25 and the NICS POC Guidelines.

(b) The SBI shall conduct background checks required for the lawful sale, transfer, or delivery of firearms under federal law and the law of this State, including under §§ 1448A and 1448B of this title, that occur within this State.

(c) (1) The SBI shall establish a toll-free telephone number that must be operational between the hours of 9:00 a.m. and 9:00 p.m. local time, Monday through Saturday, and 9:00 a.m. and 5:00 p.m. local time, Sunday, to respond to inquiries from FFLs for background checks required under subsection (b) of this section. The SBI may establish another electronic means to respond to inquiries from FFLs for background checks required under subsection (b) of this section in addition to a toll-free telephone number.

(2) Notwithstanding paragraph (c)(1) of this section, the telephone number may, but need not be, operational on Thanksgiving Day, Christmas Day, Good Friday, or on Easter Sunday.

(3) The SBI shall employ and maintain personnel as necessary to effectively and efficiently administer this subchapter and to otherwise effectively serve as this State's federal NICS POC.

(d) On receipt of a request for a background check required under paragraph (c)(1) of this section, SBI shall do all of the following:

(1) Transmit a request for a background check to the Federal Bureau of Investigation, NICS Section, and search other available databases to determine if the potential buyer or transferee is prohibited from receipt or possession of a firearm under § 1448 of this title or federal law.

(2) After receipt of a response from the Federal Bureau of Investigation, NICS Section, and the completion of its search of other available databases, inform the FFL making the inquiry of 1 of the following:

a. That the potential buyer or transferee is prohibited from receipt or possession of a firearm under § 1448 of this title or federal law.

b. That the FFL may proceed with the sale, transfer, or delivery of the firearm may proceed with the process for issuing a license to carry concealed deadly weapons. SBI shall provide the FFL with a unique approval number.

(e) If electronic failure or similar emergency beyond the control of the SBI occurs, the SBI shall immediately notify a requesting FFL of the reason for, and estimated length of, the delay. After a notification under this subsection, the SBI shall inform the FFL making the inquiry of 1 of the following no later than the end of the third business day following a request for a background check by the FFL:

(1) That the potential buyer or transferee is prohibited from receipt or possession of a firearm under § 1448 of this title or federal law.

(2) That the FFL may proceed with the sale, transfer, or delivery of the firearm. SBI shall provide the FFL with a unique approval number.

(f) The SBI may promulgate regulations necessary to administer and enforce this section.

(83 Del. Laws, c. 330, § 1.)

§ 8573. Confidentiality of NICS check and POC records.

(a) The SBI is responsible for maintaining the security, integrity, and confidentiality of all information and records pertaining to the Firearm Transaction Approval Program. The SBI may share such information and records with another state or federal law-enforcement agency or the Judicial Information Center in order to carry out its functions under §§ 8572 and 8574 of this title.

(b) As this State's designated NICS POC, the SBI shall strictly adhere to the federal regulations pertaining to the confidentiality and security of NICS information including 28 C.F.R. §§ 25.6, 25.7, 25.8, 25.9, and 25.11.

(c) (1) The SBI may promulgate regulations consistent with 28 C.F.R. Part 25 to ensure the security, integrity, and confidentiality of all information and records coming into its custody under the Firearm Transaction Approval Program.

(2) Regulations under this section may protect the privacy and confidentiality of this State's citizens to a greater extent than federal law.

(d) Nothing in this subchapter may be construed to allow the State to maintain records containing the names of FFLs who receive unique approval numbers or to maintain records of firearm transactions, including the names or other identification of FFLs and potential buyers or transferees, involving individuals who are not prohibited by § 1448 of this title or federal law from the receipt or possession of firearms for longer than 6 months. However, the SBI may retain whatever information it receives including the identifying information of a potential buyer or transferee if the SBI has reasonable cause to believe the potential buyer or transferee is committing a crime. Nothing in this paragraph may be construed to be a waiver of sovereign immunity.

(e) The Superior Court has exclusive jurisdiction over a violation of subsection (d) of this section.

(83 Del. Laws, c. 330, § 1.)

§ 8574. Procedure and remedies upon denial.

(a) An individual who is denied the right to receive or purchase a firearm under this subchapter may do 1 or more of the following:

(1) Request from the SBI a written explanation for the denial.

(2) Petition the SBI to amend erroneous information in a record pertaining to the individual.

(b) SBI shall respond to a request for a written explanation for the denial under paragraph (a)(1) of this section within 30 days of receipt of the request.

(c) On receipt of a petition under paragraph (a)(2) of this section, the SBI shall do all of the following:

(1) Perform a thorough review of the records that prompted the denial.

(2) Render, within 30 days of receipt of the petition, a final decision regarding the denial. If exceptional circumstances exist, SBI may extend the deadline to file a final decision for an additional 30 days with notice to the petitioner providing the exceptional circumstances.

(d) If the SBI reverses its denial, the SBI shall immediately do all of the following:

(1) Request that an entity that provided it with information that prompted its denial amend its records to reflect accurate information.

(2) Amend its records to reflect accurate information.

(3) Destroy records it maintains which contain erroneous information derived from a background check conducted under this subchapter.

(e) If the SBI upholds it denial, the individual may appeal the decision to the Superior Court on the record.

(f) (1) If the SBI fails to issue a decision on a petition under paragraph (a)(2) of this section within the time requirements in paragraph (c)(2) of this section, the individual may petition the Superior Court for a writ of mandamus to compel the issuance of the decision.

(2) If the SBI fails to amend its records to reflect accurate information under subsection (d) of this section, the individual may petition the Superior Court for a writ of mandamus to require the SBI to correct its records.

(3) If the Superior Court determines that the SBI wilfully refused to issue its decision or amend the record, the Court may award the petitioner costs and reasonable attorneys' fees.

(83 Del. Laws, c. 330, § 1.)

Subchapter VII
Gold Alert Program for Certain Missing Persons

§ 8580. Definitions.

The following words, terms, and phrases when used in this subchapter have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "ACIM Alert Program" or "ACIM" means "A Child is Missing Alert Program". The ACIM Alert Program is a national rapid-response communication network that offers free assistance to law-enforcement agencies to aid in the recovery, identity, or apprehension of missing persons through the use of immediate public notification and dissemination of information via telephone in a targeted community.

(2) “Gold Alert Program” or “Program” means the procedures used to aid in the identification and location of a missing person as defined under paragraphs (4), (5), (6), and (7) of this section. Gold Alerts may be local, regional, or statewide. The initial decision to issue a local Gold Alert is at the discretion of the investigating law-enforcement agency.

(3) “Investigating law-enforcement agency” means the law-enforcement agency which has primary jurisdiction in the area in which a missing person complaint has been filed.

(4) “Missing person with a disability” means a person who is all of the following:

a. Whose whereabouts are unknown.

b. Whose domicile at the time that the person is reported missing is Delaware.

c. Who has a disability.

d. Whose disappearance poses a credible threat to the health or safety of the person, as determined by the investigating law-enforcement agency.

(5) “Missing senior citizen” means a person who is all of the following:

a. Whose whereabouts are unknown.

b. Whose domicile at the time that the person is reported is missing is Delaware.

c. Whose age at the time that the person is first reported missing is 60 years of age or older.

d. Whose disappearance poses a credible threat to the health or safety of the person, as determined by the investigating law-enforcement agency.

(6) “Missing suicidal person” means a person who is all of the following:

a. Whose whereabouts are unknown.

b. Whose domicile at the time that the person is reported missing is Delaware.

c. Whose disappearance is voluntary.

d. Whose statement, actions, or conduct indicate that the missing person may voluntarily cause or inflict harm on themselves, and whose disappearance poses a credible threat to the health or safety of the person, as determined by the investigating law-enforcement agency.

(7) “Missing child” means a person who is all of the following:

a. Whose whereabouts are unknown.

b. Whose domicile at the time that the person is reported missing is Delaware.

c. Who is a minor who has not married, and who resides with a parent or other legal guardian.

d. Whose disappearance does not meet the criteria for an Amber Alert but does pose a credible threat to the health and safety of the person, as determined by the investigating law-enforcement agency.

(76 Del. Laws, c. 379, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 196, § 1.)

§ 8581. Establishment of the Delaware Gold Alert Program.

(a) Each investigating law-enforcement agency shall implement an alert program, consistent with the ACIM Alert Program, for missing senior citizens, missing suicidal persons, missing persons with disabilities, and missing children, and may promulgate necessary rules and regulations for the program. The rules and regulations shall include the following:

(1) Procedures for the use of the Delaware Information Analysis Center (DIAC) to provide support to the investigating law-enforcement agency as a resource for the receipt, analysis, and dissemination of information regarding the missing person and the missing person’s whereabouts.

(2) Procedures for the investigating law-enforcement agency to use to verify whether a senior citizen, a suicidal person, a person with a disability, or a missing child is missing and the circumstances under which the agency must enter descriptive information of the missing person into the Delaware Criminal Justice Information System (DELJIS) and the National Crime Information Center (NCIC) system. The investigating law-enforcement agency shall further notify DIAC, who shall make all the necessary notifications and assist the investigating law-enforcement agency.

(3) The process for reporting the information to designated media outlets in Delaware.

(b) The Delaware State Police shall adopt rules and regulations for the use of DIAC to assist investigating law-enforcement agencies during their investigations as a resource for the receipt, analysis, and dissemination of information to those agencies that have a need and right to know about the missing person.

(76 Del. Laws, c. 379, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 196, § 2.)

§ 8582. Activation of the Gold Alert Program.

(a) When a law-enforcement agency receives notice that a senior citizen, a suicidal person, a person with a disability, or a missing child is missing, the agency shall solicit information from the missing person’s family or legal guardian to provide information regarding the missing person’s physical or mental condition, or both. When the investigating law-enforcement agency verifies that the person is

missing, the investigating law-enforcement agency shall enter the descriptive information of the missing person into DELJIS and the NCIC system. The investigating law-enforcement agency shall further notify DIAC, who shall make all the necessary notifications and assist the investigating law-enforcement agency.

(b) When an investigating law-enforcement agency has verified that a senior citizen, a suicidal person, a person with a disability, or a missing child is missing, the investigating law-enforcement agency shall send an alert to designated media outlets in Delaware. The alert must include all appropriate information that may assist in the safe return of the missing senior citizen, suicidal person, person with a disability, or a missing child along with a statement instructing anyone with information relating to the missing person to contact the investigating law-enforcement agency or a law-enforcement agency within their jurisdiction. Additionally, when an investigating law-enforcement agency has verified that a senior citizen, a suicidal person, a person with a disability, or a missing child is missing, the investigating law-enforcement agency shall contact the Department of Transportation. The Department of Transportation shall adopt rules and regulations for the display on its variable message signs of appropriate information that may assist in the safe return of the missing senior citizen, suicidal person, person with a disability, or a missing child consistent with the Manual on Uniform Traffic Control Devices and federal requirements.

(76 Del. Laws, c. 379, § 1; 78 Del. Laws, c. 16, § 1; 84 Del. Laws, c. 196, § 3.)

§ 8583. Cancellation of a Gold Alert.

(a) The investigating law-enforcement agency shall notify the designated media outlets when a Gold Alert has been cancelled.

(b) A law-enforcement agency that locates a missing person who is the subject of a Gold Alert shall notify DELJIS, NCIC, and DIAC as soon as possible that the missing person has been located. A law-enforcement agency must remove any notifications concerning the missing person from all law-enforcement media platforms, including social media platforms, and law-enforcement websites within 72 hours of being advised that the missing person has been located. Once the data is electronically removed the law-enforcement agency must follow retention and disposition requirements under Chapter 5 of Title 29.

(76 Del. Laws, c. 379, § 1; 83 Del. Laws, c. 519, § 1; 84 Del. Laws, c. 196, § 4.)

Subchapter VII-A

Green Alert Program for Certain Missing Persons.

(81 Del. Laws, c. 391, § 1.)

§ 8580A. Definitions.

As used in this subchapter:

(1) "ACIM Alert Program" or "ACIM" means "A Child is Missing Alert Program," a national rapid-response communication network that offers free assistance to law-enforcement agencies to aid in the recovery, identity, or apprehension of missing persons through the use of immediate public notification and dissemination of information via telephone in a targeted community.

(2) "Gold Alert Program" means as defined in § 8580 of this title.

(3) "Green Alert Program" or "Green Alert" means the procedures used to aid in the identification of a missing member of the armed forces.

(4) "Investigating law-enforcement agency" means the law-enforcement agency that has primary jurisdiction in the area in which a complaint regarding a missing member of the armed forces is filed.

(5) "Missing member of the armed forces" means an individual who meets all of the following:

a. The individual's location is unknown.

b. The individual's domicile is in this State at the time the individual is reported missing.

c. The individual is a veteran or is an active duty member of the United States Armed Forces, including the National Guard or the reserves.

d. The individual is known to have a physical or mental health condition that is related to the individual's service as an active duty member of the United States Armed Forces, including the National Guard or reserves.

e. The individual's disappearance poses a credible threat to the health or safety of the individual, as determined by the investigating law-enforcement agency.

(6) "Veteran" means an individual who has served in the United States Armed Forces, including the National Guard or the reserves.

(81 Del. Laws, c. 391, § 1.)

§ 8581A. Establishment of the Delaware Green Alert Program.

(a) Each law-enforcement agency shall implement a Green Alert Program, consistent with the ACIM Alert Program and the Gold Alert Program, for missing members of the armed forces.

(b) Each law-enforcement agency may promulgate necessary rules and regulations to implement the Green Alert Program. The rules and regulations must include the following:

(1) Procedures for the use of the Delaware Information Analysis Center to provide support to the investigating law-enforcement agency as a resource for the receipt, analysis, and dissemination of information regarding a missing member of the armed forces and the whereabouts of the missing member of the armed forces.

(2) Procedures for the investigating law-enforcement agency to use to verify whether a missing member of the armed forces is missing and the circumstances under which the agency must enter descriptive information of the missing member of the armed forces into the Delaware Criminal Justice Information System and the National Crime Information Center system.

(3) The process for reporting the information to designated media outlets for this State.

(c) The Delaware State Police shall adopt rules and regulations for the use of the Delaware Information and Analysis Center to assist investigating law-enforcement agencies during their investigations as a resource for the receipt, analysis, and dissemination of information to those agencies that have a need and right to know about a missing member of the armed forces.

(d) The Department of Transportation shall adopt rules and regulations for the display on its variable message signs of appropriate information that may assist in the safe return of a missing member of the armed forces, consistent with the Manual on Uniform Traffic Control Devices and federal requirements.

(81 Del. Laws, c. 391, § 1.)

§ 8582A. Activation of the Green Alert Program.

(a) (1) If an investigating law-enforcement agency receives notice that an individual is a missing member of the armed forces, the agency shall solicit information from the family or legal guardian of the missing member of the armed forces to provide information regarding the physical or mental condition of the missing member of the armed forces.

(2) If the investigating law-enforcement agency verifies that the individual is a missing member of the armed forces, the investigating law-enforcement agency shall enter the descriptive information of the missing member of the armed forces into the Delaware Criminal Justice Information System and the National Crime Information Center system.

(3) The investigating law-enforcement agency shall notify the Delaware Information Analysis Center that of the missing member of the armed forces. The Delaware Information Analysis Center shall make all the necessary notifications and assist the investigating law-enforcement agency.

(b) (1) If an investigating law-enforcement agency verifies that an individual is a missing member of the armed forces, the investigating law-enforcement agency shall send an alert to designated media outlets for this State.

(2) The alert must include all appropriate information that may assist in the safe return of the missing member of the armed forces, along with a statement instructing anyone with information relating to the missing member of the armed forces to contact the investigating law-enforcement agency or another law-enforcement agency.

(3) If an investigating law-enforcement agency verifies that an individual is a missing member of the armed forces, the investigating law-enforcement agency shall contact the Department of Transportation. The Department of Transportation shall display on its variable message signs appropriate information that may assist in the safe return of the missing member of the armed forces.

(81 Del. Laws, c. 391, § 1.)

§ 8583A. Cancellation of a Green Alert.

(a) The investigating law-enforcement agency shall notify the designated media outlets when a Green Alert has been cancelled.

(b) A law-enforcement agency that locates a missing member of the armed forces who is the subject of a Green Alert shall notify Delaware Criminal Justice Information System, the National Crime Information Center, and the Delaware Information and Analysis Center as soon as possible that the missing member of the armed forces has been located.

(81 Del. Laws, c. 391, § 1.)

Subchapter VIII
Blue Alert Program for Apprehension of Persons Suspected of Killing or Injuring Law-Enforcement Officers

§ 8584. Definitions.

(a) “ACIM Alert Program” means the “A Child Is Missing Alert Program,” a national rapid-response communication network that offers free assistance to law-enforcement agencies to aid in the recovery, identity, or apprehension of missing persons through the use of immediate public notification and dissemination of information via telephone in a targeted community.

(b) “Gold Alert Program” means the program established in subchapter VII of this chapter to aid in the identification and location of certain missing persons.

(c) “Investigating law-enforcement agency” means the law-enforcement agency that has primary jurisdiction over the area in which a law-enforcement officer has been injured or killed.

(d) “Law-enforcement agency” means a government agency or any subunit thereof which performs the administration of criminal justice pursuant to statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. For the purposes of this subchapter, such agencies shall include, but are not limited to, the following:

(1) The Delaware State Police;

(2) All law-enforcement agencies and police departments of any political subdivision of this State;

(3) The Department of Correction; and

(4) The Department of Justice.

(e) "Law-enforcement officer" includes police officers, the Attorney General and the Attorney General's deputies, sheriffs and their regular deputies, agents of the State Division of Alcohol and Tobacco Enforcement, correctional officers, state fire marshals, municipal fire marshals that are graduates of a Delaware Police Academy which is accredited/authorized by the Police Officer Standards and Training Commission, sworn members of the City of Wilmington Fire Department who have graduated from a Delaware Police Academy which is authorized/accredited by the Police Officer Standards and Training Commission, environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control, and constables. For purposes of this subchapter, "law-enforcement officer" also includes an employee of a federal governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and who has statutory powers of arrest. For purposes of this subchapter, sheriffs and their regular deputies shall not have any arrest authority.

(77 Del. Laws, c. 469, § 1; 78 Del. Laws, c. 266, § 7; 84 Del. Laws, c. 149, § 8.)

§ 8585. Establishment of the Delaware Blue Alert Program.

Each investigating law-enforcement agency shall implement an alert program, consistent with the ACIM Alert Program and the Gold Alert Program, for the apprehension of persons suspected of killing or seriously injuring law-enforcement officers, and may promulgate necessary rules and regulations for implementing the program. The rules and regulations shall include the following:

(1) Procedures for the use of the Delaware Information Analysis Center to provide support to the investigating law-enforcement agency as a resource for the receipt, analysis, and dissemination of information regarding the suspect and the suspect's whereabouts and/or method of escape;

(2) The process for reporting the information to designated media outlets in Delaware; and

(3) Procedures for the investigating law-enforcement agency to determine quickly whether an officer has been "seriously injured or killed" and a Blue Alert therefore needs to be activated.

(77 Del. Laws, c. 469, § 1.)

§ 8586. Activation of the Blue Alert Program.

(a) The Blue Alert Program shall be activated when a suspect for a crime involving the death or serious injury of a law-enforcement officer has not been apprehended and may be a serious threat to the public. Upon notification by an investigating law-enforcement agency that a suspect in a case involving the death or serious injury of a peace officer has not been apprehended and may be a serious threat to the public, the investigating law-enforcement agency shall activate the Blue Alert system and shall notify appropriate participants in the Blue Alert system, as established by regulations promulgated pursuant to this subchapter, when the investigating law-enforcement agency believes that:

(1) A suspect has not been apprehended;

(2) A suspect may be a serious threat to the public; and

(3) Sufficient information is available to disseminate to the public that could assist in locating and apprehending the suspect.

(b) When a Blue Alert is activated pursuant to subsection (a) of this section, the investigating law-enforcement agency shall provide the descriptive information to the Delaware Criminal Justice Information System and the National Crime Information Center system. The investigating law-enforcement agency shall also notify the Delaware Information Analysis Center, which shall make all necessary notifications and provide appropriate assistance to the investigating law-enforcement agency.

(c) When an investigating law-enforcement agency receives notice that a law-enforcement officer has been seriously injured or killed, the agency shall send an alert to designated media outlets in Delaware. The alert must include all appropriate information that may assist in the speedy apprehension of the suspect, including a statement instructing any person with information relating to the incident causing the serious injury or death of the law-enforcement officer to contact the investigating law-enforcement agency.

(d) The investigating law-enforcement agency shall assess the appropriate boundaries of the Blue Alert based on the nature of the suspect and the circumstances surrounding the crime. The Blue Alert area may be less than statewide if the investigating law-enforcement agency determines that the nature of the event makes it probable that the suspect did not leave a designated geographic location.

(77 Del. Laws, c. 469, § 1.)

§ 8587. Termination of a Blue Alert.

(a) The investigating law-enforcement agency shall terminate the Blue Alert with respect to a particular suspect when the suspect is located or the incident is otherwise resolved, or when the investigating law-enforcement agency determines that the Blue Alert system is no longer an effective tool for locating and apprehending the suspect.

(b) The investigating law-enforcement agency shall notify other law-enforcement agencies, Delaware Criminal Justice Information System, National Crime Information Center, the Delaware Information Analysis Center, and other appropriate participants in the Blue

Alert system, when a Blue Alert for a particular suspect has been terminated. The investigating law-enforcement agency shall also notify the designated media outlets when a Blue Alert for a particular suspect has been terminated.

(77 Del. Laws, c. 469, § 1.)

Subchapter IX

Criminal Background Check for Student Teachers [Repealed].

§ 8590. Definitions [Repealed].

(77 Del. Laws, c. 373, § 1; repealed by 80 Del. Laws, c. 154, § 2, eff. Apr. 7, 2016.)

§ 8591. Screening Procedures [Repealed].

(77 Del. Laws, c. 373, § 1; repealed by 80 Del. Laws, c. 154, § 2, eff. Apr. 7, 2016.)

§ 8592. Penalties [Repealed].

(77 Del. Laws, c. 373, § 1; repealed by 80 Del. Laws, c. 154, § 2, eff. Apr. 7, 2016.)

Subchapter X

Driving Privilege Cards

§ 8593. Definitions.

For purposes of this subchapter:

(1) “Applicant” shall mean a prospective driving privilege card holder.

(2) “Driving privilege card” shall mean a card issued pursuant to § 2711(d) of Title 21, to undocumented immigrants who are not eligible for a Delaware driver’s license.

(80 Del. Laws, c. 67, § 4.)

§ 8594. Authority of the State Bureau of Identification.

This subchapter is intended for use by an applicant for a driving privilege card who may or may not have sufficient identification or documentation to prove his or her identity, pursuant to the procedures established in § 8595 of this title. The State Bureau of Identification, hereinafter referred to as “Bureau,” shall facilitate the criminal background check of applicants. The Bureau is hereby authorized to promulgate such reasonable forms, fees, and regulations as may be necessary or desirable to effectuate the provisions of this subchapter.

(80 Del. Laws, c. 67, § 4; 70 Del. Laws, c. 186, § 1.)

§ 8595. Application process.

(a) The applicant shall appear at the Bureau during regular hours of business, and shall inform the Bureau of the applicant’s desire to avail oneself of the procedure set forth in this section.

(1) The applicant shall produce identification documentation. Acceptable documentation shall include the following, with other documentation to be evaluated on a case-by-case basis:

a. A birth certificate;

b. A foreign passport;

c. A foreign driver’s license; or

d. School Identification that includes a photograph.

(2) The applicant will sign an affidavit attesting to the applicant’s identity. The affidavit will inform the applicant that if any of the information provided is proven to be false the applicant could be prosecuted under § 907 of this title.

(3) The applicant shall be required to submit fingerprints and other necessary information in order for the Bureau to run a search of Delaware state criminal databases. This search shall include a review of the applicant’s Delaware criminal history record to determine if the applicant has an alias linked to fingerprints on file at the Bureau.

(4) If the review pursuant to paragraph (a)(3) of this section identifies a conflict between the name the applicant provided and an alias on file with the State, or the applicant has an outstanding warrant for criminal charges in Delaware, the applicant’s fingerprints and other necessary information will be sent by the Bureau to the Federal Bureau of Investigation for a national background check. This national background check shall be comprised of a report of the applicant’s entire federal criminal history record, pursuant to the Federal Bureau of Investigation appropriation of Title 42 of Public Law 92-544 (28 C.F.R. § 20.33 (a)(3)).The Bureau shall be the recipients of said federal criminal history records. All costs associated with obtaining the criminal history reports required by this paragraph shall be borne by the applicant. The applicant must resolve the conflict prior to becoming eligible to obtain a driving privilege card.

(5) Fees for the criminal history background check shall be paid by the applicant prior to the commencement of the background check.

(b) The Bureau shall maintain a record of all background checks under this section to the same extent as is required by law.

(c) The Bureau will make the result known to the Division of Motor Vehicles once the applicant has successfully completed the background check. The Bureau will coordinate with the Division of Motor Vehicles to develop a procedure to ensure the applicant who successful completes this subchapter's procedures is the same individual who applies for a driving privilege card.

(80 Del. Laws, c. 67, § 4; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 197, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 255, § 1.)

Subchapter XI

The National Crime Prevention and Privacy Compact Act

(82 Del. Laws, c. 97, § 1.)

§ 8596. Enactment.

The National Crime Prevention and Privacy Compact Act of 1998 is hereby enacted and entered into with all other jurisdictions legally joining therein in the form substantially as follows. The Compact organizes an electronic information sharing system among the federal government and the states to exchange criminal history records for noncriminal justice purposes authorized by federal or state law, such as background checks for governmental licensing and employment.

Under this Compact, the FBI and the party states agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the federal government and to party states for authorized purposes. The FBI shall also manage the federal data facilities that provide a significant part of the infrastructure for the system.

(82 Del. Laws, c. 97, § 1.)

§ 8597. Definitions.

The following definitions shall apply for the purposes of this section only:

(1) "Attorney General" shall mean the Attorney General of the United States.

(2) "Compact officer" shall mean:

a. With respect to the federal government, an official so designated by the Director of the FBI; and

b. With respect to Delaware, the Director of the State Bureau of Identification or the Director's designee.

(3) "Council" shall mean the Compact Council established under § 8599C of this title.

(4) "Criminal history records" shall mean:

a. Information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; and

b. But does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

(5) "Criminal history repository" shall mean the Delaware State Bureau of Identification.

(6) "Criminal justice" shall mean:

a. Activities relating to the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders; and

b. Criminal identification activities and the collection, storage and dissemination of criminal history records.

(7) "Criminal justice agency" shall mean:

a. Courts; and

b. A governmental agency or any subunit thereof that:

1. Performs the administration of criminal justice pursuant to a statute or executive order; and

2. Allocates a substantial part of its annual budget to the administration of criminal justice; and

c. Federal and state inspectors general offices.

(8) "Criminal justice services" shall mean services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes.

(9) "Criterion offense" shall mean any felony or misdemeanor offense not included on the list of nonserious offenses published periodically by the FBI.

(10) "Direct access" shall mean access to the National Identification Index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.

(11) "Executive order" shall mean an order of the President of the United States or the Governor of the State of Delaware that has the force of law and that is promulgated in accordance with applicable law.

(12) "FBI" shall mean the Federal Bureau of Investigation.

(13) "Interstate Identification System" or "III System" shall mean:

a. The cooperative federal-state system for the exchange of criminal history records; and

b. The National Identification Index, the National Fingerprint File and, to the extent of their participation in such system, the criminal history record repositories of the states and the FBI.

(14) "National Fingerprint File" shall mean a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System.

(15) "National Identification Index" shall mean an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III System.

(16) "National indices" shall mean the National Identification Index and the National Fingerprint File.

(17) "Nonparty State" shall mean a state that has not ratified this Compact.

(18) "Noncriminal justice purposes" shall mean uses of criminal history records for purposes authorized by federal or state law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

(19) "Party state" shall mean a state that has ratified this Compact.

(20) "Positive identification" shall mean:

a. A determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III System;

b. Identifications based solely upon a comparison of subjects' names or other nonunique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification.

(21) "Sealed record information" shall mean:

a. With respect to adults, that portion of a record that is:

1. Not available for criminal justice uses;

2. Not supported by fingerprints or other accepted means of positive identification; or

3. Subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a federal or state statute that requires action on a sealing petition filed by a particular record subject; and

b. With respect to juveniles, whatever each state determines is a sealed record under its own law and procedure.

(22) "State" shall mean any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(82 Del. Laws, c. 97, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 255, § 1.)

§ 8598. Purposes.

The purposes of this Compact are to:

(1) Provide a legal framework for the establishment of a cooperative federal-state system for the interstate and federal-state exchange of criminal history records for noncriminal justice uses;

(2) Require the FBI to permit use of the National Identification Index and the National Fingerprint File by each party state, and to provide, in a timely fashion, federal and state criminal history records to requesting states in accordance with the terms of this Compact and with rules, procedures, and standards established by the Council under § 8599C of this title;

(3) Require party states to provide information and records for the National Identification Index and the National Fingerprint File and to provide criminal history records, in a timely fashion, to criminal history record repositories of other states and the federal government for noncriminal justice purposes in accordance with the terms of this Compact and with rules, procedures, and standards established by the Council under § 8599C of this title;

(4) Provide for the establishment of a Council to monitor III System operations and to prescribe the system rules and procedures for the effective and proper operations of the III System for noncriminal justice purposes; and

(5) Require the FBI and each party state to adhere to III System standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.

(82 Del. Laws, c. 97, § 1.)

§ 8599. Responsibilities of compact parties.

(a) FBI responsibilities. —

The Director of the FBI shall:

(1) Appoint an FBI compact officer who shall:

a. Administer this Compact within the Department of Justice and among federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to § 8599B(c) of this title;

b. Ensure that Compact provisions and rules, procedures, and standards prescribed by the Council under § 8599C of this title are complied with by the Department of Justice and the federal agencies and other agencies and organizations referred to in paragraph (a)(1)a. of this section; and

c. Regulate the use of records received by means of the III System from party states when such records are supplied by the FBI directly to other federal agencies;

(2) Provide to federal agencies and to state criminal history record repositories, criminal history records maintained in its database for the noncriminal justice purposes described in § 8599A of this title, including:

a. Information from nonparty states; and

b. Information from party states that is available from the FBI through the III System but is not available from the party state through the III System;

(3) Provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in § 8599A of this title and ensure that the exchange of such records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

(4) Modify or enter into user agreements with nonparty state criminal history record repositories to require them to establish record request procedures conforming to those prescribed in § 8599B of this title.

(b) State responsibilities. —

Each party state shall:

(1) Appoint a compact officer who shall:

a. Administer this Compact within that state;

b. Ensure that Compact provisions and rules, procedures, and standards established by the Council under § 8599C of this title are complied with in the state; and

c. Regulate the in-state use of records received by means of the III system from the FBI or from other party states;

(2) Establish and maintain a criminal history record repository, which shall provide:

a. Information and records for the National Identification Index and the National Fingerprint File; and

b. The state's III System-indexed criminal history records for noncriminal justice purposes described in § 8599A of this title;

(3) Participate in the National Fingerprint File; and

(4) Provide and maintain telecommunications links and related equipment necessary to support the services set forth in this Compact.

(c) Compliance with III System standards. —

In carrying out their responsibilities under this Compact, the FBI and each party state shall comply with III System rules, procedures, and standards duly established by the Council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III System operation.

(d) *Maintenance of record services.* —

(1) Use of the III system for noncriminal justice purposes authorized in this Compact shall be managed so as not to diminish the level of services provided in support of criminal justice purposes.

(2) Administration of compact provisions shall not reduce the level of service available to authorized noncriminal justice users on the effective date of this Compact.

(82 Del. Laws, c. 97, § 1.)

§ 8599A. Authorized record disclosures.

(a) State criminal history record repositories. —

To the extent authorized by 5 U.S.C. § 552a (commonly known as the "Privacy Act of 1974"), the FBI shall provide on request criminal history records (excluding sealed records) to state criminal history record repositories for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the Attorney General and that authorizes national indices checks.

(b) Criminal justice agencies and other governmental or nongovernmental agencies. —

The FBI, to the extent authorized by 5 U.S.C. § 552a (commonly known as the "Privacy Act of 1974"), and state criminal history record repositories shall provide criminal history records (excluding sealed records) to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the Attorney General that authorizes national indices checks.

(c) Procedures. —

Any record obtained under this Compact may be used only for the official purposes for which the records was requested. Each compact officer shall establish procedures consistent with this Compact and with rules, procedures, and standards established by the Council under § 8599C of this title, which procedures shall protect the accuracy and privacy of the records, and shall:

(1) Ensure that records obtained under this Compact are used only by authorized officials for authorized purposes;

(2) Require that subsequent record checks are requested to obtain current information whenever a new need arises; and

(3) Ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate "no record" response is communicated to the requesting official.

(82 Del. Laws, c. 97, § 1.)

§ 8599B. Record request procedures.

(a) Positive identification. —

Subject fingerprints or other approved forms of positive identification shall be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(b) Submission of state requests. —

Each request for a criminal history record check utilizing the national indices made under any approved state statute shall be submitted through that state's criminal history record repository. A state criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if such request is transmitted through another state criminal history record repository or the FBI.

(c) Submission of federal requests. —

Each request for criminal history record checks utilizing the national indices made under federal authority shall be submitted through the FBI or, if the state criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the state in which such request originated. Direct access to the National Identification Index by entities other than the FBI and state criminal history records repositories shall not be permitted for noncriminal justice purposes.

(d) Fees. —

A state criminal history record repository or the FBI:

(1) May charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and

(2) May not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

(e) Additional search. —

(1) If a state criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, shall be forwarded to the FBI for a search of the national indices.

(2) If, with respect to a request forwarded by a state criminal history record repository under paragraph (e)(1) of this section, the FBI positively identifies the subject as having a III System-indexed record or records:

a. The FBI shall so advise the state criminal history record repository; and

b. The state criminal history record repository shall be entitled to obtain the additional criminal history record information from the FBI or other state criminal history record repositories.

(82 Del. Laws, c. 97, § 1.)

§ 8599C. Establishment of Compact Council

(a) Establishment. —

(1) In general. —

There is established a council to be known as the "Compact Council," which shall have the authority to promulgate rules and procedures governing the use of the III System for noncriminal justice purposes not to conflict with FBI administration of the III System for criminal justice purposes.

(2) Organization. —

The Council shall:

a. Continue in existence as long as this Compact remains in effect;

b. Be located, for administrative purposes, within the FBI; and

c. Be organized and hold its first meeting as soon as practicable after the effective date of this Compact.

(b) Membership. —

The Council shall be composed of 15 members, each of whom shall be appointed by the Attorney General, as follows:

(1) Nine members, each of whom shall serve a 2-year term, who shall be selected from among the compact officers of party states based on the recommendation of the compact officers of all party states, except that, in the absence of the requisite number of compact officers available to serve, the chief administrators of the criminal history record repositories of nonparty states shall be eligible to serve on an interim basis.

(2) Two at-large members, nominated by the Director of the FBI, each of whom shall serve a 3-year term, of whom:

a. One shall be a representative of the criminal justice agencies of the federal government and may not be an employee of the FBI; and

b. One shall be a representative of the noncriminal justice agencies of the federal government.

(3) Two at-large members, nominated by the Chairman of the Council, once the Chairman is elected pursuant to subsection (c) of this section, each of whom shall serve a 3-year term, of whom:

a. One shall be a representative of state or local criminal justice agencies; and

b. One shall be a representative of state or local noncriminal justice agencies.

(4) One member, who shall serve a 3-year term and who shall simultaneously be a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board.

(5) One member, nominated by the Director of the FBI, who shall serve a 3-year term and who shall be an employee of the FBI.

(c) Chairman and Vice Chairman. —

(1) In general. —

From its membership, the Council shall elect a Chairman and a Vice Chairman of the Council, respectively. Both the Chairman and Vice Chairman of the Council:

a. Shall be a compact officer, unless there is no compact officer on the Council who is willing to serve, in which case the Chairman may be an at-large member; and

b. Shall serve a 2-year term and may be reelected to only 1 additional 2-year term.

(2) Duties of Vice Chairman. —

The Vice Chairman of the Council shall serve as the Chairman of the Council in the absence of the Chairman.

(d) Meetings. —

(1) In general. —

The Council shall meet at least once each year at the call of the Chairman. Each meeting of the Council shall be open to the public. The Council shall provide prior public notice in the Federal Register of each meeting of the Council, including the matters to be addressed at such meeting.

(2) Quorum. —

A majority of the Council or any committee of the Council shall constitute a quorum of the Council or of such committee, respectively, for the conduct of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

(e) Rules, procedures and standards. —

The Council shall make available for public inspection and copying at the Council office within the FBI, and shall publish in the Federal Register, any rules, procedures, or standards established by the Council.

(f) Assistance from FBI. —

The Council may request from the FBI such reports, studies, statistics, or other information or materials as the Council determines to be necessary to enable the Council to perform its duties under this Compact. The FBI, to the extent authorized by law, may provide such assistance or information upon such a request.

(g) Committees. —

The Chairman may establish committees as necessary to carry out this Compact and may prescribe their membership, responsibilities, and duration.

(82 Del. Laws, c. 97, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8599D. Ratification of Compact

This Compact shall take effect upon being entered into by 2 or more states as between those states and the federal government. Upon subsequent entry into this Compact by additional states, it shall become effective among those states and the federal government and each party state that has previously ratified it. When ratified, this Compact shall have the full force and effect of law within the ratifying jurisdictions. The form of ratification shall be in accordance with the laws of the executing state.

(82 Del. Laws, c. 97, § 1.)

§ 8599E. Miscellaneous provisions.

(a) Relation of Compact to certain FBI activities. —

Administration of this Compact shall not interfere with the management and control of the Director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory policy board chartered under the Federal Advisory Committee Act (5 U.S.C. App.) for all purposes other than noncriminal justice.

(b) No authority for nonappropriated expenditures. —

Nothing in this Compact shall require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(c) Relating to Public Law 92-544. —

Nothing in this Compact shall diminish or lessen the obligations, responsibilities, and authorities of any state, whether a party state or a nonparty state, or of any criminal history record repository or other subdivision or component thereof, under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544), or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the Council under § 8599C(a) of this title, regarding the use and dissemination of criminal history records and information.

(82 Del. Laws, c. 97, § 1.)

§ 8599F. Renunciation.

(a) In general. —

This Compact shall bind each party state until renounced by the party state.

(b) Effect. —

Any renunciation of this Compact by a party state shall:

(1) Be effected in the same manner by which the party state ratified this Compact; and

(2) Become effective 180 days after written notice of renunciation is provided by the party state to each other party state and to the federal government.

(82 Del. Laws, c. 97, § 1.)

§ 8599G. Severability.

The provisions of this Compact shall be severable, and, if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any participating state or to the Constitution of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If a portion of this Compact is held contrary to the constitution of any party state, all other portions of this Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all other provisions.

(82 Del. Laws, c. 97, § 1.)

§ 8599H. Adjudication of disputes.

(a) In general. —

The Council shall:

(1) Have initial authority to make determinations with respect to any dispute regarding:

a. Interpretation of this Compact;

b. Any rule or standard established by the Council pursuant to § 8599B of this title; and

c. Any dispute or controversy between any parties to this Compact; and

(2) Hold a hearing concerning any dispute described in paragraph (a)(1) of this section at a regularly scheduled meeting of the Council and only render a decision based upon a majority vote of the members of the Council. Such decision shall be published pursuant to the requirements of § 8599C(e) of this title.

(b) Duties of FBI. —

The FBI shall exercise immediate and necessary action to preserve the integrity of the III System, maintain system policy and standards, protect the accuracy and privacy of records, and to prevent abuses until the Council holds a hearing on such matters.

(c) Right of appeal. —

The FBI or a party state may appeal any decision of the Council to the Attorney General and thereafter may file suit in the appropriate District Court of the United States, which shall have original jurisdiction of all cases or controversies arising under this Compact. Any suit arising under this Compact and initiated in a state court shall be removed to the appropriate District Court of the United States in the manner provided by 28 U.S.C. § 1446, or other statutory authority.

(82 Del. Laws, c. 97, § 1.)

Part V
Law-Enforcement Administration
Chapter 86
Delaware Criminal Justice Information System

§ 8601. Purpose.

The purpose of this chapter is to manage and maintain an accurate and efficient criminal justice information system in Delaware consistent with Chapter 85 of this title and applicable federal law and regulations, the need of criminal justice agencies and courts of the State for accurate and current criminal justice information, and the right of individuals to be free from improper and unwarranted intrusions into their privacy.

(63 Del. Laws, c. 352, § 1; 80 Del. Laws, c. 169, § 1.)

§ 8602. Definitions.

For the purposes of this chapter:

(1) "Access" means the physical or electronic privilege to view, modify, or make use of criminal justice information, whether direct or indirect. For purposes of this term:

a. "Direct" means access to CJIS whether via authorized and approved Delaware Criminal Justice Information system (DELJIS) credentials or an authorized agency portal.

b. "Indirect" means access to criminal justice information, in oral, online or printed form, by an individual without approved DELJIS credentials for direct access.

(2) "Administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correction supervision or rehabilitation of accused persons or criminal offenders, criminal identification activities, and the collection, storage, and dissemination of criminal justice information.

(3) "Authorized agency" means any entity, criminal justice agency, or governmental agency which the Board determines complies with §§ 8610 and 8611 of this title.

(4) "Authorized user" means any employee, intern, extern, contractor, volunteer, or other individual, acting on behalf of an authorized agency, who has been appropriately vetted by the Board and has been granted access to criminal justice information.

(5) "Biographic data" means information about individuals associated with a unique case, and not necessarily connected to identity data. Biographic data does not provide a history of an individual, only information related to a unique case.

(6) "Biometric data" means data derived from 1 or more intrinsic physical or behavioral traits of humans typically for the purpose of uniquely identifying individuals from within a population. The term includes fingerprints, palm prints, iris scans, and facial recognition data.

(7) "Board" means the Delaware Criminal Justice Information System Board of Managers.

(8) "Case or incident history" means all relevant information gathered about an individual, organization, incident, or combination thereof, arranged so as to serve as an organized record to provide analytic value for a criminal justice agency. In regard to criminal justice information, it is the information about the history of incidents.

(9) "Criminal history record information" has the same meaning as set forth in § 8502 of this title.

(10) "Criminal justice agency" has the same meaning as set forth in § 8502 of this title.

(11) "Criminal justice information" or "CJI" means all Criminal Justice Information System data. The term includes: criminal history record information; biographic data; biometric data; identity history; person, organization, property, or Division of Motor Vehicles data; case or incident history; and other data necessary for authorized agencies to make hiring decisions, perform their mission, and enforce the laws of this State.

(12) "Criminal Justice Information System" or "CJIS" means the computer hardware, software, and communication network which is managed, operated, and maintained by the DELJIS for the collection, warehousing, and timely dissemination of CJI to authorized agencies.

(13) "Disposition" includes: trial verdicts of guilty or not guilty; nolle prosequis; Attorney General probations; pleas of guilty or nolo contendere; dismissals; findings of incompetence to stand trial, delinquency or nondelinquency, or responsible or not responsible; and the initiation and completion of appellate proceedings.

(14) "Dissemination" means the transmission of criminal justice information, or the confirmation of the existence or nonexistence of such information. The term shall not include any of the following:

a. Internal use of information by an officer or employee of the agency which maintains such information.

b. Transmission of information to the State Bureau of Identification.

c. Transmission of information to a criminal justice agency in order to permit the initiation of subsequent criminal justice proceedings.

d. Transmission of information in response to inquiries from criminal justice agencies.

(15) “Governmental agency” means any agency of the government of the United States or the State of Delaware or any political subdivision thereof. It does not include a private individual, corporation, or other nongovernmental entity.

(16) “Identity history” means textual data that corresponds with an individual’s biometric data, providing a history of criminal or civil events for the identified individual.

(17) “Property data” means information about vehicles and property associated with a crime.

(18) “Requesting party” means any entity, criminal justice agency, or governmental agency seeking access to CJIS.

(63 Del. Laws, c. 352, § 1; 65 Del. Laws, c. 451, §§ 1-3; 68 Del. Laws, c. 103, §§ 1, 2; 71 Del. Laws, c. 204, § 1; 74 Del. Laws, c. 224, § 2; 77 Del. Laws, c. 326, § 3; 80 Del. Laws, c. 169, § 2.)

§ 8603. Board of Managers — Established; purpose; composition; term of office; staff; powers.

(a) The Delaware Criminal Justice Information System Board of Managers is hereby established.

(b) The Board shall establish policy for the development, implementation, and operation of comprehensive data systems in support of the criminal justice system of this State.

(c) The Board shall be composed of 16 members, 11 of whom shall be voting members as follows:

(1) One member of the Delaware State Police, to be designated by the Superintendent of the Delaware State Police;

(2) One member of a municipal police department, to be designated by the Chairperson of the Delaware Police Chiefs’ Council;

(3) One member of the Department of Correction, to be designated by the Commissioner of Correction;

(4) One member of the Division of Youth Rehabilitative Services, to be designated by the Director of the Division of Youth Rehabilitative Services;

(5) Three members to be designated by the Chief Justice of the Supreme Court, 1 of whom shall represent the Family Court, and 1 to represent all other courts of the State;

(6) One member of the Department of Justice, to be designated by the Attorney General;

(7) One member of the Office of Defense Services, to be designated by the Chief Defender;

(8) One member-at-large to be designated by the Governor; and

(9) One member of the New Castle County Police Department as designated by the Colonel of the New Castle County Police.

(d) In addition, there shall be 5 nonvoting members:

(1) Two members of the General Assembly, 1 Senator to be designated by the President Pro Tempore of the Senate, and 1 Representative to be designated by the Speaker of the House of Representatives;

(2) One member of the Delaware State Bureau of Identification, to be designated by the Superintendent of the Delaware State Police;

(3) One member of the department (or agency) within the State with overall responsibility for providing information resource management, to be designated by the director or chief official of that agency; and

(4) One member of the Delaware Criminal Justice Council, to be designated by the Chairperson of that Council.

(e) Each Board member shall serve at the pleasure of, and for the term prescribed by, the officer or individual by whom such member was appointed.

(f) The agencies represented on the Board shall provide the Board with adequate staff support to assure that applicable provisions of this chapter are effectively carried out, not inconsistent with state law.

(g) The Board shall have the power and authority to:

(1) Designate an Executive Committee which may act between meetings of the Board, subject to confirmation of its decisions by a quorum of the Board, which Executive Committee shall consist of not less than 3 members of the Board and shall be chaired by the Board Chairperson.

(2) Appoint, supervise and evaluate an Executive Director to implement and administer this chapter.

(3) Approve the Executive Director’s annual budget request and other applications for funds from any sources.

(4) Recommend any legislation necessary for the implementation, operation and maintenance of the criminal justice information system.

(5) Establish and implement policy for providing management and administrative statistics and for coordinating technical assistance to serve the information needs of criminal justice agencies, planners, administrators, legislators and the general public.

(6) Perform all functions necessary to carry out the duties of this chapter.

(63 Del. Laws, c. 352, § 1; 65 Del. Laws, c. 451, §§ 4-6; 68 Del. Laws, c. 103, §§ 3, 4; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 307, §§ 1-4; 80 Del. Laws, c. 26, § 3; 80 Del. Laws, c. 169, § 3.)

§ 8604. Board of Managers — Duty to ensure compliance with statute.

The Board shall ensure that all authorized agencies collecting, storing, or disseminating criminal justice information and other information concerning crimes and offenders comply with this chapter, Chapter 85 of this title, subchapter III, subpart K of Chapter 5 of this title, § 305(m) of Title 21, and the rules and regulations promulgated by the Board under § 8605 of this title.

(63 Del. Laws, c. 352, § 1; 80 Del. Laws, c. 169, § 4.)

§ 8605. Rules and regulations.

The Board shall have the power and authority to promulgate rules and regulations to insure compliance with this chapter not inconsistent with Chapter 85 of this title.

(63 Del. Laws, c. 352, § 1; 68 Del. Laws, c. 103, § 5.)

§ 8606. Office of the Director; function and duties.

(a) *Appointment and duties of Executive Director.* — The Executive Director shall be appointed by and serve at the pleasure of the Board. The duties of the Executive Director shall include:

(1) The employment and supervision of required employees.

(2) The preparation and management of an annual budget, and such other funds as are designated for the development and operation of the Criminal Justice Information System.

(3) Providing such administrative support to the Board as may be necessary.

(4) The preparation of policy or procedure to implement this chapter and Chapter 85 of this title.

(5) Being the Chief Operational Officer of the Criminal Justice Information System.

(6) The preparation of an annual report on the status of the Criminal Justice Information System.

(7) Making and entering into a cooperative agreement, contract, or memorandum of understanding, whenever deemed necessary or desirable to perform the functions of the Criminal Justice Information System and whenever funds are available for such purpose. All necessary legal services shall be provided under Chapter 25 of Title 29.

(b) *Primary functions.* — The primary function of the Office of the Director shall be the assurance of the efficient and reliable development and operation of the hardware, software, and database which comprise the Criminal Justice Information System; thereby, effectively collecting, storing, and disseminating through the automated system, for all authorized users, criminal justice information.

(c) *Duty to provide security.* — The Office of the Director shall provide for automated security as follows:

(1) Provide secure access for all authorized users through the administration of the Delaware Criminal Justice Information System security programs.

(2) Employ effective and technologically adequate software and hardware designs to prevent unauthorized access or modifications to any information contained within the Criminal Justice Information System.

(3) Ensure that access to computer facilities, systems operating environments, data file contents, and system documentation, whether in use or stored in a media library, shall be restricted to authorized agencies and authorized users.

(4) Procedures shall be instituted to assure that all Delaware Justice Information System facilities provide safe and secure record storage.

(5) Procedures shall be instituted to assure that any authorized agency or authorized user shall be responsible for the physical security of criminal justice information, or other such sensitive information, under its control or in its custody, and such information shall be protected from unauthorized access, disclosure, or dissemination.

(6) Direct access to criminal justice information, or other such sensitive information, shall be available only to authorized users essential to the proper operation of the Criminal Justice Information System.

(7) Each authorized user working with, or having access to the Criminal Justice Information System shall be made familiar with the substance and intent of this chapter, Chapter 85 of this title, and any rules and regulations promulgated by the Board under § 8605 of this title.

(d) *Duty to maintain complete and accurate records; performance of an audit.* — The Office of the Director, or such contracted firms as may be employed, shall conduct an audit of the Criminal Justice Information System files and of the agencies accessing the system. The audit will be conducted according to established systems auditing procedures, and other such procedures as the Board may prescribe.

(e) *Duty to provide training.* — The Office of the Director shall assure that training programs are established for all automated systems within the scope of the Criminal Justice Information System and provide for adequate documentation and manuals for the use of such systems. No authorized user will be granted access to criminal justice information without attending minimum training as prescribed by the Board.

(f) *Duty to assure system operations.* — The Office of the Director shall provide for the continued operation of the Criminal Justice Information System, including such maintenance as required.

(g) *Duty to provide information resource management.* — The Office of the Director shall provide the management of the Criminal Justice Information System data, assuring the effective use of the information resource.

(h) *Duty to assure compliance with state criminal justice system; duty to provide effective management.* — The Office of the Director shall have the duty to assure that all Criminal Justice Information System developments shall meet the requirements of the state criminal justice system and its authorized agencies, and provide for the effective management of the development process.

(i) *Duties pursuant to cooperative agreement, contract, or memorandum of understanding.* — The Office of the Director shall perform such duties as the Board deems necessary within the bounds of the Criminal Justice Information System, its management and maintenance, as established through cooperative agreement, contract, or memorandum of understanding.

(68 Del. Laws, c. 103, § 5; 80 Del. Laws, c. 169, § 5.)

§ 8607. Violations and investigations.

All suspected or reported violations of this chapter, Chapter 85 of this title, subchapter III, subpart K of Chapter 5 of this title, § 305(m) of Title 21, or the rules and regulations promulgated by the Board under § 8605 of this title shall be reported to the Office of the Director who shall investigate the reported violation.

(68 Del. Laws, c. 103, § 6; 80 Del. Laws, c. 169, § 6.)

§ 8608. Authorized users.

(a) No individual shall be an authorized user with an authorized agency which has or allows access to criminal justice information without meeting the minimum requirements prescribed by the Board to determine if the individual could endanger the security, privacy, or integrity of such information.

(b) The Board shall initiate or cause to be initiated administrative action leading to the suspension or removal of an authorized user's access if that authorized user violates this chapter, Chapter 85 of this title, subchapter III, subpart K of Chapter 5 of this title, § 305(m) of Title 21, or the rules and regulations promulgated by the Board under § 8605 of this title.

(c) The Board shall establish rules and regulations for resolving appeals by authorized users to the Board.

(d) Nothing in this chapter or in any rule promulgated by the Board under § 8605 of this title shall limit the authority of an authorized agency to deny the appointment, promotion, or transfer of any individual to any position which requires access to criminal justice information.

(e) An authorized user who knowingly or recklessly violates the terms of this chapter, Chapter 85 of this title, subchapter III, subpart K of Chapter 5 of this title, § 305(m) of Title 21, or the rules and regulations promulgated by the Board under § 8605 of this title shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title.

(f) Any individual who is denied access to criminal justice information shall be given a written statement of the reason or reasons therefor by the agency responsible for such action.

(63 Del. Laws, c. 352, § 1; 68 Del. Laws, c. 103, § 5; 80 Del. Laws, c. 169, § 7.)

§ 8609. Denial of appointment, etc., to position allowing access to criminal history record information [Repealed].

(63 Del. Laws, c. 352, § 1; 68 Del. Laws, c. 103, § 5; repealed by 80 Del. Laws, c. 169 § 8, eff. Aug. 17, 2015.)

§ 8610. Access to Criminal Justice Information System; conditions.

Access to the Criminal Justice Information System, including computerized criminal justice information, shall be available to a requesting party provided that the requesting party meets all of the following conditions:

(1) Offer written evidence that the public interest in dissemination or access outweighs the security and privacy interests of the person or persons upon whom access is sought, and that access is germane to the mission of the requesting party.

(2) Submit to an application procedure as established by the Board. The application procedure shall identify the specific information being sought.

(3) Have its application approved by the Board. The Board may approve an application in whole, in part, or as modified by the Board. The Board's decision on an application requires a majority vote of the Board.

(4) Enter into an agency agreement as prescribed in § 8611 of this title, upon approval of the requesting party's application by the Board.

(5) Bear all costs associated with CJIS access, once granted.

(71 Del. Laws, c. 204, § 2; 80 Del. Laws, c. 169, § 9.)

§ 8611. Agency agreements.

(a) Use of criminal justice information shall be restricted to the purpose for which it was given.

(b) An authorized agency shall not disseminate criminal justice information, except as otherwise provided in Chapter 85 of this title or as required by Delaware law.

(c) An agency agreement shall, at a minimum, do all of the following:

(1) Specifically authorize access to the data or information.

(2) Limit the use of the data or information to purpose for which it was given.

(3) Ensure the security and confidentiality of the data or information consistent with this chapter.

(d) An authorized agency which has entered into an agency agreement, and which knowingly or recklessly violates the terms of that agreement, shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title. Upon such violation, the agency agreement shall be terminable at the option of the State Bureau of Identification or the Board.

(63 Del. Laws, c. 188, § 1; 80 Del. Laws, c. 169, § 10.)

Part V
Law-Enforcement Administration

Chapter 87
Criminal Justice Council

§ 8700. Mission statement.

The Delaware Criminal Justice Council is an independent body committed to leading the criminal justice system through a collaborative approach that calls upon the experience and creativity of the Council, all components of the system, and the community. The Council shall continually strive for an effective system that is fair, efficient, and accountable.

(75 Del. Laws, c. 193, § 1.)

§ 8701. Created; composition; compensation.

(a) There is hereby created the Criminal Justice Council.

(b) The Council shall consist of 29 members as follows:

(1) The Chief Justice of the Supreme Court, or the Chief Justice's designee;

(2) The President Judge of Superior Court, or the President Judge's designee;

(3) The Chief Judge of Family Court, or the Chief Judge's designee;

(4) The Chief Magistrate of the Justice of the Peace Courts, or the Chief Magistrate's designee;

(5) The Attorney General, or the Attorney General's designee;

(6) The Chief Defender, or the Chief Defender's designee;

(7) The Commissioner of the Department of Correction, or the Commissioner's designee;

(8) The Chief of the Bureau of Prisons of the Department of Correction, or the Bureau Chief's designee;

(9) The Director of the Division of Youth Rehabilitation, or the Director's designee;

(10) The Chairperson of the Board of Parole, or the Chairperson's designee;

(11) The Superintendent of the State Police, or the Superintendent's designee;

(12) The Chief of the New Castle County Police Department, or the Chief's designee;

(13) The Chief of the Wilmington Police Department, or the Chief's designee;

(14) The Chairperson of the Delaware Police Chiefs' Council, or the Chairperson's designee;

(15) The Director of the Division of Forensic Science, or the Director's designee;

(16) The Secretary of Health and Social Services, or the Secretary's designee;

(17) The Secretary of Labor, or the Secretary's designee;

(18) The United States Attorney for the District of Delaware, or the United States Attorney's designee;

(19) The Secretary of Education, or the Secretary's designee;

(20) Five at-large members who shall serve at the pleasure of the Governor for a term of 5 years each;

(21) The Secretary of the Department of Technology and Information, or the Secretary's designee;

(22) The Chief Judge of the Court of Common Pleas, or the Chief Judge's designee;

(23) The Secretary of the Department of Services for Children, Youth and their Families, or the Secretary's designee;

(24) The Secretary of Public Safety, or the Secretary's designee; and

(25) A sitting judge of the United States District Court for the District of Delaware as designated by the Chief Judge of the United States District Court for the District of Delaware.

(c) The terms of those members who serve by virtue of the office they hold shall be concurrent with service in the office from which they derive their membership.

(d) Commission members shall serve without salary, but shall be entitled to reimbursement for travel and other necessary expenses incurred in the performance of official duties.

(61 Del. Laws, c. 495, § 2; 63 Del. Laws, c. 170, § 1; 63 Del. Laws, c. 191, § 4; 64 Del. Laws, c. 407, § 2; 67 Del. Laws, c. 85, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 45, §§ 1-3; 72 Del. Laws, c. 290, §§ 1-3; 75 Del. Laws, c. 193, §§ 4-7; 78 Del. Laws, c. 293, § 1; 78 Del. Laws, c. 305, § 3; 79 Del. Laws, c. 265, § 12; 80 Del. Laws, c. 26, § 3.)

§ 8702. Meetings; quorum; committees; procedure.

(a) The Council shall meet at least 8 times per year. At least 1 meeting each calendar year shall be held in each county. Ten members shall constitute a quorum.

(b) The Council may establish committees as it deems advisable, but only the Council itself may set policy or take other official action.

(c) The Council may promulgate rules of procedure governing its operations, provided that they are in accordance with Chapters 100 and 101 of Title 29, and provided that no rule shall permit proxy voting at more than 2 meetings per calendar year.

(61 Del. Laws, c. 495, § 2; 63 Del. Laws, c. 170, §§ 2, 3; 64 Del. Laws, c. 407, § 2.)

§ 8703. Officers.

(a) In December of each year, the Council shall elect a Chairperson and a Vice-Chairperson who shall serve terms of office coinciding with the following calendar year. Officers may be reelected.

(b) If the Chairperson resigns or ceases to be a member of the Council, the Vice-Chairperson shall become the Chairperson and there shall be an election to fill the unexpired term of the Vice-Chairperson at the next Council meeting.

(c) If the Vice-Chairperson resigns or ceases to be a member of the Council, there shall be an election to fill the unexpired term of the Vice-Chairperson at the next Council meeting.

(d) It shall be the duty of the Chairperson to convene and preside over meetings of the Council and prepare an agenda for meetings, except for the initial meeting of the Council, which shall be convened and presided over by the Chief Justice of the Supreme Court.

(e) It shall be the duty of the Vice-Chairperson to act as Chairperson in the absence of the Chairperson.

(64 Del. Laws, c. 407, § 2.)

§ 8704. Powers and duties.

The Council shall:

(1) Continuously study the administration of justice in this State and develop and implement policies and programs for improving the effectiveness of the criminal justice system in this State;

(2) Receive, consider and, at its discretion, investigate criticisms and suggestions pertaining to the administration of justice in the State;

(3) Submit to the General Assembly each January a program of recommended legislation to improve the criminal justice system;

(4) Recommend to the Governor and criminal justice agencies and courts of the State or political subdivisions thereof, either upon request or upon the Council's own motion, such changes in rules, organization or methods of operation as it may deem advisable;

(5) Review any application for federal funds by any criminal justice agency or court of the State or political subdivision thereof, prior to the submission of said application or request to the Delaware State Clearinghouse Committee, and provide the Clearinghouse Committee with any comments the Council deems appropriate;

(6) Allocate among the criminal justice agencies and courts of the State or political subdivisions thereof all federal funds for the improvement of the state criminal justice system if such funds are provided by the federal government in the form of a block or categorical grant;

(7) Have the authority to collect from any state or local governmental entity information, reports, statistics or other such material which is necessary to carry out the Council's function;

(8) Provide training and technical assistance to criminal justice agencies;

(9) Perform such other duties as may be necessary to carry out this chapter;

(10) Allocate funds resulting from the certified copy fees for marriage license/certificates, pursuant to § 3132(b) of Title 16. Moneys resulting from the copy fees shall constitute The Domestic Violence Fund. The Fund shall be administered by the Criminal Justice Council and shall be used to make grants to programs providing direct services to victims of domestic violence and submit an annual report each fiscal year to the General Assembly delineating how and where the funds collected were spent. The Criminal Justice Council shall publish a Domestic Violence Fund, Request for Proposals, once a year and provide annual grants to eligible programs. The Domestic Violence Coordinating Council will participate in the review of grant applications. To be eligible to receive funds under this section, a domestic violence program must meet the following requirements:

a. It shall have been in operation on the preceding July 1 and shall continue to be in service;

b. It shall offer direct victim services; and

c. It must be a nonprofit corporation; and

(11) Oversee the Delaware Anti-Trafficking Action Council, established under § 787(k) of this title. The Criminal Justice Council shall have the duties and authorities with respect to the Delaware Anti-Trafficking Action Council that are necessary to carry out this paragraph (11).

(61 Del. Laws, c. 495, § 2; 64 Del. Laws, c. 407, § 2; 76 Del. Laws, c. 375, § 4; 83 Del. Laws, c. 389, § 2.)

§ 8705. Officials to furnish information.

It shall be the duty of all officials of the State or any political subdivision thereof to furnish any information and compile any report which may be requested by the Council.

(64 Del. Laws, c. 407, § 2.)

§ 8706. Criminal justice agencies and courts to provide assistance.

It shall be the duty of all criminal justice agencies and courts of the State or any political subdivision thereof to provide such staff or other assistance as may reasonably be requested by the Council to carry out its functions under this chapter.

(64 Del. Laws, c. 407, § 2.)

§ 8707. Annual report; quarterly reports.

(a) The Council shall compile the recommendations made pursuant to § 8704(4) of this title and such other information as it deems appropriate into an annual report, which shall be made available to the Governor, the criminal justice agencies and courts of the State and political subdivisions thereof, and upon request to members of the General Assembly and the public.

(b) The Council shall compile a record of all funding distributions made by the Council during each fiscal quarter into a quarterly report which shall be made available to the General Assembly at the close of the quarter.

(61 Del. Laws, c. 495, § 2; 64 Del. Laws, c. 407, § 2; 75 Del. Laws, c. 193, §§ 2, 3.)

§ 8708. Public hearings.

The Council shall hold public hearings annually in each county for the purpose of carrying out its duties under § 8704(1), (2) and (4) of this title.

(64 Del. Laws, c. 407, § 2.)

§ 8709. Executive Director; staff.

The Executive Director of the Criminal Justice Council shall be appointed by and serve at the pleasure of a majority of the members of the Council. The Executive Director shall act as secretary to the Council. The Executive Director shall be paid such compensation as shall be determined by the General Assembly. The Executive Director may employ such personnel as are necessary to carry out the functions of this chapter, subject to the approval of the Council and within the limits of any appropriation made by the General Assembly.

(61 Del. Laws, c. 495, § 2; 63 Del. Laws, c. 170, § 1; 63 Del. Laws, c. 191, § 4; 64 Del. Laws, c. 407, § 2.)

Part V
Law-Enforcement Administration

Chapter 88
Delaware County and Municipal Police/Firefighter Pension Plan

§ 8801. Definitions.

As used in this chapter:

(1) "Board" shall mean the Board of Pension Trustees established by § 8308 of Title 29.

(2) "Compensation" shall mean all salary or wages, excluding overtime payments and special payments for extra duties, payable to a member for service.

(3) "Credited service" shall mean, for any member:

a. Service as an employee;

b. Equalized state service if the member elects a unified pension;

c. Service as an employee before the date of affiliation with the Fund by the employer, provided the actuarially-determined past service cost associated with such service is paid into the Fund on a schedule approved by the Board of Pension Trustees; and

d. Service with a police department not covered under paragraph (6) of this section by someone who is subsequently employed as a police officer by a county or municipality in Delaware, which has affiliated with the Fund established by this chapter may receive credit for such previous service upon payment to the Fund, on or before the date of issuance of the individual's first benefit check, of a single lump sum payment equal to the actuarial value of the pension benefits to be derived from such service credits compiled on the basis of actuarial assumption approved by the board and the individual's attained age and final average compensation.

(4) "Dependent" shall mean a dependent child or dependent parent. A dependent child is a person who is unmarried and either has not attained age 18, or has attained age 18 but not age 22 and is attending school on a full-time basis, or has attained age 18 and is permanently disabled as the result of a disability which began before the dependent attained age 18. A dependent parent is the parent of a member who was receiving at least one half of the support from the member at the time of the member's death.

(5) "Employee" shall mean:

a. An individual who is employed on a full-time basis as a police officer by a county or municipality in Delaware which has affiliated with the Fund established by this chapter; or

b. An individual who is employed on a full-time basis as a uniformed firefighter by the City of Wilmington after affiliation by the City of Wilmington with the Fund established by this chapter; or

c. An individual employed on a full-time basis as a uniformed paramedic by a county in Delaware which has affiliated with the Fund established by this chapter;or

d. An individual employed on a full-time basis with duties as both a paid firefighter and a paid emergency medical technician in a volunteer fire company which has affiliated with the Fund established by this chapter.

(6) "Equalized state service" shall mean:

a. Years of service as an "employee" as defined in § 5501(f)(1) and (3) of Title 29, multiplied by 25/30, provided that the individual is not accruing nor collecting benefits under Chapter 55 of Title 29. It shall not include service for which the employee has received the withdrawal benefit provided by § 5530 of Title 29, or the refund provided by § 5523(b) of Title 29, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

b. Years of service as an "employee" as defined in § 5551(5) of Title 29, multiplied by 25/30, provided that the individual is not accruing nor collecting benefits under Chapter 55A of Title 29. It shall not include service for which the employee has received the withdrawal benefit provided by § 5580 of Title 29, or the refund provided by § 5573(b) of Title 29, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

c. Years of service as an "employee" as defined in § 8351(5) of this title, multiplied by 25/25, provided that the individual is not accruing nor collecting benefits under subchapter III of Chapter 83 of this title. It shall not include service for which the employee has received the withdrawal benefit provided by § 8374 of this title, or the refund provided by § 8364(d) of this title, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

(7) "Final average compensation" shall mean $^{1}/_{36}$ of the compensation paid to an employee during any period of 36 consecutive months for services rendered during those 36 months, in the years of credited service in which the compensation was highest.

(8) The clause "for which the member is eligible under the Federal Social Security Act" shall mean the old age insurance benefit or the disability insurance benefit for which an individual is or will be eligible by virtue of age and the wage credits under the Federal Social Security Act (42 U.S.C. § 301 et seq.), based on the final average compensation and the Federal Social Security Act (42 U.S.C. § 301 et seq.) in effect when the individual ceased to be an employee under this chapter and computed in accordance with rules

and regulations approved by the Board, regardless of any other factors such as, without limitation, whether the employee has made application for Social Security benefits or is subsequently employed.

(9) “Fund” shall mean the Fund established by § 8843 of this title.

(10) “Inactive member” shall mean a member who is an employee on or after the member:

a. Has terminated service;

b. Is not eligible to begin receiving a service or disability pension; and

c. Has neither applied for nor received a refund of contributions.

(11) “Member” shall mean a person who is an employee on or after the date the employer affiliates with the Fund.

(12) “Normal retirement date'' shall mean the date at which a member is eligible for a service pension pursuant to § 8813(a) of this title. For a member who has received a disability benefit, the period of disability plus credited service, not to exceed 20 years, shall be used in determining normal retirement date.

(13) “Partial disability” shall mean a medically determined physical or mental impairment which renders the member unable to function as a police officer and which is reasonably expected to last at least 12 months.

(14) “Primary survivor” shall mean a person in the following order of priority, unless the priority is changed by the member on a form prescribed by the Board on file with the Board at the time of the member’s death:

a. The surviving spouse, or

b. If there is no eligible surviving spouse, a dependent child (or with the survivor’s pension divided among them in equal shares, all such children, including and resulting from a pregnancy prior to the member’s death), or

c. If there is no eligible surviving spouse, or eligible dependent child, a dependent parent (or, with the survivor’s pension divided between them in equal shares, both such parents).

(15) “Retired member” shall mean a member who has terminated service, other than an inactive member, who is eligible to receive a service or disability pension under this chapter.

(16) “Total disability” shall mean a medically determined physical or mental impairment which renders the member totally unable to work in any occupation for which the member is reasonably suited by training or experience, which is reasonably expected to last at least 12 months.

(64 Del. Laws, c. 445, § 1; 65 Del. Laws, c. 91, § 1; 67 Del. Laws, c. 86, § 2; 67 Del. Laws, c. 327, § 2; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 43, § 1; 79 Del. Laws, c. 140, § 1; 79 Del. Laws, c. 174, § 1; 79 Del. Laws, c. 413, § 1; 81 Del. Laws, c. 179, § 1; 81 Del. Laws, c. 368, § 1; 82 Del. Laws, c. 87, § 4.)

§ 8802. Employment of pensioners.

An individual shall not receive a service or disability pension under this chapter for any month during which the individual is an employee as defined in § 8801 of this title, unless:

(1) The individual is a police officer who has retired from 1 county or municipal employer and has been appointed by the executive branch and confirmed by the legislative branch of a different county or municipal employer participating in the County Municipal Police/Firefighter Pension Plan; or

(2) The individual is a temporary employee whose earnings from such employment do not exceed the maximum allowed by Social Security without affecting Social Security benefits; and

(3) The individual’s employment under paragraphs (1) and (2) of this section is not pension creditable service time and may not be used to earn any retirement benefits in the Delaware County and Municipal Police/Firefighter Pension Plan.

(64 Del. Laws, c. 445, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 407, § 1.)

§ 8803. Garnishment and assignment of benefits prohibited.

Except for orders of the Delaware Family Court for a sum certain payable on a periodic basis, the benefits provided by this chapter shall not be subject to attachment or execution and shall be payable only to the beneficiary designated and shall not be subject to assignment or transfer.

(64 Del. Laws, c. 445, § 1; 71 Del. Laws, c. 337, § 2.)

§ 8804. Waiver of benefits.

Any individual entitled to any benefits under this chapter may decline to accept all or any part of such benefits by a waiver signed and filed with the Board. Such waiver may be revoked in writing at any time, but no payment of the benefits waived shall be made covering the period during which such waiver was in effect.

(64 Del. Laws, c. 445, § 1.)

§ 8805. Optional participation of counties and municipalities.

Any county or municipality may elect to participate in the County and Municipal Police/Firefighter Pension Plan beginning July 1 of any year on or after July 1, 1984. Application to participate shall be by resolution approved by the governing body of the county or municipality

and shall be submitted to the Board in such form as the Board shall determine not later than 90 days prior to the date participation is to begin, except such time limit may be reduced by the Board. Any such application, upon approval by the Board, shall be irrevocable. Each participating county and municipality shall provide such information to the Board as it may require for the administration of this chapter.

(64 Del. Laws, c. 445, § 1; 67 Del. Laws, c. 327, § 3.)

§ 8806. Powers and duties of the Board.

The Board shall have the power and duty to appoint an Executive Secretary who shall be responsible for determining the eligibility for retirement pension benefits under this chapter.

(82 Del. Laws, c. 87, § 5.)

§ 8811. Mandatory retirement.

A member shall retire on the member's mandatory retirement date as established by the employer.

(64 Del. Laws, c. 445, § 1; 75 Del. Laws, c. 133, § 8.)

§ 8812. Retirement option.

When the member applies for a pension, the member shall choose either a unified pension or an ordinary pension.

(64 Del. Laws, c. 445, § 1; 67 Del. Laws, c. 86, § 10; 70 Del. Laws, c. 186, § 1.)

§ 8813. Eligibility for service pension.

(a) A member shall become eligible to receive a service pension, after the member has terminated employment, beginning with the month when:

(1) The member has 5 years of credited service and has attained age 62; or

(2) The member's age plus credited service (but not less than 10 years) equals 75; or

(3) The member has 5 years of credited service, and has retired under the provisions of § 8811 of this title; or

(4) The member has 20 years of credited service.

(b) An inactive member with a vested right to a service pension shall become eligible to receive such pension, computed in accordance with the provisions of this chapter in effect when the member ceased to be an employee, beginning with the first month after attainment of age 62.

(c) For purposes of this section, credited service shall include any period during which a member is receiving a disability pension as provided by this chapter.

(64 Del. Laws, c. 445, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 143, § 1; 75 Del. Laws, c. 133, § 9; 76 Del. Laws, c. 214, § 1.)

§ 8814. Vesting rights; return to service.

(a) A member who has 5 years of credited service shall have a vested right to a service pension.

(b) If a member who has less than 5 years of credited service ceases to be an employee, the service credits to the date of termination shall be cancelled unless:

(1) The member again becomes an employee within 4 months after such cessation of employment; or

(2) The member subsequently acquires 5 years of credited service; or

(3) The member has joined a state pension plan which provides for a unified state service pension and subsequently acquires 5 years of credited service; and provided that, if the member has withdrawn that member's own contributions, the member repays them with interest at a rate determined by the Board.

(c) For purposes of this section, credited service shall include any period during which a member is receiving a disability pension as provided by this chapter.

(d) A former employee's vested right shall be forfeited upon application for a refund of accumulated contribution.

(64 Del. Laws, c. 445, § 1; 67 Del. Laws, c. 86, § 11; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 133, § 7; 76 Del. Laws, c. 214, § 1.)

§ 8815. Eligibility for disability pension.

(a) A member who suffers a partial or total disability resulting from an individual and specific act, the type of which would normally occur only while employed as a police officer/firefighter, shall be eligible for a duty-connected disability pension. If such act involves a traumatic event which directly causes an immediate cardiovascular condition which results in partial or total disability, the member shall be eligible for a partial or total duty-connected disability pension.

(b) A member with 5 years of credited service who suffers a partial or total disability and who is not eligible for a duty-connected disability pension shall be eligible for an ordinary partial or total disability pension.

(c) The determination of disability and its cause shall be made by the Board, or, if so delegated by the Board, by the Executive Secretary, after review of medical documentation submitted by the applicant, in the form required by the Board.

(d) For the purposes of this section, whether a member is employed as an on-duty police officer or on an authorized special duty function, the following duties shall be presumed to occur only while employed as a police officer without limiting the scope of acts embraced by subsection (a) of this section:

(1) Engaging in a high-speed chase;

(2) Effecting an arrest (criminal or traffic);

(3) Pursuing a suspect (criminal or traffic);

(4) Patrolling (criminal or traffic);

(5) Directing traffic or removing traffic hazards;

(6) Assisting a civilian, for example, a motorist alongside of the highway or rendering aid in a life-threatening situation (fire, drowning);

(7) In-service training other than physical fitness;

(8) Performing police functions at a crime scene or in connection with the investigation thereof; or

(9) Being assaulted whether by a suspect, detainee, arrestee, prisoner or mental patient.

(64 Del. Laws, c. 445, § 1; 67 Del. Laws, c. 327, § 4; 70 Del. Laws, c. 389, § 1; 82 Del. Laws, c. 87, § 6; 83 Del. Laws, c. 286, § 2.)

§ 8816. Payment of service pension.

Service pension payments shall be made to a retired member for each month beginning with the month in which the member becomes eligible to receive such pension and ending with the month in which the member dies.

(64 Del. Laws, c. 445, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8817. Payment of disability pension.

(a) Disability pension payments shall be made to a member for each month beginning with the month in which the member becomes eligible to receive such pension and ending with the month in which the member ceases to be eligible or dies.

(b) [Repealed.]

(c) If a member who is initially determined to be totally disabled recovers, yet is still partially disabled, the total disability pension shall be reduced to a partial disability pension for as long as the member shall remain partially disabled.

(d) If a member who is disabled recovers and is no longer totally or partially disabled, the disability pension shall be discontinued unless:

(1) The member has reached normal retirement date, or

(2) In the case of a duty-connected disability, the member is not offered employment by the council or municipality in a position for which the member is suited by training and experience.

(e) A member aggrieved by the reclassification or termination of disability pension pursuant to subsection (c) or (d) of this section may appeal such decision to the Superior Court within 30 days of the day the decision is mailed. The appeal shall be on the record, without a trial de novo. The Court may remand the case to the Board for further proceedings on the record if the Court determines that the record is insufficient for review. When factual determinations are at issue, the Court's review, in the absence of actual fraud, shall be limited to a determination of whether the Board's decision is supported by substantial evidence in the record.

(64 Del. Laws, c. 445, § 1; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 286, § 2.)

§ 8818. Amount of ordinary service pension.

The amount of the monthly ordinary service pension payable to a retired member shall be the sum of 2.5% of final average compensation multiplied by years of service up to 20 years inclusive, plus 3.5% of final average compensation multiplied by years of service above 20 years.

(64 Del. Laws, c. 445, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 133, § 1.)

§ 8819. Amount of unified service, disability or survivor pension.

The amount of the unified pension payable to an employee, former employee or survivor shall be the sum of the following:

(1) The amount computed according to this chapter, exclusive of service credited under § 8801(6) of this title; plus

(2) The sum of the amounts computed, based on credited service as an employee, according to subchapter II of Chapter 55 of Title 29; subchapter II of Chapter 55A of Title 29; and subchapter III of Chapter 83 of this title.

(64 Del. Laws, c. 445, § 1; 67 Del. Laws, c. 86, § 8.)

§ 8820. Amount of duty-connected disability pension.

(a) The duty-connected total disability pension shall by 75% of final average compensation plus 10% of final average compensation for each dependent during the period of dependency, not to exceed a total of 25% of final average compensation for all dependents.

(b) The duty-connected partial disability pension shall be computed in the same manner as the service pension based on credited service accrued to the date of disability, subject to a minimum of 50% of final average compensation.

(c) Medical costs made necessary by reason of duty-connected disability which are in excess of those amounts paid by any health care coverage or worker's compensation shall be paid by the Fund. Payments under this subsection will be paid upon the filing of a claim in a form prescribed by the Board.

(64 Del. Laws, c. 445, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 133, §§ 2, 3.)

§ 8821. Amount of ordinary disability pension.

The ordinary disability pension shall be computed in the same manner as the service pension based on credited service accrued to the date of disability, subject to the following:

(1) In the case of total disability, the minimum pension shall be 50% of final coverage compensation plus 5% of final average compensation for each dependent during the period of dependency, not to exceed a total of 20% of final average compensation for all dependents; and

(2) In the case of partial disability, the minimum pension shall be 30% of final average compensation.

(64 Del. Laws, c. 445, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 133, § 4.)

§ 8821A. Amount of ordinary service or disability pensions [For application of this section, see 79 Del. Laws, c. 315, § 10].

(a) Notwithstanding provisions of this chapter to the contrary, an employee may elect to have his or her service or disability pension computed under this chapter reduced by 2% thereby providing a survivor's pension equal to $^{2}/_{3}$ of such reduced amount to the employee's eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to the issuance of the employee's first benefit check and shall be irrevocable.

(b) Notwithstanding provisions of this chapter to the contrary, an employee may elect to have his or her service or disability pension computed under this chapter reduced by 3% thereby providing a survivor's pension equal to 75% of such reduced amount to the employee's eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to the issuance of the employee's first benefit check and shall be irrevocable.

(c) Notwithstanding provisions of this chapter to the contrary, a member may elect to have his or her service or disability pension computed under this chapter reduced by 6% thereby providing a survivor's pension equal to 100% of such reduced amount to the employee's eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to the issuance of the employee's first benefit check and shall be irrevocable.

(78 Del. Laws, c. 374, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 315, § 5.)

§ 8822. Ordinary survivor's pension [For application of this section, see 79 Del. Laws, c. 315, § 10].

(a) Upon the death of a member in service, a monthly survivor's pension shall be payable to his or her eligible survivor or survivors equal to $^{3}/_{4}$ of the service pension the employee would have been eligible to receive had he or she elected the option provided under § 8821A(b) of this title.

(b) Upon the death of an employee in service, whose death occurred in the line of duty, a monthly survivor's pension shall be payable to the primary survivor equal to $^{3}/_{4}$ of the member's compensation.

(c) Upon the death of an individual receiving a service or disability pension at the time of his or her death, a monthly survivor's pension shall be payable to the primary survivor and surviving dependents equal to the greater of: (i) 50% of such service or disability pension; (ii) if such pension was computed under the provisions of § 8821A(a) of this title,$^{2}/_{3}$ of such service or disability pension; (iii) if such pension was computed under the provisions of § 8821A(b) of this title, 75% of such service or disability pension; or (iv) if such pension was computed under the provisions of § 8821A(c) of this title, 100% of such service or disability pension. If the primary survivor is the surviving spouse, such person must have been married to the deceased member:

(1) Prior to retirement; or

(2) For at least 1 year before the date of death, unless the death was the result of an accident.

(d) A survivor's pension shall begin with the month following the month in which the member or retired member dies. If payable to a surviving spouse who dies or marries, it shall become payable in the following month to the next primary survivor as defined in § 8801 of this title or cease with that month in the absence of the eligible dependents. If payable to a child who dies or fails to meet the conditions of eligibility in § 8801(4) of this title, it shall become payable in the following month to a dependent parent or cease with that month in the absence of eligible parents. If payable to a parent, it shall cease with the month in which the parent dies.

(64 Del. Laws, c. 445, § 1; 67 Del. Laws, c. 86, § 16; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 374, § 2; 78 Del. Laws, c. 375, § 1; 79 Del. Laws, c. 315, § 6.)

§ 8823. Death benefit.

Upon the death of a member, inactive member, retired member or individual receiving a survivor's pension, there shall be paid to the designated beneficiary or beneficiaries or, in the absence of a designated beneficiary, to the estate of the member, inactive member, retired

member or survivor, a lump sum equal to the excess, if any, of the accumulated member contributions with interest over the aggregate of all pension payments made.

(64 Del. Laws, c. 445, § 1.)

§ 8824. Withdrawal benefit.

(a) The accumulated contributions with interest of a member who is neither eligible for a service nor disability pension, nor has a vested right to a service pension, shall be refunded upon withdrawal from service.

(b) If a member has a vested right to a service pension and withdraws from service and is not immediately eligible for a service or disability benefit, the member may request a refund of accumulated contributions with interest. Refund of such contributions shall extinguish all rights to benefits under this chapter.

(64 Del. Laws, c. 445, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8825. Adjustment of benefits.

(a) A pension payable under this chapter shall be adjusted no less liberally than adjustments made for pensions payable under the State Employees' Pension Plan, taking into account adjustments to Social Security benefits payable to state employees.

(b) Any monthly service pension, disability pension or survivor pension based on a former service or disability pension which is payable on July 7, 2005, shall be increased effective July 1, 2005, by the amount of difference between the pensioner's computed benefit under this chapter of this title, as effective July 1, 2005, less the benefit previously awarded under this chapter of this title.

(64 Del. Laws, c. 445, § 1; 75 Del. Laws, c. 133, § 6.)

§ 8826. Application for benefits.

(a) A service pension, disability pension, survivor's pension, death benefit or withdrawal benefit shall be paid only upon the filing of an application in a form prescribed by the Board. A monthly benefit shall not be payable for any month earlier than the second month preceding the date on which the application for such benefit is filed.

(b) The Board may require any member, inactive member, retired member or eligible survivor to furnish such information as may be required for the determination of benefits under this chapter or to authorize the Board to procure such information. The Board may withhold payment of any pension under this chapter, whenever the determination of such pension is dependent upon such information and the member, inactive member, retired member or eligible survivor does not cooperate in the furnishing or procuring thereof.

(c) A service pension, disability pension, or survivor's pension applied for under this act may be paid into a Miller Trust Bank account, pursuant to the creation of an irrevocable income assignment trust ("Miller Trust"), established on behalf of an eligible pensioner or survivor covered under this chapter who is a person with disabilities, so long as the Miller Trust is established consistent with the laws of the State of Delaware, the laws of the United States and in accordance with the rules and regulations of the local and federal agencies responsible for administering assistance programs for persons with disabilities.

(64 Del. Laws, c. 445, § 1; 77 Del. Laws, c. 408, § 4.)

§§ 8827-8840. [Reserved.]

§ 8841. Member contributions.

(a) Effective January 1, 2006, member contributions to the fund shall be 7% of monthly compensation.

(b) An employee can repay a withdrawal benefit using a rollover distribution from:

(1) A direct rollover of an eligible rollover distribution from:

a. A qualified plan described in § 401(a) of the United States Internal Revenue Code [26 U.S.C. § 401(a)];

b. An annuity contract described in § 403(b) of the United States Internal Revenue Code [26 U.S.C. § 403(b)]; or

c. An eligible plan under § 457(b) of the United States Internal Revenue Code [26 U.S.C. § 457(b)].

(2) A participant contribution of an eligible rollover distribution from:

a. A qualified plan described in § 401(a) of the United States Internal Revenue Code [26 U.S.C. § 401(a)];

b. An annuity contract described in § 403(b) of the United States Internal Revenue Code [26 U.S.C. § 403(b)]; or

c. An eligible plan under § 457(b) of the United States Internal Revenue Code [26 U.S.C. § 457(b)].

(3) A participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in § 408 of the United States Internal Revenue Code [26 U.S.C. § 408] that is eligible to be rolled over and would otherwise be includible in gross income.

(64 Del. Laws, c. 445, § 1; 72 Del. Laws, c. 143, § 2; 73 Del. Laws, c. 419, §§ 4, 5; 75 Del. Laws, c. 133, § 5.)

§ 8842. Employer contributions.

The contribution of the county or municipality for each fiscal year shall be the percentage of covered payroll approved by the Board on the basis of the most recent actuarial valuation and shall equal:

(1) The normal cost; plus

(2) Adjustments for actuarial gains and losses or increases in benefits adopted on or subsequent to participation; plus

(3) Administrative costs.

(64 Del. Laws, c. 445, § 1.)

§ 8843. Fund established.

There shall be established a County and Municipal Police/Firefighter Retirement Fund, hereinafter referred to as the "Fund," separate and distinct from the fund established under subchapters II and III of Chapter 83 of this title, to which county or municipal appropriations and other employer contributions shall be deposited monthly, and to which member contributions shall be deposited upon deduction from the member's paycheck, and to which earnings on investments, refunds and reimbursements shall be deposited upon receipt, and from which benefits shall be paid and fees and expenses authorized by the Board shall be paid. Subject to Internal Revenue Code § 401(a)(24) [26 U.S.C. § 401(a)(24)], the assets of the Fund will be commingled in the Delaware Public Employees' Retirement System as provided for by § 8308 of this title. The assets of the Fund are held in trust and may not be used for or diverted to any purpose other than for the exclusive benefit of the employees and their beneficiaries.

(64 Del. Laws, c. 445, § 1; 67 Del. Laws, c. 327, § 5; 71 Del. Laws, c. 121, § 9; 76 Del. Laws, c. 279, § 11.)

§ 8844. Employer pickup of member contributions.

(a) Each participating employer, pursuant to the provisions of § 414(h)(2) of the United States Internal Revenue Code [26 U.S.C. § 414(h)(2)], shall pick up and pay the contributions which would otherwise be payable by the members under § 8841 of this title. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the member's compensation.

(b) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each member's compensation equal to the amount of the member's contributions picked up by the employer. This deduction, however, shall not reduce the member's compensation for purposes of computing benefits under the retirement system pursuant to this chapter.

(c) Member contributions shall be credited to a separate account within the member's individual account so that the amount contributed prior to the effective date for the pickup of member contributions may be distinguished from the amounts contributed on or after the effective date.

(d) The contributions, although designated as employee contributions, are being paid by the employer in lieu of the contributions by the employee. The employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system.

(68 Del. Laws, c. 358, § 6.)

§ 8845. Payment of benefits.

Benefits shall be due and payable under this chapter only to the extent provided in this chapter, and neither the State nor the County and Municipal Police/Firefighter Retirement Fund shall be liable for any amount in excess of such sums.

(71 Del. Laws, c. 132, § 88.)

§ 8846. Burial benefits.

(a) After July 1, 2016, upon the death of a member under this chapter, a benefit will be paid in the same manner as benefits provided under § 5546 of Title 29.

(b) The benefit granted under this section shall not be construed as a contractual obligation of the State or of the Fund and may be revised or terminated by an act of the General Assembly.

(81 Del. Laws, c. 397, § 1.)

Part V
Law-Enforcement Administration

Chapter 89
Statistical Analysis Center

§ 8901. Established; employees.

(a) The Statistical Analysis Center is hereby located within the Criminal Justice Council. The Director of the Statistical Analysis Center shall be qualified by education or experience to carry out the mission of the Statistical Analysis Center and shall report to the Director of the Criminal Justice Council.

(b) The Director of the Statistical Analysis Center may employ such personnel as are necessary to carry out the functions of this chapter, subject to the approval of the Director of the Criminal Justice Council and within the limits of any appropriation made by the General Assembly. The staff of the Statistical Analysis Center is hereby placed under the authority of and is subject to the oversight and supervision of the Director of the Criminal Justice Council.

(72 Del. Laws, c. 395, § 100; 75 Del. Laws, c. 88, § 21(6); 78 Del. Laws, c. 78, § 73.)

§ 8902. Mission.

The Statistical Analysis Center shall provide the State with a professional capability for objective, interpretive analysis of data relating to crime and criminal justice issues in order to improve the effectiveness of policy-making, program development, planning and reporting.

(72 Del. Laws, c. 395, § 100.)

§ 8903. General powers and duties.

In pursuit of its mission, the Statistical Analysis Center shall have the following powers, duties, and functions:

(1) Generate statistical and analytical products concerning crime and the criminal justice system in the State;

(2) Provide statistical and analytical services from available information upon request;

(3) Provide technical assistance in the identification of sources, collection, analysis, interpretation and dissemination of criminal justice statistics to state and local governmental agencies;

(4) Identify, collect, analyze and disseminate statistics regarding the resources expended on criminal justice in the State;

(5) Promote the orderly development of criminal justice information and statistical systems within the State;

(6) Maintain a state-level capability for providing state and local governments with access to federal resources in criminal justice statistical information in cooperation with the U.S. Department of Justice,

(7) Serve as the clearinghouse and point of contact for the U.S. Department of Justice and for state agencies, local government agencies, the courts, and appropriate nongovernmental organizations;

(8) Direct or participate in the research design for the analysis of crime or criminal justice issues for the State;

(9) Conduct research and provide analyses as required to determine the impact proposed policy changes may have on the criminal justice system; and

(10) Submit annually to the Governor, Chief Justice, President Pro Tem of the Senate, and the Speaker of the House a report examining 1-year, 2-year, and 3-year rates of re-arrest and recommitment of released offender cohorts.

(72 Del. Laws, c. 395, § 100; 78 Del. Laws, c. 392, § 16; 83 Del. Laws, c. 233, § 3.)

§ 8904. Access to information and data.

The Statistical Analysis Center shall have full access to all information and data in any form, including computerized files and official records, to accomplish its research and analysis. All data referencing individuals shall be used only for research purposes and shall not in any way be shared or portrayed as to identify any individual so as to meet both state and federal security and privacy laws. It shall be the duty of all officials of the State or any political subdivision thereof to furnish any information and compile any report that may be requested by the Statistical Analysis Center.

(72 Del. Laws, c. 395, § 100.)

§ 8905. Criminal justice agencies and courts to provide assistance.

It shall be the duty of all criminal justice agencies and courts of the State or any political subdivision thereof to provide such assistance as may reasonably be requested by the Statistical Analysis Center to carry out its mission under this chapter.

(72 Del. Laws, c. 395, § 100.)

Part V
Law-Enforcement Administration

Chapter 89A

Delaware County and Municipal Police/Firefighters' Retiree Pension Plan [Repealed].

§§ 8901A-8906A. Definitions; optional participation of counties and municipalities; payment of pension; adjustment of benefits; employer contributions; fund established [Repealed].

Repealed by 76 Del. Laws, c. 279, § 12, effective July 1, 2008.

Part V
Law-Enforcement Administration

Chapter 89B
Call Location Information

§ 8901B. Definitions.

As used in this chapter:

(1) “911 dispatcher” is as defined in § 10002 of Title 16.

(2) “Law-enforcement agency” means a government agency or any subunit thereof which performs the administration of criminal justice pursuant to state or federal law or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. For the purposes of this subchapter, such agencies shall include, but are not limited to, the following:

a. The Delaware State Police;

b. All law-enforcement agencies and police departments of any political subdivision of this State;

c. The Department of Correction; and

d. The Department of Justice.

(3) “Provider” is as defined in § 10002 of Title 16.

(4) “Public safety answering point” is as defined in § 10002 of Title 16.

(5) “Wireless provider” is as defined in § 10002 of Title 16.

(6) “Wireless service” is as defined in § 10002 of Title 16.

(7) “Wireless service customer” is as defined in § 10002 of Title 16.

(80 Del. Laws, c. 152, § 1; 84 Del. Laws, c. 231, § 1.)

§ 8902B. Provision of call location information by wireless service provider to law enforcement.

(a) Upon request of a law-enforcement agency or a public safety answering point on behalf of a law-enforcement agency, a wireless provider shall provide call location information concerning the telecommunications device of a wireless service customer to the requesting law-enforcement agency or public safety answering point. A law-enforcement agency or public safety answering point shall only request information under this chapter for the purposes of responding to a call for emergency services or in an emergency situation that involves the risk of death or serious physical harm.

(b) A wireless provider may establish protocols by which the carrier voluntarily discloses call location information.

(c) No cause of action shall lie in any court against a wireless provider, its directors, officers, employees, agents, or vendors for providing cell location tracking information to a law-enforcement agency or public safety answering point as required by this chapter.

(d) The Delaware State Police Headquarters Communications shall obtain contact information from all wireless providers authorized to do business in this State to facilitate a request from a law-enforcement agency or a public safety answering point on behalf of a law-enforcement agency for call location information under this section. The Delaware State Police Headquarters Communications shall disseminate the contact information to each public safety answering point in this State.

(80 Del. Laws, c. 152, § 1.)

Part VI
Victims of Crimes

Chapter 90
Compensation for Innocent Victims of Crime

§ 9001. Declaration of purpose.

The General Assembly hereby declares that it serves a purpose, and is of benefit to the State, to indemnify those persons who are victims of crimes committed within the State or Delaware victims of terrorist acts, and it is therefore the declared purpose of this chapter to promote the public welfare by establishing a means of meeting the additional hardships imposed upon the innocent victims of certain crimes, and the families and dependents of those victims.

(59 Del. Laws, c. 519, § 1; 60 Del. Laws, c. 436, § 1; 73 Del. Laws, c. 250, § 1; 77 Del. Laws, c. 193, § 1.)

§ 9002. Definitions.

For purposes of this chapter:

(1) “Agency” means the Victims’ Compensation Assistance Program.

(2) “Appeals Board” means the Victims’ Compensation Assistance Program Appeals Board.

(3) “Child” means an unmarried person who is under 18 years of age, and includes the stepchild, foster child, or adopted child of the victim, or child conceived before, but born after, the personal injury or death of the victim.

(4) “Claimant” means victim, secondary victim, dependent, or any other person filing a claim under § 9012 of this title on behalf of a victim, secondary victim, or dependent.

(5) “Council” means the Victims’ Compensation Assistance Program Advisory Council.

(6) “Crime” means any of the following:

a. Any specific offense set forth in Chapter 5 of this title, if the offense was committed after July 1, 1973, and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives, unlawful use of firearms, stalking, or endangering the welfare of a child.

b. Any specific offense set forth in former Chapter 3 of this title, if such offense was committed prior to July 1, 1973, and contains the characteristics of murder, rape or any other sexual assault or sexual abuse, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives, or unlawful use of firearms.

c. Any specific offense occurring in another state, possession, or territory of the United States or in violation of the United States Criminal Code, in which a person whose domicile is in Delaware is a victim, if the offense contains the characteristics of murder, rape or any other sexual assault or sexual abuse, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives, or unlawful use of firearms as set forth in Chapter 5 of this title.

d. Any specific act of delinquency by a child, which if committed by an adult would constitute a specific offense set forth in Chapter 5 of this title, and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives, or unlawful use of firearms.

e. An act of terrorism, as defined in 18 U.S.C. § 2331, committed outside, or inside, the United States against a resident or domiciliary of this State.

f. Any offense under the Criminal Code or the Motor Vehicle Code containing as an element the act of driving under the influence of alcohol or any drug or driving with a prohibited blood alcohol concentration, vehicular homicide in any degree, vehicular assault in any degree, operation of a motor vehicle causing death, leaving the scene of an accident involving personal injury, or operation of a vehicle causing serious physical injury to a vulnerable user.

g. Any act that contains the characteristics of domestic violence or abuse.

h. Any act that contains the characteristics of human trafficking as defined in § 787 of this title.

(7) “Dependent” used as a noun, means a person wholly or substantially dependent on the income of the victim at the time of victim’s death, or would have been so dependent but for the incapacity of the victim due to the injury from which the death resulted, and includes a child born after the death of the victim.

(8) “Executive Director” means the executive director of the Agency, except in § 9003 of this title.

(9) “Guardian” means any person, governmental instrumentality, or private organization who is entitled by law or legal appointment to care for and manage the person or property, or both, of a child or person who is incapacitated.

(10) “Pecuniary loss” means any expenses actually and necessarily incurred as a result of personal injury or death resulting from a crime, but does not include property damage. “Pecuniary loss” includes the following, except that for secondary victims, “pecuniary

loss" means what is in paragraphs (10)d. and (10)o. of this section, and for claimants in homicide cases, "pecuniary loss" means what is in paragraphs (10)b., (10)c., (10)d., (10) f., (10)h., (10)o., (10)s., and (10)u. of this section:

a. Crime scene cleanup not to exceed $1,000.

b. Temporary housing not to exceed $1,500.

c. Moving expenses not to exceed $1,000.

d. Essential personal safety property not to exceed $1,500.

e. Lost wages of parents or others charged with the care, custody, or guardianship of a victim while providing care to the victim.

f. Reasonable expenses, other than counseling of secondary victims where the victim has been killed by the act of a person during the commission of a crime, not to exceed $1,000.

g. The deductible under a policy of automobile insurance where a motor vehicle is stolen in connection with a crime, not to exceed the amount of the deductible.

h. Housing-related expenses, including mortgage, rent, security deposit, or other housing costs and furniture not to exceed 3 times the claimant's monthly prospective housing cost.

i. Loss of support for victims of violence, not to exceed $3,000, when all of the following are established:

1. The offender was gainfully employed or had other legal income at the time the crime was committed against the victim.

2. The victim is fully or partially dependent on the income of the offender.

3. The victim no longer has that income from the offender.

j. Compensation for towing and impoundment expenses incurred as a direct result of a crime.

k. The cost to change locks and replace items seized as evidence.

l. Child care not to exceed the deposit plus 2 months of care by a state-approved or licensed day care provider.

m. Reimbursement for reasonable expenses incurred due to attendance at criminal proceedings as a witness for the prosecution.

n. Medical expenses.

o. Psychiatric care and mental health counseling.

p. Nonmedical remedial care and treatment rendered in accordance with a religious method of healing.

q. Hospital expenses.

r. Loss of past or future earnings, including reimbursement for vacation, sick, and compensatory time, because of a disability resulting from personal injury.

s. Funeral expenses and burial expenses not to exceed $7,500.

t. [Repealed.]

u. Loss of support to the dependents of a victim of homicide.

(11) "Person who is incapacitated" means a person who is incapable of managing the person's own affairs, as determined by the Agency or by a court of competent jurisdiction.

(12) "Personal injury" means bodily harm, mental, emotional or psychological harm, or includes pregnancy resulting from the crime.

(13) "Secondary victim" means any parent, stepparent, grandparent, son, daughter, spouse, sibling, half-sibling, fiance, caretaker of the victim, any child who resides on a regular or semi-regular basis with any adult who is the victim of, or convicted of, any crime involving an act of domestic violence, the parents of a victim's spouse, or any person who resided in the victim's household at the time of the crime or at the time of the discovery of the crime. For purposes of receiving mental health counseling only, this definition includes any person who discovers and reports a homicide.

(14) "Victim" means a person who sustains a personal injury or is killed by the act of any other person during the commission of a crime.

(59 Del. Laws, c. 519, § 1; 60 Del. Laws, c. 436, § 2; 66 Del. Laws, c. 262, § 1; 66 Del. Laws, c. 269, § 11; 67 Del. Laws, c. 71, § 1; 69 Del. Laws, c. 156, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 11, §§ 1, 2; 71 Del. Laws, c. 424, §§ 4, 6; 72 Del. Laws, c. 460, §§ 1-5, 19; 73 Del. Laws, c. 250, §§ 2, 3; 74 Del. Laws, c. 296, §§ 1-6; 76 Del. Laws, c. 360, § 1; 77 Del. Laws, c. 193, § 1; 78 Del. Laws, c. 103, §§ 6, 7; 79 Del. Laws, c. 276, § 2; 83 Del. Laws, c. 247, § 1; 85 Del. Laws, c. 142, § 2.)

§ 9003. Advisory Council.

(a) The Victims' Compensation Assistance Program Advisory Council ("Council") is comprised of the following members, or a designee selected by the member serving by virtue of position:

(1) The Attorney General.

(2) The Chairperson of the Victim's Rights Task Force.

(3) The Chairperson of the Domestic Violence Task Force.

(4) The Child Advocate.

(5) Eight at-large members appointed by the Governor as follows:

a. One member from the medical profession.

b. Two members from the mental health profession.

c. One member who is employed by a police agency as a "victim services professional" as defined in § 9401 of this title.

d. Four members of the public, 1 member from each of the following:

1. City of Wilmington.

2. New Castle County, outside of the city limits of Wilmington.

3. Kent County.

4. Sussex County.

(6) The Executive Director of the Delaware Alliance Against Sexual Violence.

(b) (1) The term of Council members appointed under paragraph (a)(5) of this section is 3 years.

(2) Notwithstanding paragraph (b)(1) of this section, the term of an appointed member continues until that member's successor is duly appointed.

(c) In case of a vacancy on the Council before the expiration of a member's term under subsection (b) of this section, the Governor must appoint a successor within 30 days of the vacancy. A member appointed under this subsection serves for the remainder of the unexpired term.

(d) The Attorney General or the Attorney General's designee serves as chair.

(e) (1) A quorum of the Council is a majority of its members.

(2) Official action by the Council, including making findings and recommendations, requires the approval of a quorum of the Council.

(3) The Council may adopt rules necessary for its operation.

(4) The chair of the Council may invite individuals with relevant expertise to participate in Council discussions.

(5) A member of the Council with the ability to designate another individual to attend a Council meeting must provide the designation in writing to the chair. An individual attending a meeting for a member as a designee has the same duties and rights as the member.

(6) The Council shall meet at the call of the chair but no less than 4 times a year.

(f) The Department of Justice is responsible for providing reasonable and necessary support staff and materials for the Council.

(59 Del. Laws, c. 519, § 1; 60 Del. Laws, c. 436, § 3; 61 Del. Laws, c. 409, § 68; 65 Del. Laws, c. 268, § 2; 66 Del. Laws, c. 85, § 49; 67 Del. Laws, c. 208, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 460, § 21; 77 Del. Laws, c. 193, § 1; 83 Del. Laws, c. 247, § 2; 85 Del. Laws, c. 142, § 3.)

§ 9004. Functions of the Council.

The Council shall have the following functions, powers and duties:

(1) To review and comment on such rules and regulations as are proposed by the Agency.

(2) To serve in an advisory capacity to the Agency and Appeals Board.

(3) Recommend adoption, amendment, or rescission of rules, regulations and policies implementing this chapter.

(4) In its discretion, prepare an independent annual report describing the Council's activities.

(59 Del. Laws, c. 519, § 1; 66 Del. Laws, c. 261, § 1; 67 Del. Laws, c. 208, § 2; 77 Del. Laws, c. 193, § 1; 79 Del. Laws, c. 125, § 2.)

§ 9005. Victims' Compensation Assistance Program.

(a) This hereby establishes the Victims' Compensation Assistance Program, hereafter the "Agency," which functions under the authority of the Department of Justice, and which has the sole jurisdiction over the awarding of compensation for claimants.

(b) *Executive Director. —*

The Executive Director must be appointed by and report to the Attorney General. The Executive Director shall manage the Agency staff and supervise the claims review process and payment of compensation to claimants.

(c) The Executive Director and staff shall support the Council and the Appeals Board.

(d) *Staff. —*

The Executive Director may employ staff and contract for services as necessary and authorized to carry out the purpose of the Agency, Council, and Appeals Board.

(77 Del. Laws, c. 193, § 1; 83 Del. Laws, c. 247, § 3.)

§ 9006. Function of the Agency.

The Agency, subject to the approval of the Department of Justice, has all of the following functions, powers, and duties:

(1) To meet and function at any place within the State.

(2) To obtain the services of other governmental agencies on request and to utilize those services when necessary.

(3) To receive, investigate, and determine awards, and to process for claims payment for applications filed under this chapter.

a.-c. [Repealed.]

(4) To publish reports, information, and other data collected by the Agency.

(5) To annually render to the Governor and General Assembly a written report of the Agency's activities and recommendations.

(6) To provide applications for purposes of this chapter and to specify the information to be included in the applications.

(7) To adopt, promulgate, amend, and rescind rules and regulations that are required to carry out this chapter.

(8) To reimburse other governmental agencies under this chapter for awards to claimants.

(9) To recover, through reimbursement by the criminal defendant, the full amount of compensation paid to claimants for crimes committed by the defendant.

(10) To recover, through reimbursement from claimants, funds received from other sources of payment, as set forth herein.

(11) To administer the Victims' Compensation Fund established by this chapter.

(77 Del. Laws, c. 193, § 1; 79 Del. Laws, c. 125, § 2; 79 Del. Laws, c. 404, § 1; 83 Del. Laws, c. 247, § 4.)

§ 9007. Victims' Compensation Assistance Program Appeals Board.

(a) There is hereby established the Victims' Compensation Assistance Program Appeals Board, hereafter "Appeals Board", which is composed of 5 members to be appointed by the Governor and confirmed by the Senate. No more than 3 members may be of 1 major political party. Appeals Board representation must reflect representation from all counties of the State.

(b) Members of the Violent Crimes Compensation Board serving on July 31, 2009, will become the members of the Appeals Board. They will serve the balance of their terms in accordance with the provisions of the statute in existence at the time of their last reappointment. Upon expiration of the current terms of the Appeals Board members, their compensation will be $100 per meeting. The compensation of all other Appeals Board members is $100 per meeting.

(c) The term of Appeals Board members is 3 years. A member shall continue to serve until that member's successor is duly appointed but a holdover under this provision does not affect the expiration date of the succeeding term.

(77 Del. Laws, c. 193, § 1; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 247, § 5.)

§ 9008. Function of the Appeals Board.

(a) The Appeals Board has the power and authority to meet and function in any place within the State.

(b) The Appeals Board has the power and authority to affirm, reverse, or modify the Agency's claims decisions under the provisions of § 9012 of this title.

(77 Del. Laws, c. 193, § 1; 83 Del. Laws, c. 247, § 6.)

§ 9009. Administrative provisions; compensation.

A claimant, including an estate, may file a claim with the Agency for indemnification of all pecuniary loss:

(1) If a claim is approved, the award must be the amount of pecuniary loss minus the amount the claimant has received or will receive as indemnification from any other source, including any applicable insurance.

(2) In the event of a death caused by a crime , a person who legally or voluntarily assumes the obligation to pay the medical or burial expenses incurred as a direct result of the injury and death is eligible to file a claim with the Agency. This provision for payment in case of death does not apply to any insurer or public entity.

(3) The Agency is not compelled to provide compensation in any case, nor is it compelled to award the full amount claimed. The Agency may make its award of compensation dependent on conditions it deems desirable.

(4)-(6) [Repealed.]

(7) Payment may be made in accordance with this chapter, whether or not the alleged perpetrator of the criminal act is prosecuted or convicted, in the discretion of the Agency. Payment may be made even though the person committing the crime is legally deemed to not have intended the act by reason of age, insanity, drunkenness, or is otherwise deemed legally incapable of mens rea.

(8) Upon determination of the Agency of the amount of compensation due, the Agency shall request payment be issued by the Delaware State Treasurer in accordance with the State of Delaware Budget and Accounting Manual or any succeeding document.

(9) A person whose domicile is in Delaware and who is the victim or secondary victim of a crime that occurs in another state, possession, or territory of the United States may make an application for compensation if both of the following are true:

a. The crimes would be compensable had they occurred in Delaware.

b. The placement of the crime occurred in states, possessions, or territories of the United States not having eligible crime victim compensation programs that provide benefits equal to the benefits provided under this chapter.

(10) Where compensation has been paid to a claimant, the Agency may not reopen or reinvestigate a case after 2 years from the date of the last payment by the Agency, or 1 year from the date the award was rendered if no payment has been made, except where the Agency in its discretion determines that the circumstances render this requirement unreasonable. Where compensation has been denied to a claimant, reopening and reinvestigation must be limited to the circumstances set forth in Superior Court Civil Rule 60.

(11) Notwithstanding the provision of paragraph (10) of this section and § 9010(a)(3), (4), and (5) of this title to the contrary, the Agency may make an award for the payment of mental health counseling services under this chapter on a claim made by the victim of a crime that occurred before the victim's eighteenth birthday so long as the occurrence of the crime is appropriately documented, and the claim is filed before the victim's twentieth birthday. The Agency may also, upon good cause shown, permit a victim whose claim had previously been decided by the Agency to request that such claim be reopened for the purpose of making an award for the payment for mental health counseling services, and the Agency may reopen or reinvestigate the case and award such compensation, if the victim had not yet reached that victim's eighteenth birthday by the date of the Agency's original decision, and provided that the request for reopening is filed before the victim's twentieth birthday. However, the foregoing limitations in this paragraph (11) regarding the victim's twentieth birthday do not apply in cases of crimes involving sexual assault or abuse.

(12) Notwithstanding any provision to the contrary, the Agency may not limit acceptance or consideration of any applications arising from sexual assault or abuse of a child which may have otherwise been barred from consideration by a statute of limitations.

(13) a. Notwithstanding the provisions of paragraph (10) of this section or any other provisions of this chapter to the contrary, if any of the following apply, a victim or secondary victim of the crime committed by the offender may apply for reimbursement as set forth in paragraph (13)b. of this section:

1. Further investigation into a previously reported crime is initiated by a law-enforcement agency.

2. An offender appears in any judicial or administrative proceeding regarding a criminal charge, conviction, or sentence, including a trial, appeal, postconviction relief, mediation, penalty, parole or pardon hearing.

3. The offender is released from incarceration.

4. [Repealed.]

b. A victim or secondary victim may apply for reimbursement of the following costs under the circumstances set forth in paragraph (13)a. of this section provided that the costs are incurred within 1 year before, or within 2 years after, the opening of the investigation, the date of the judicial or administrative proceeding, or the release or execution date of the offender:

1. The cost of mental health counseling services, not to exceed 50 sessions.

2. Reasonable expenses incurred due to attendance at criminal proceedings.

3. Expenses for essential personal safety property, not to exceed $1,500.

c. Any payments made under this paragraph (13) are subject to the provisions of § 9010 of this title with regard to denial and reduction of claims, and to § 9011 of this title with regard to payment.

(59 Del. Laws, c. 519, § 1; 60 Del. Laws, c. 436, §§ 4, 5; 65 Del. Laws, c. 268, § 1; 66 Del. Laws, c. 262, § 2; 68 Del. Laws, c. 35, § 1; 68 Del. Laws, c. 213, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 424, § 5; 72 Del. Laws, c. 460, §§ 6-8, 15; 74 Del. Laws, c. 296, §§ 7, 8; 76 Del. Laws, c. 360, §§ 2, 3; 77 Del. Laws, c. 193, § 1; 77 Del. Laws, c. 204, § 1; 78 Del. Laws, c. 103, §§ 1, 2; 83 Del. Laws, c. 247, § 7; 84 Del. Laws, c. 433, § 3.)

§ 9010. Denial of claim; reduction.

(a) The Agency shall deny payment of a claim for any of the following reasons:

(1) Where the claimant was the perpetrator of the crime on which the claim is based.

(2) Where the victim incurred the personal injury on which the claim is based through collusion with the perpetrator of the crime.

(3) Where the victim refused to give reasonable cooperation to state or local law-enforcement agencies in their efforts to apprehend or convict the perpetrator of the crime in question.

(4) Where the claim has not been filed within 1 year after the personal injury on which the claim in based, unless an extension is granted by the Agency or the Agency, in its discretion, determines that the circumstances render this requirement unreasonable.

(5) Where the victim has failed to report the crime to a law-enforcement agency within 72 hours of its occurrence. This requirement is waived in any of the following circumstances:

a. The crime has been reported to an appropriate governmental agency, such as child or adult protective services or the Family Court.

b. The victim can provide a protection from abuse order.

c. The victim has cooperated with law enforcement or an appropriate government agency in cases of crimes involving domestic violence, sexual assault or abuse.

d. Where the Agency, in its discretion, determines that the circumstances of the crime or the victim render this requirement unreasonable.

(6) Where the victim is injured as a result of that victim's own suicide or attempted suicide, unless the suicide or attempted suicide is directly related to a prior criminal victimization for which compensation is eligible under this chapter.

(7), (8) [Repealed.]

(b) In determining whether or not to make an award under this chapter, or in determining the amount of any award, the Agency may consider any circumstances it deems to be relevant, including the behavior of the victim which directly or indirectly contributed to injury

or death, unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend an offender.

(c) If the victim bears any share of responsibility that caused injury or death, the Agency shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim. A claim may be denied or reduced if the victim of the personal injury in question, either through negligence or through wilful and unlawful conduct, substantially provoked or aggravated the incident giving rise to the injury.

(d) In no event may the Agency deny any claim solely because the victim was a child victim of sexual assault or abuse, and the victim either delayed reporting the abuse or assault to authorities or the victim delayed an application for services to mitigate the effects of the impact of sexual assault or abuse.

(59 Del. Laws, c. 519, § 1; 65 Del. Laws, c. 268, § 3; 68 Del. Laws, c. 35, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 18, §§ 1, 2; 72 Del. Laws, c. 460, §§ 9, 20; 74 Del. Laws, c. 296, §§ 9-12; 76 Del. Laws, c. 360, § 4; 77 Del. Laws, c. 193, § 1; 78 Del. Laws, c. 103, §§ 3-5; 83 Del. Laws, c. 247, § 8.)

§ 9011. Payment of compensation.

(a) Any person, regardless of age or mental condition, is entitled to make application for compensation under this chapter if the person is a claimant. In any instance in which the person entitled to make application is deemed by law to be a person who is incapacitated, the person may nevertheless appear in person or the application may be made on the person's behalf by any person acting as a relative, guardian, or attorney. Every claimant making application is entitled to appear and be heard by the Agency in accordance with § 9012(b), (c), and (d) of this title.

(b) Except in cases of dire hardship, as determined by the Agency, there may not be payment of compensation where the claim is for less than $25. Awards may be paid in a lump sum, or in periodic payments as determined by the Agency. All payment is exempt from attachment, garnishment, or any other remedy available to creditors for the collection of a debt.

(c) The Agency may require any injured person filing a claim under this chapter to submit to a physical or mental examination by a physician selected by the Agency.

(d) Compensation may not be awarded under the chapter to a claimant in a total amount in excess of $25,000; provided, however, that the Agency may award compensation to victims who are permanently and totally disabled in an amount not to exceed $50,000.

(e) Although a person who is incapacitated may appear and press a claim before the Agency, payment of compensation may not be made directly to any person who is incapacitated but must be made to a third person for the benefit of the person who is incapacitated. In the case of any payment for the benefit of a child or person who is incapacitated, the Agency shall order the payee to file an accounting with the Agency no later than January 31 of each year for the previous calendar year, and to take such other action as the Agency may determine to be necessary and appropriate for the benefit of the child or person who is incapacitated.

(f) The Agency shall deduct from its award of compensation any payments received from the following by the claimant if the payment were in any manner made to compensate for the personal injury or death arising from the crime or incident giving rise to the claim:

(1) The offender.

(2) Any person on behalf of the offender.

(3) Any insurer.

(4) The United States or any state.

(5) The State of Delaware or any of its political subdivisions.

(g) In the event that payment of an award of compensation has been received by the claimant, and payments as set forth is subsection (f) of this section are received, the claimant is obligated to reimburse the Agency for the funds received, to the full extent of the compensation paid by the Agency.

(h) The Executive Director has authority to accept reimbursement of less than the full amount of compensation paid, but only in cases where the claimant is subjected to extreme hardship, as determined in the sole discretion of the Executive Director.

(i) The reimbursement provisions of subsections (f), (g), and (h) of this section do not apply to any life insurance proceeds.

(59 Del. Laws, c. 519, § 1; 60 Del. Laws, c. 436, § 6; 64 Del. Laws, c. 273, § 1; 67 Del. Laws, c. 84, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 460, §§ 10-12; 77 Del. Laws, c. 193, § 1; 78 Del. Laws, c. 103, § 8; 79 Del. Laws, c. 404, § 4; 83 Del. Laws, c. 247, § 9.)

§ 9012. Form of claim; investigation—hearing.

(a) All claims filed with the Agency must be in writing on the Agency's provided claim form and signed by the claimant. The Agency shall initiate an investigation of the claim within 30 days of the filing of the claim. After this investigation, the Agency shall render a decision on whether or not to award compensation to the claimant. The Agency shall immediately mail a copy of its decision to the claimant, together with written notice of the claimant's options for redress if dissatisfied with the Agency decision.

(b) If the claimant is dissatisfied with the Agency's decision, the claimant may, within 30 days after the date the Agency decision is mailed, file a request for reconsideration of the claim. The request must include additional information from the claimant that supports

the claim request. If the request is not timely made, then the Agency decision is final and not appealable to the Appeals Board or the Superior Court.

(c) If a reconsideration is timely requested, the Executive Director shall review the claimant's information and render a final decision. This decision will immediately be mailed to the claimant, together with written notice of the claimant's right to request an appeal.

(d) If the claimant is dissatisfied with the Agency's final decision, the claimant may, within 30 days after the date the decision is mailed, request a hearing before the Appeals Board. If an appeal is timely requested, the Appeals Board shall fix the time and place for hearing the appeal. The Agency shall, at least 20 days before the time set for the hearing, mail notices of the time and place of the hearing to all interested persons and agencies. At the appeal hearing, the claimant may present evidence to the Appeals Board to show why the Agency's decision should be reversed or modified. Within 90 days of the conclusion of all hearings on the matter, the Appeals Board shall mail to the claimant a statement of its final decision to award or deny the claim and a statement of any conditions under which the claim will be awarded. The Appeals Board may affirm, reverse, or modify the Agency's decision.

(e) The claimant or the Agency, if dissatisfied by the Appeals Board's decision concerning compensation or any conditions attached to the award of the compensation, may appeal to the Superior Court within 30 days following the date the decision of the Appeals Board is mailed to the appealing party. An appeal to Superior Court must be based on the record of the Appeals Board hearing.

(59 Del. Laws, c. 519, § 1; 60 Del. Laws, c. 436, §§ 7, 8; 68 Del. Laws, c. 239, §§ 1, 2; 72 Del. Laws, c. 460, §§ 13, 14, 16; 77 Del. Laws, c. 193, § 1; 83 Del. Laws, c. 247, § 10.)

§ 9013. Attorney fees.

A claimant need not be represented by an attorney before the Appeals Board, but if such person is represented the Appeals Board may award an amount for services rendered. Such fees shall not exceed $1,000 or 15% of the amount awarded, whichever sum is less, and shall be in addition to the amount of compensation awarded to the claimant. An attorney shall not charge, demand, receive or collect for services rendered in connection with any proceedings under this chapter any amount other than awarded as attorneys' fees under this section.

(59 Del. Laws, c. 519, § 1; 77 Del. Laws, c. 193, § 1.)

§ 9014. Recovery from the criminal.

(a) Whenever any person is convicted of an offense and a payment of compensation is, or has been, made under this chapter for a personal injury or death resulting from the act constituting such offense, the State may institute an action against such person for the recovery of the whole or any specified part of the compensation in any Superior Court within the State, or in any other court, either state or federal, if such court has custody or control of funds of the criminal or which may be awarded to the criminal. Any amounts recovered under this section shall be deposited to the fund which finances the administration of this chapter.

(b) Any payment of compensation under this chapter does not affect any right of any person to recover damages in a civil action from the person convicted of the offense giving rise to the claim for compensation.

(c) Whenever any person is sentenced for an offense and compensation has been paid under this chapter to a claimant, the Agency may assert a claim for reimbursement of the Victims' Compensation Fund as restitution from the criminal defendant. In support of the reimbursement claim, the Agency shall submit an affidavit with supporting documentation to the sentencing court, setting forth all payments made to the claimant. Restitution may be awarded to the Agency. A hearing on restitution will be held on the timely request of the defendant. Where the compensation of the claimant is continuing, and the full amount of reimbursement due has not been established by the Agency, the affidavit may so state, and the sentencing court may reserve jurisdiction over any future claim for reimbursement to the Agency. Any supplemental claim for reimbursement to the Agency must be brought within 2 years of the sentencing date, or before the expiration of a term of probation imposed on the defendant for an offense giving rise to the claim for compensation, whichever date comes first. The courts shall establish procedures for determining the amount of reimbursement due to the Victims' Compensation Fund from offenders.

(59 Del. Laws, c. 519, § 1; 77 Del. Laws, c. 193, § 1; 79 Del. Laws, c. 404, § 2; 83 Del. Laws, c. 247, § 11.)

§ 9015. Assignment and subrogation.

(a) Awards and recoveries granted under this chapter shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this chapter shall be subject to execution, levy, attachment, garnishment or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) There shall be no substitution or subrogation, whether conventional or legal, of any indebtedness or right of action by virtue of any claim of guarantee or surety, agency, lien, payments or advances made, or any claim made by the person convicted of the act giving rise to any compensation awarded under this chapter.

(59 Del. Laws, c. 519, § 1; 77 Del. Laws, c. 193, § 1.)

§ 9016. Penalty assessment.

(a) In addition to, and at the same time as, any fine is assessed to any criminal defendant or any child adjudicated delinquent, there must be levied an additional penalty of 18% of every fine, penalty, and forfeiture imposed and collected by the courts for crimes or offenses

as defined in § 233 of this title, or $10 per offense of conviction, whichever is greater. Where multiple offenses are involved, the penalty assessment must be based on the total fine for all offenses. When a fine, penalty, or forfeiture is suspended, in whole or in part, the penalty assessment must not be suspended; provided, however, that if the penalty assessment herein imposed remains uncollected for a period in excess of 3 years, the courts may expunge the record of the assessment.

(b) The penalty assessment under subsection (a) of this section must be paid to the prothonotary or clerk of court, as applicable, and transmitted to the State Treasury to be deposited in a separate account for the administration of this chapter, designated the "Victims' Compensation Fund".

(59 Del. Laws, c. 519, § 1; 60 Del. Laws, c. 436, § 9; 63 Del. Laws, c. 227, § 1; 67 Del. Laws, c. 71, § 2; 67 Del. Laws, c. 260, § 1; 68 Del. Laws, c. 213, § 2; 68 Del. Laws, c. 223, § 1; 73 Del. Laws, c. 312, § 36; 77 Del. Laws, c. 193, § 1; 79 Del. Laws, c. 125, § 3; 83 Del. Laws, c. 247, § 12; 85 Del. Laws, c. 142, § 4.)

§ 9017. Annual reports.

The Department of Justice shall transmit to the Governor, State Auditor, and the General Assembly an annual report of the activity of the Agency under this chapter.

(59 Del. Laws, c. 519, § 1; 60 Del. Laws, c. 436, § 10; 69 Del. Laws, c. 250, § 1; 77 Del. Laws, c. 193, § 1; 83 Del. Laws, c. 247, § 13.)

§ 9018. Compensating fine.

In any court of the State upon the conviction of any person or the adjudication of delinquency of any child for a crime resulting in the personal injury or death of another person, the court may, in addition to any other penalty, and in addition to reimbursement to the Victims' Compensation Fund, order such person to pay a compensating fine, in lieu of, but greater than, the penalty set forth in § 9016 of this title. The amount of such fine is in the discretion of the court and must be commensurate with the malice shown and the injury done to the victim. All fines paid in accordance with this section must be deposited into the Victims' Compensation Fund.

(59 Del. Laws, c. 519, § 1; 67 Del. Laws, c. 71, § 3; 67 Del. Laws, c. 260, § 1; 77 Del. Laws, c. 193, § 1; 79 Del. Laws, c. 404, § 3; 83 Del. Laws, c. 247, § 14.)

§ 9019. Oaths; production of witnesses and records.

The Executive Director and each member of the Appeals Board shall have the power to administer oaths, subpoena witnesses and compel the production of books, papers and records relevant to any investigation or hearing authorized by this chapter. Any person who shall fail to appear in response to a subpoena or to answer any question, or produce any books, papers and records relevant to any such investigation or hearing may be compelled to do so by order of the Superior Court.

(60 Del. Laws, c. 436, § 11; 77 Del. Laws, c. 193, § 1.)

§ 9020. Filing false claim.

(a) Any claim under this chapter, which is false in part or in whole, constitutes a false written statement in violation of § 1233 of this title.

(b) Any person who files a false claim under this chapter shall forfeit any compensation and shall reimburse and repay the Agency for any compensation received under this chapter.

(60 Del. Laws, c. 436, § 12; 77 Del. Laws, c. 193, § 1; 83 Del. Laws, c. 247, § 15.)

§ 9021. Persons to whom chapter applicable.

This chapter shall apply to:

(1) All persons, including nonresidents of Delaware, who are victims of crimes committed on January 1, 1975, or thereafter within this State; and

(2) All Delaware residents and domiciliaries who are victims of terrorist acts.

(60 Del. Laws, c. 436, § 13; 72 Del. Laws, c. 460, § 17; 73 Del. Laws, c. 250, § 4; 77 Del. Laws, c. 193, § 1.)

§ 9022. Conflict of interest.

Any member of the Agency, Council, or Appeals Board with a direct or indirect interest in a matter in question shall disqualify themselves from any consideration of that matter.

(65 Del. Laws, c. 64, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 193, § 1; 83 Del. Laws, c. 247, § 16.)

§ 9023. Payment for forensic medical examinations for victims of sexual offense.

(a) The cost of a forensic medical examination done for the purpose of gathering evidence that can be used in the prosecution of a sexual offense may be paid from the Victims' Compensation Fund.

(b) For purposes of this section, "forensic medical examination" means medical diagnostic procedures examining for physical trauma, and determining penetration, force, or lack of consent. The cost of the examination must include collecting all evidence as called for in the sexual offense evidence collection kits and may include any of the following, if done as part of the forensic medical examination:

(1) Physician's fees for the collection of the patient history, physical, collection of specimens, and treatment for the prevention of venereal disease or the provision of emergency contraception, including 1 return follow-up visit.

(2) Emergency department expenses, including emergency room fees, cost of pelvic tray, and transportation by ambulance.

(3) Laboratory expenses for wet mount for sperm, swabs for acid phosphates and ABH antigen; blood typing, serology for syphilis and Hepatitis B; cultures for gonorrhea, chlamydia, trichomonas, and other sexually transmitted diseases; pregnancy testing; urinalysis; and any other laboratory test needed to collect evidence that could be used in the prosecution of the offense.

(c) Hospitals and health-care professionals shall provide forensic medical examinations free of charge to the victims of sexual offenses. Any hospital or health-care professional performing a forensic medical examination shall seek reimbursement for the examination from the patient's insurance carrier, including Medicaid and Medicare, if available. If insurance is unavailable, or does not cover the full costs of the forensic medical examination, the service provider may seek reimbursement from the Victims' Compensation Fund. The Agency shall authorize the repayment for reasonable expenses incurred during the forensic medical examination. The reimbursement may not exceed a maximum amount to be determined by the Agency. If the hospital or health-care professional has recovered from insurance, the Agency shall only provide compensation sufficient to total the maximum amount provided for in the Agency's rules and regulations.

(d) The victim of the sexual offense shall not pay any out-of-pocket costs associated with the forensic medical examination and shall not be required to file an application with the Agency. Notwithstanding other language in this chapter, all forensic medical examinations of victims of a sexual offense not covered by insurance must be paid for through the Victims' Compensation Fund and the payment must be considered full compensation to the hospital or health-care professional providing the services.

(e) In addition to, and at the same time as, any other fine or penalty assessed on any criminal defendant, all defendants convicted of a sexual offense as defined in § 761 of this title must be assessed an additional fine that must be used to reimburse the Victims' Compensation Fund for forensic medical examination payments. All defendants convicted of sexual offenses shall pay $50 for each misdemeanor level count for which they are convicted and $100 for each felony level count for which they are convicted. All fines paid in accordance with this section must be deposited into the Victims' Compensation Fund.

(f) Nothing in this section may preclude victims from applying to the Agency for other costs incurred.

(70 Del. Laws, c. 40, § 1; 77 Del. Laws, c. 193, § 1; 83 Del. Laws, c. 247, § 17.)

§ 9024. Payment for child psychological assessments and short-term counseling.

(a) The costs of a psychological assessment done for the purposes of evaluating the mental health needs of a child victim may be paid from the Victims' Compensation Fund.

(b) The costs of short-term counseling, as defined by the Agency, for the purposes of meeting the mental health needs of a child victim may be paid from the Victims' Compensation Fund.

(c) Any psychological assessment or counseling provided pursuant to this section shall be provided by a qualified mental health practitioner as determined by the Agency. The Agency shall authorize the repayment of reasonable expenses for a psychological assessment and/or short-term counseling. Such reimbursement shall not exceed a maximum amount to be determined by the Agency. Any mental health practitioner performing a psychological assessment and/or short-term counseling pursuant to this section shall seek reimbursement for such services from the patient's insurance carrier, including Medicaid and Medicare, if available. If the mental health practitioner has recovered from insurance, the Agency shall only provide compensation sufficient to total the maximum amount provided for in the Board's rules and regulations. Funding for psychological assessments and/or short-term counseling shall be available to the victim regardless of other health insurance resources which may exist.

(d) A parent or guardian acting on behalf of a child victim shall not pay any out-of-pocket costs associated with a psychological assessment or short-term counseling, and shall not be required to file an application with the Agency. Notwithstanding other language in this chapter, all psychological assessments and short-term counseling expenses of child victims shall be paid for through the Victims' Compensation Fund and such payment shall be considered full compensation to the mental health practitioner providing such services.

(e) Nothing in this section shall preclude a victim from applying to the Agency for other costs incurred.

(f) For the purpose of this section, "child victim" or "child" means any victim or person who had not yet reached that victim's or person's eighteenth birthday on the date of the commission of the crime.

(71 Del. Laws, c. 424, § 7; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 193, § 1.)

§ 9025. Enactment.

(a) To the extent that they may be under the administrative control of the Administrative Office of the Courts, as of July 1, 2009, the Executive Director and staff of the Violent Crime Compensation Board are transferred to the Department of Justice for budgetary and administrative purposes. Such employees shall be deemed to be employees of the Department of Justice with all benefits they may have accrued in the classified service as of July 1, 2009.

(b) The Advisory Council shall be established on July 1, 2009, and allow for the appointment of the 7 Advisory Council members by the Governor.

(c) The effective date for new process and procedures under the Victims' Compensation Assistance Program shall be August 30, 2009.

(d) The effective date for all new and pending claims to be processed through the newly established Victims' Compensation Assistance Program shall be August 30, 2009.

(77 Del. Laws, c. 193, § 1.)

Part VI
Victims of Crimes

Chapter 91
Distribution of Moneys Received as Result of Commission of Crime

§ 9101. Findings.

The General Assembly finds that it is against public policy and the welfare of the citizens of Delaware to allow a person accused or convicted of a crime to benefit financially from a published reenactment of said crime or any incidents involved therein. The General Assembly further finds that a system is required to provide for the distribution of moneys received as a result of the commission of a crime in order that victims of crime may be adequately compensated.

(64 Del. Laws, c. 169, § 1.)

§ 9102. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

(1) "Board" shall mean the Violent Crimes Compensation Board, as established by this title.

(2) "Person convicted of a crime" shall mean any person convicted of a crime in this State either by entry of a plea of guilty, a plea of nolo contendere, a "Robinson plea" or by conviction after trial as well as a person found not guilty as a result of the defense of mental disease or defect pursuant to this title.

(3) "Victim" shall mean a person who suffers personal, physical, mental or emotional injury, or pecuniary loss, as a direct result of the commission of a crime enumerated in Chapter 5 of this title.

(64 Del. Laws, c. 169, § 1; 67 Del. Laws, c. 260, § 1; 68 Del. Laws, c. 394, § 1.)

§ 9103. Distribution of moneys.

(a) Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person convicted of a crime in this State, with respect to the reenactment of such crime, by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of any kind, or from the expression of such convicted person's thoughts, feelings, opinions or emotions regarding such crime if such expression represents the primary contents of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, or live entertainment of any kind, shall submit a copy of such contract to the Board and pay over to the Board any moneys which would otherwise, by terms of such contract, be owing to the person convicted or the person's representatives. The Board shall deposit such moneys in an escrow account for the benefit of and payable to any victim or the legal representative of any victim of crimes committed by such convicted person, provided that such victim, or the legal representative of any such victim, within 5 years from the establishment of such escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against such person or the person's representatives.

(b) The Board, at least once every 6 months for 5 years from the date it receives such moneys, shall cause to have published a legal notice in a newspaper or newspapers of general circulation in the county wherein the crime was committed, and in the county contiguous to such county, advising such victims that such escrow accounts are available to satisfy money judgments pursuant to this chapter. The Board may, in its discretion, provide for such additional notice as it deems necessary.

(c) Upon a showing by any convicted person that 5 years have elapsed from the date of establishment of such escrow account, and further that no actions are pending against such convicted person pursuant to this chapter, the Board shall immediately pay over any moneys in such escrow account to such person or the person's legal representatives.

(d) Notwithstanding the foregoing provision of this chapter, the Board shall make payments from an escrow account to any person convicted of crime upon order of any court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the criminal proceeding against such person, including the appeals process. The Board may in its discretion and after notice to victims of the crime make payments from the escrow account to a representative of any person convicted of a crime for the necessary fees and expenses incident to the generation and procurement of the moneys paid into the escrow account, provided the Board finds that such payments would be in the best interest of the victims of the crime and would not be contrary to public policy. The total of all payments made from the escrow account under this subsection shall not exceed one fifth of the total moneys paid into the escrow account and available to satisfy civil money judgments obtained by victims of the crime.

(e) Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this chapter, shall be null and void as against the public policy of this State.

(f) For purposes of this chapter, notwithstanding any other provision of the Delaware Code, claims on moneys in the escrow account shall have the following priorities:

(1) Payments ordered by the Board or a court pursuant to subsection (d) of this section.

(2) Judgments obtained by the Division of Revenue, State of Delaware, against the convicted person pursuant to Chapter 5 of Title 30.

(3) Subrogation claims of the State in an amount not to exceed one third of the net amount of the civil judgment obtained by a victim which is payable directly to the victim from the escrow account.

(4) Civil judgments of the crime victims.

(5) Other judgment creditors or persons claiming moneys through the person convicted of a crime who present lawful claims, including local government tax authorities.

(6) The person convicted of the crime.

(g) The Board may bring an action in a court of competent jurisdiction for a declaratory judgment where it cannot determine the priority of claims and the proper distribution of any escrow account.

(h) Moneys in an escrow account shall not be subject to execution, levy, attachment or lien except in accordance with the priority of claims established in this chapter.

(64 Del. Laws, c. 169, § 1; 68 Del. Laws, c. 394, § 2; 70 Del. Laws, c. 186, § 1.)

§ 9104. Board as exclusive escrow agent.

Notwithstanding any other provisions of law, the Board shall have exclusive jurisdiction and control, as escrow agent, over any moneys subject to this chapter. No distribution of moneys in such escrow accounts shall be made except by determination and order of the Board.

(64 Del. Laws, c. 169, § 1.)

§ 9105. Judicial review.

Any party aggrieved by a final determination and order of the Board may appeal such final determination and order to the Superior Court.

(64 Del. Laws, c. 169, § 1.)

§ 9106. Penalties.

Any person convicted of a violation of this chapter shall be guilty of a class A misdemeanor.

(64 Del. Laws, c. 169, § 1.)

Part VI
Victims of Crimes
Chapter 92
Police Officers' Due Process, Accountability, and Transparency

(84 Del. Laws, c. 148, § 1.)

§ 9200. Limitations on political activity; "law-enforcement officer" defined; rights of officers under investigation.

(a) A law-enforcement officer within a jurisdiction in this State has the same rights to engage in political activity as are afforded to any other person. The right to engage in political activity shall not apply to any law-enforcement officer while on duty or when acting in an official capacity or while in uniform.

(b) For purposes of this chapter:

(1) "Detailed narrative" means a complete description of the facts, steps taken to further an investigation, evidence collected, conclusions reached, the names of officers involved for whom misconduct was substantiated, any discipline assigned in connection with the event, and the employment status of disciplined officers.

(2) "Formal investigation" refers to an investigation initiated at the request of management after a preliminary determination has been made that a rule or policy of the department may have been violated. A formal investigation is typically conducted by an internal affairs department or its equivalent and is distinguished from an informal inquiry that is more properly considered routine employer supervision.

(3) "Informal inquiry" means questioning by supervisory personnel for purposes of making a preliminary determination whether an officer has violated a rule or policy of the department. An informal inquiry is made only to obtain preliminary facts in order to determine whether a formal investigation should be initiated. An informal inquiry must be conducted in accordance with state and federal law.

(4) "Law-enforcement officer" or "officer" means a full-time or part-time police officer who is a sworn member of the Delaware State Police, of the Wilmington City Police Department, of the New Castle County Police, of the University of Delaware Police Division, the Delaware State University Police Department, of the police force established by the Delaware River and Bay Authority, or of the police department, bureau of police or police force of any incorporated municipality, city or town within this State or who is a sworn uniformed police or enforcement officer of the Department of Natural Resources and Environmental Control or of the Delaware State Capital Police, or a Probation and Parole Officer of the Department of Correction or a Probation and Parole Officer of the Department of Services for Children, Youth and their Families, or a State Fire Marshall Deputy or a state detective or special investigator of the Department of Justice, an agent of the State Police Drug Diversion Unit or an agent of the State Division of Alcohol and Tobacco Enforcement; provided, however, that except for the disclosures required under § 9210 of this title, this chapter shall not apply to the Superintendent or Deputy Superintendent of the Delaware State Police, or to any officer above the rank of Captain in the Delaware State Police, or to the chief of police of any police force in this State, or to any other officer who is the highest ranking officer in the law-enforcement agency. An officer who is not a member of 1 of the above agencies is not covered by this chapter.

(5) "Sustained finding" means after the conclusion of an investigation, a law-enforcement officer's violation of law, rule, policy, regulation, or guideline was established by a preponderance of the evidence. "Preponderance of the evidence" means more probably true than not.

(c) Whenever a law-enforcement officer is under formal investigation and is subjected to questioning which could lead to disciplinary action, the investigation or questioning shall be conducted under the following conditions:

(1) The questioning shall be conducted at a reasonable hour, preferably at a time when the officer is on duty unless the gravity of the investigation in the opinion of the investigator is of such degree that immediate questioning is required.

(2) The questioning shall take place at the agency headquarters or at the office of the local troop or police unit in which the incident allegedly occurred as designated by the investigating officer or unless otherwise waived in writing by the officer being investigated.

(3) The law-enforcement officer under investigation shall be informed of the name, rank and command of the officer in charge of the investigation at a time and at the discretion of the department, but no later than prior to formal questioning. All questions directed to the officer shall be asked by and through no more than 2 investigators. No formal complaint against a law-enforcement officer seeking dismissal or suspension or other formal disciplinary action shall be prosecuted under departmental rule or regulation unless the complaint is supported by substantial evidence derived from an investigation by an authorized member of the department or another officer who is certified pursuant to Chapter 84 of this title and has experience and/or training on conducting an internal law-enforcement investigation and is appointed by the Chief of Police, or the Chief's designee, of the law-enforcement department to conduct the investigation of the officer in question.

(4) The law-enforcement officer under investigation shall be informed in writing of the nature of the investigation prior to being questioned.

(5) Interview sessions shall be for reasonable periods of time. There shall be times provided for the officer to allow for such personal necessities and rest periods as are reasonably necessary.

(6) Except upon refusal to answer questions pursued in a valid investigation, no officer shall be threatened with transfer, dismissal or other disciplinary action.

(7) A complete record shall be kept of all interviews held in connection with the administrative investigation. Upon request, a copy of the record or recording of the interviews shall be provided to the officer.

(8) If the law-enforcement officer under interrogation is under arrest or may reasonably be placed under arrest as a result of the investigation, the officer shall be informed of the officer's rights, including the reasonable possibility of the officer's arrest prior to the commencement of the interrogation.

(9) Upon request, any officer under questioning shall have the right to be represented by counsel or other representative of the officer's choice, who shall be present at all times during the questioning unless waived in writing by the investigated officer. The questioning shall be suspended for a reasonable period of time if the officer requests representation until such time as the officer can obtain the representative requested if reasonably available.

(10) An officer who is charged with violating any departmental rules or regulations, or the officer's representative, will be provided access to transcripts, records, written statements, written reports, and video and audio recordings pertinent to the case if they are exculpatory, intended to support any disciplinary action or are to be introduced in the departmental hearing on the charges involved. Upon demand by the officer or counsel, they shall be produced within 48 hours of the written notification of the charges.

(11) At the conclusion of the formal investigation, the investigator shall inform in writing the officer of the investigative findings, conclusions, and any recommendation for further action. Notwithstanding anything in this chapter to the contrary, upon completion of the investigation and any related proceedings, an officer is entitled to access investigatory files regardless of whether charges are sustained.

(12) Except as set forth in subsection (d) of this section and § 9210 of this title, records compiled as a result of any investigation subject to the provisions of this chapter and/or a contractual disciplinary grievance procedure are confidential and may not be released to the public. A contract or collective bargaining agreement that purports to extend confidentiality provisions relating to officer personnel or disciplinary records beyond the scope set forth in this chapter is void and unenforceable as against public policy.

(13) Whenever an investigation is initiated, it must be completed, regardless of the employment status of the law-enforcement officer under investigation. The employing department shall maintain the file relating to the investigation regardless of whether or not the officer separates from the employing department prior to the initiation or completion of a formal investigation and regardless of the investigation's conclusion. Any sustained finding must be reported to the Police Officer Standards and Training Commission.

(d) Unless otherwise required by this chapter, no law-enforcement agency shall be required to disclose in any civil proceeding, other than those brought by a citizen against a law-enforcement officer alleging that the officer breached the officer's official duties and that such breach resulted in injury or other damage to the citizen, any:

(1) Personnel file; or

(2) Internal affairs investigatory file compiled in connection with a law-enforcement officer under investigation or subjected to questioning for any reason which could lead to disciplinary action, demotion, or dismissal.

(65 Del. Laws, c. 12, § 1; 65 Del. Laws, c. 139, §§ 1, 2; 67 Del. Laws, c. 237, § 1; 69 Del. Laws, c. 298, § 1; 70 Del. Laws, c. 175, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 467, § 1; 71 Del. Laws, c. 456, § 1; 72 Del. Laws, c. 367, § 6; 76 Del. Laws, c. 43, § 3; 76 Del. Laws, c. 303, §§ 1, 2; 77 Del. Laws, c. 158, § 1; 78 Del. Laws, c. 155, § 5; 79 Del. Laws, c. 340, § 1; 81 Del. Laws, c. 347, § 1; 84 Del. Laws, c. 148, § 1; 84 Del. Laws, c. 149, § 18.)

§ 9201. Insertion of adverse material in officer's file.

No law-enforcement agency shall insert any adverse material into the file of any officer except the file of the internal investigation or the intelligence division unless the officer has had an opportunity to review, sign, receive a copy of and comment in writing on the adverse material.

(65 Del. Laws, c. 12, § 1.)

§ 9202. Disclosure of personal assets.

No officer shall be required or requested to disclose any item of personal property, income, assets, sources of income, debts, personal or domestic expenditures (including those of any member of the officer's household), unless such information is necessary in investigating a violation of any federal, state or local ordinance with respect to the performance of official duties or unless such disclosure is required by state or federal law.

(65 Del. Laws, c. 12, § 1; 70 Del. Laws, c. 186, § 1.)

§ 9203. Hearing — Required on suspension or other disciplinary action.

If a law-enforcement officer is:

(1) Suspended for any disciplinary reason; or

(2) Charged with conduct alleged to violate the rules or regulations or general orders of the agency that employs the officer; or

(3) Charged with a breach of discipline of any kind, which charge could lead to any form of disciplinary action (other than a reprimand) which may become part of the officer's permanent personnel record,

then that officer shall be entitled to a hearing which shall be conducted in accordance with this chapter unless a contractual disciplinary grievance procedure executed by and between the agency and the bargaining unit of that officer is in effect, in which case the terms of that disciplinary grievance procedure shall take precedence and govern the conduct of the hearing.

(65 Del. Laws, c. 12, § 1; 65 Del. Laws, c. 139, § 3; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 148, § 1.)

§ 9204. Hearing — Scheduling; notice.

In the event an officer is entitled to a hearing, a hearing shall be scheduled within a reasonable period of time from the alleged incident, but in no event more than 45 days following the conclusion of the internal investigation, unless waived in writing by the charged officer. The officer shall be given written notice of the time and place of the hearing and the issues involved, including a specification of the actual facts that the officer is charged with having committed; a statement of the rule, regulation or order that those facts are alleged to violate; and a copy of the rule, regulation or order. The charge against the law-enforcement officer shall advise the officer of the alleged facts and that the violation of the rule constituted a basis for discipline, and shall specify the range of applicable penalties that could be imposed.

(65 Del. Laws, c. 12, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 148, § 1.)

§ 9205. Hearing — Procedure.

(a) An official record including testimony and exhibits shall be kept of the hearing.

(b) The hearing shall be conducted within the department by an impartial board of officers. The prosecuting party and the officer and/or the officer's representative shall be given an opportunity to present evidence and argument with respect to the issues involved. Both the department and the officer may be represented by legal counsel. In the event an impartial board cannot be convened, then a board of 3 officers or more shall be convened under the auspices of the Delaware Criminal Justice Council. Any officer appointed under this subsection, either within the department or under the auspices of the Criminal Justice Council, shall not be liable for civil damages from any acts or omissions arising out of such officer's service on the board as long as the member of the board of officers acted in good faith and without malice in carrying out that member's responsibilities or duties. A member of the board of officers is presumed to have acted in good faith and without malice unless proven otherwise.

(c) Evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs shall be admissible in evidence and given probative effect. The tribunal conducting the hearing shall give effect to the rules of privilege recognized by law and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. All records and documents which any party desires to use shall be offered and made a part of the record. Documentary evidence may be received in the form of copies of excerpts or by incorporation by reference.

(d) Every party shall have the right of cross-examination of witnesses who testify and may submit rebuttal evidence.

(e) The tribunal may take notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within its specialized knowledge. Parties shall be notified beforehand of the materials so noticed by the trial board. No law-enforcement officer may be adjudged guilty of any offense unless the hearing tribunal is satisfied that guilt has been established by substantial evidence.

(65 Del. Laws, c. 12, § 1; 65 Del. Laws, c. 139, § 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 166, § 1.)

§ 9206. Hearing — Evidence obtained in violation of officer's rights.

No evidence may be obtained, received or admitted into evidence in any proceeding of any disciplinary action which violates any of the rights established by the United States Constitution or Delaware Constitution or by this chapter. The tribunal may not enter any judgment or sustain any disciplinary action based on any evidence obtained in violation of the officer's rights as contained in this chapter.

(65 Del. Laws, c. 12, § 1.)

§ 9207. Hearing — Written decision and findings of fact to be delivered to officer.

Any decision, order or action taken following the hearing shall be in writing and shall be accompanied by findings of fact. The findings shall consist of a concise statement upon each issue in the case. A copy of the decision or order accompanying findings and conclusions along with the written action and right of appeal, if any, shall be delivered or mailed promptly to the law-enforcement officer or to the officer's attorney or representative of record.

(65 Del. Laws, c. 12, § 1; 70 Del. Laws, c. 186, § 1.)

§ 9208. Extra work as punishment prohibited.

No law-enforcement officer shall be compelled to work extra duty without compensation as a penalty for a disciplinary infraction. No suspension for any period of time provided in departmental rules and regulations shall affect the law-enforcement officer's eligibility for pension, hospitalization, medical and life insurance coverage or other benefits specifically protected under the contract of employment. Suspension may affect time of pension eligibility by contractual provision or other statutory provision. Nothing herein shall prevent any law-enforcement agency from requiring reimbursement by a suspended law-enforcement officer of the officer's employee contribution to benefits during the officer's time of suspension.

(65 Del. Laws, c. 12, § 1; 70 Del. Laws, c. 186, § 1.)

§ 9209. Application of chapter.

The chapter shall apply to all law-enforcement disciplinary proceedings throughout the State, conducted by the law-enforcement agencies specified in § 9200(b) of this title.

(65 Del. Laws, c. 12, § 1; 65 Del. Laws, c. 139, § 5.)

§ 9210. Authorized disclosures.

(a) (1) Beginning on August 7, 2023, an investigating agency shall prepare, within 30 days following the completion of a formal investigation and the conclusion of any hearing required by this chapter, a detailed narrative of the investigation, not including any compelled statements of an officer, and forward the detailed narrative to the Criminal Justice Council (CJC), with regard to any of the following:

a. Incidents where a law-enforcement officer has discharged a firearm at a person.

b. A law-enforcement officer's use of force that results in serious physical injury.

c. An investigation that results in a sustained finding that a law-enforcement officer engaged in a sexual assault or sexual harassment. For purposes of this paragraph, "sexual assault" means the commission or attempted initiation of a sexual act by means of force, threat, coercion, extortion, or offer or implication of leniency or official favor, under the color of authority. Propositioning sex or commission of a sexual act while an officer is on duty is deemed a "sexual assault."

d. An investigation that results in a sustained finding that a law-enforcement officer engaged in dishonest conduct. This includes, but is not limited to sustained findings of perjury, false statements, filing false reports, witness tampering, and destruction, falsification, or concealment of evidence.

e. A sustained finding of domestic violence by a law-enforcement officer.

(2) The detailed narratives required by this subsection may not reveal the name or any personal identifying information of a victim or witness. In a domestic violence case where revealing the name of the officer would also allow identification of the victim, the officer's name may be redacted.

(3) The Criminal Justice Council shall post the narratives they receive under this paragraph on their website within 30 calendar days of receipt.

(b) Departments shall provide information to a complainant or victim of officer misconduct regarding the resolution of that complaint, including the investigative findings, conclusions, and any recommendation for further action.

(c) (1) Notwithstanding anything in this chapter to the contrary, the Department of Justice must disclose in a criminal or delinquency matter, at the request of a defendant, all existing records, including those contained in a personnel or disciplinary file, relating to sustained findings of misconduct relating to perjury, witness tampering, intentional false statements or false reports, or destruction, falsification, or concealment of evidence by an officer who participated in the investigation or prosecution.

(2) The Department of Justice is responsible for gathering records from law-enforcement agencies that are responsive to a request under paragraph (c)(1) of this section and shall facilitate the transfer of records, pursuant to a confidentiality order entered by the court that restricts use or dissemination of such information beyond proceedings in that case and requires secure handling of the records.

(3) The Department of Justice shall diligently advise all agencies involved in criminal and juvenile justice matters of the agencies' continuing duty to identify, preserve, and disclose to the prosecutor, information required to be disclosed under this subsection.

(4) Prior to the transfer of records under this subsection, the Department of Justice shall redact all of the following:

a. The home address, home telephone number, work or school address, work telephone number, e-mail address, and Social Security number of a law-enforcement officer or officer's family member, a complainant or complainant's family member, or a witness or witness' family member.

b. The medical history and detailed medical information of a law-enforcement officer or a complainant. This paragraph (c)(4)b. may not be construed to permit redactions to any descriptions of injuries or conditions that are the subject of the complaint or caused by or resulting from a law-enforcement officer's alleged conduct.

(d) A law-enforcement agency must disclose to the Department of Justice unsubstantiated allegations of misconduct in which the following 3 criteria are satisfied:

(1) A formal investigation is ongoing.

(2) The allegations relate to perjury, witness tampering, intentional false statements or false reports, or destruction, falsification, or concealment of evidence by an officer who participated in the investigation or prosecution of a pending criminal matter.

(3) The misconduct at issue is alleged to have occurred in the course of the officer's participation in the investigation or prosecution of that same pending criminal matter.

(e) In addition to any existing obligation under federal or Delaware state law, the Department of Justice has the following disclosure obligations to the defense in a criminal or delinquency matter:

(1) The Department shall immediately disclose an unsubstantiated allegation of misconduct meeting the criteria in subsection (d) of this section where the evidence or information is exculpatory.

(2) The Department shall disclose an unsubstantiated allegation of misconduct meeting the criteria in subsection (d) of this section where the evidence or information is admissible for impeachment of a witness.

(3) The Department shall submit to the Court for in camera review all unsubstantiated allegations of misconduct meeting the criteria in subsection (d) of this section that are not otherwise disclosed to the defendant. Upon review, the Court shall order disclosure of an unsubstantiated allegation of misconduct if it is determined to be exculpatory or admissible for impeachment of witness. Where the Court orders disclosure, the disclosure shall be made under a protective order.

(f) If an allegation disclosed under subsections (d) and (e) of this section is determined at the conclusion of the formal investigation to be unsubstantiated, information relating to that allegation may not be used in any criminal or delinquency proceeding.

(g) A law-enforcement agency must require every new hire to sign an agreement allowing that officer's personnel file, and any disciplinary or investigative records relating to misconduct to be shared with any future law-enforcement agency, in this State or another jurisdiction, that hires or has made a conditional offer of hire to that officer. The sharing of these records with another law-enforcement agency that hires or makes a conditional offer of hire to an officer is not a violation of this chapter.

(84 Del. Laws, c. 148, § 1.)

§ 9211. Annual reporting and record retention.

(a) Beginning in 2024, each law-enforcement agency shall annually report to the Criminal Justice Council (CJC), and the CJC shall post on its website, all of the following information:

(1) The number of public complaints and internal complaints relating to police misconduct that the department receives each year, broken down by subject matter of the complaint.

(2) The number of formal investigations undertaken by the department each year, and the number of complaints resolved without a formal investigation.

(3) The number of formal investigations that resulted in a sustained finding of misconduct, an unsubstantiated finding, or any other disposition.

(b) Notwithstanding any other law to the contrary, records relating to any incident for which a detailed narrative is required to be publicly posted pursuant to this chapter, shall be preserved for at least 25 years.

(84 Del. Laws, c. 148, § 1.)

Part VI
Victims of Crimes

Chapter 93
Police Chief Due Process

§ 9301. Police chief removal; right to hearing; appeal.

(a) No colonel, chief of police or any officer who is the highest ranking officer of a legislatively authorized police department within this State, except the Police Chief of the City of Wilmington, Chief of New Castle County Police, and any colonel, chief of police or highest ranking officer of a police agency that is a division of the Department of Safety and Homeland Security, shall be dismissed, demoted or otherwise removed from office unless there is a showing of just cause and such person has been given notice in writing of the specific grounds for such action and an opportunity to be heard in the person's own defense, personally and/or by counsel, at a hearing, which may be public at the request of the person, before a panel appointed under the auspices of the Delaware Criminal Justice Council, such panel to consist of 3 persons, 1 to be appointed by the Chair of the Delaware Police Chiefs' Council, 1 by the President of the Delaware League of Local Governments, and 1 by the Chair of the Delaware Criminal Justice Council, provided that the Delaware Criminal Justice Council appointee shall not be an actively-serving law-enforcement officer. Such hearing shall be held on not less than 5 days written notice and not more than 30 days after such notice, unless the parties agree otherwise, in writing. The hearing panel's decision shall be by majority vote and based upon the evidence presented at the hearing. The hearing panel shall issue a written decision as to whether the charges against the colonel, chief or highest ranking officer were substantiated or unsubstantiated within 20 days of the conclusion of the hearing.

(b) If the hearing panel determines that the charges against the colonel, chief or highest ranking officer were unsubstantiated, it may award the colonel, chief or highest ranking officer his or her reasonable attorneys' fees.

(c) Any appeals from the process described in subsection (a) of this section shall be on the record to the Superior Court from the county in which the hearing was held. All such appeals shall be undertaken by filing a notice of appeal with the Court within 90 days of receipt of the hearing panel's written decision.

(d) By September 30, 2013, the Delaware Criminal Justice Council, the Delaware Police Chiefs' Council, and the Delaware League of Local Governments shall each appoint 2 representatives to a Rules Committee. One representative from the Delaware Criminal Justice Council shall chair the committee.

(e) By March 30, 2014, the Rules Committee created pursuant to subsection (d) of this section shall adopt rules and procedures to govern proceedings brought under this section. Thereafter, the Rules Committee shall meet at the call of the Chair to amend the rules and procedures as deemed necessary or appropriate.

(66 Del. Laws, c. 343, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 317, §§ 1-4; 79 Del. Laws, c. 68, § 1.)

Part VI
Victims of Crimes

Chapter 94
Crime Victims' Bill of Rights

Subchapter I
Crime Victims' Rights

§ 9401. Definitions.

For purposes of this chapter:

(1) "Crime" means any of the following:

a. An offense against the person under subchapter II of Chapter 5 of this title.

b. Any of the following offenses involving property:

1. A felony under Subpart A through Subpart E of Chapter 5 of this title.

2. An offense under § 811, § 820, § 823, § 840, § 841, § 848, § 851, § 861, § 900, or § 903 of this title.

c. Under Subpart A of subchapter V of Chapter 5 of this title, an offense relating to children or a vulnerable adult.

d. An offense relating to judicial or similar proceedings under § 1261, § 1263, § 1263A, § 1264, § 1271, or § 1271A of this title.

e. An offense against public health, order or decency under § 1311 through § 1313, or § 1339 of this title.

f. Noncompliance with conditions of release bond under § 2113 of this title.

g. Intimidation of a victim or witness under § 3532 or § 3533 of this title.

h. Under § 4176A of Title 21, operation of a vehicle causing death.

i. Any offense when any of the following apply:

1. The act was committed against an individual who is in a protected class as defined in § 1041(2) of Title 10.

2. The conduct constitutes abuse under § 1041(1) of Title 10.

3. The conduct is grounds for a sexual violence protective order under Chapter 72 of Title 10.

(2) a. "Individual with a cognitive disability" means an individual with a cognitive disability as "cognitive disability" is defined in § 761 of this title.

b. "Individual with a cognitive disability" does not include an individual with a cognitive disability accused of committing a felony, however, at the court's discretion, "individual with a cognitive disability" may include any of the following:

1. An individual with a cognitive disability when the individual's participation in a felony appears to have been induced, coerced, or unwilling.

2. An individual with a cognitive disability who participated in the felony, but who has subsequently and voluntarily agreed to testify on behalf of this State.

(3) "Law-enforcement agency" means any of the following:

a. A police department.

b. The Department of Justice.

c. The Department of Correction, including Probation and Parole.

(4) "Member of the victim's family" means a spouse, child, stepchild, parent, stepparent, or sibling. "Member of the victim's family" does not include an individual who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan.

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

(6) a. "Representative of a victim" means any of the following:

1. An individual designated by the victim or by a court.

2. A. If the victim is deceased, a member of the victim's family, except if paragraph (6)a.2.B. of this section applies.

B. If the deceased victim is a child and a sibling of the victim is in the custody of the Department of Services for Children, Youth and their Families (DSCYF) under Chapter 25 of Title 13, DSCYF or the sibling's attorney appointed under § 9007A of Title 29.

3. The parent, guardian, or custodian of a victim who is unable to meaningfully understand or participate in the proceedings because the victim is a child or an individual with a physical, psychological, or mental impairment.

4. If the victim is a child in the custody of the DSCYF under Chapter 25 of Title 13, DSCYF or the child's attorney appointed under § 9007A of Title 29.

b. "Representative of a victim" does not include an individual who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan.

(7) "Sex offense" means all offenses under Chapter 5, subchapter II, Subpart D of this title.

(8) "Supervisor" means an employee or official of an agency who has legal authority to issue directives to subordinate employees or officials.

(9) "Victim" means the victim of a crime and includes all of the following:

a. The person identified as the victim of a crime in a police report, a criminal complaint or warrant, an indictment or information or other charging instrument; or

b. The representative of a victim.

(10) "Victim advocate" means an individual who is an employee or in a formal volunteer role with a victim services agency to provide victim services to victims and includes victim services professionals.

(11) "Victim services" means any of the following, including by referral to another entity:

a. Crisis intervention services, including a crisis hotline.

b. Emergency assistance, which includes food, shelter, housing assistance, clothing, financial assistance, and legal assistance.

c. Orientation to and information about the criminal justice system, including court proceedings.

d. Information about legal rights, protections, and the criminal justice process.

e. Trauma-informed counseling.

f. Advocacy regarding legal protection provided to victims of crime, including legal assistance.

g. Assistance with understanding and completing civil court documents.

h. Assistance with an application to the Victims' Compensation Assistance Program.

i. Assistance with safety planning.

j. Support during any meeting, process, or proceeding necessary as a result of the crime.

(12) "Victim services agency" means a public or private organization that provides victim services.

(13) "Victim services professional" means an individual who is employed by a law-enforcement agency to provide victim services.

(14) a. "Witness" means an individual for whom any of the following apply:

1. Has knowledge of the existence or nonexistence of any fact related to any crime.

2. Has reported any crime to a law-enforcement officer or probation officer.

3. Has been designated for service with a subpoena.

4. Would be believed by any reasonable person to be an individual under paragraphs (14)a.1. through (14)a.3. of this section.

b. "Witness" does not include a law-enforcement officer or probation officer in the performance of their official duties.

(15) The following terms mean as defined in § 4701A of Title 29:

a. "Biological sample."

b. "Deoxyribonucleic acid" or "DNA."

c. "DNA profile."

d. "Sexual assault kit" or "SAK."

(68 Del. Laws, c. 445, § 1; 69 Del. Laws, c. 167, § 1; 70 Del. Laws, c. 101, § 1; 71 Del. Laws, c. 176, § 22; 71 Del. Laws, c. 285, §§ 22, 23; 71 Del. Laws, c. 467, § 11; 72 Del. Laws, c. 34, § 7; 72 Del. Laws, c. 211, § 1; 72 Del. Laws, c. 297, § 3; 73 Del. Laws, c. 255, § 5; 73 Del. Laws, c. 329, § 53; 74 Del. Laws, c. 44, § 1; 77 Del. Laws, c. 416, § 1; 78 Del. Laws, c. 168, § 8; 78 Del. Laws, c. 252, § 14; 79 Del. Laws, c. 260, § 11; 79 Del. Laws, c. 276, § 6; 80 Del. Laws, c. 175, § 10; 82 Del. Laws, c. 215, § 1; 82 Del. Laws, c. 216, § 1; 84 Del. Laws, c. 126, § 11; 85 Del. Laws, c. 142, § 1; 85 Del. Laws, c. 143, § 4.)

§ 9402. Compliance with chapter.

(a) The Department of Justice shall enforce compliance with this chapter on behalf of victims, witnesses, and members of their families.

(1) Each law-enforcement agency shall designate a supervisor who shall receive, review, and promptly address complaints of noncompliance with this chapter.

(2) A complaint under paragraph (a)(1) of this section may be filed by the victim, witness, or by an individual on behalf of a victim or witness.

(3) a. At the conclusion of the investigation of a complaint under paragraph (a)(2) of this section, the law-enforcement agency shall send the complainant a written summary of the investigation that states whether or not the law-enforcement agency complied with this chapter.

b. If the law-enforcement agency finds that it complied with this chapter, the written summary under paragraph (a)(3)a. of this section must include information regarding how a complaint against the law-enforcement agency may be made to the Department of Justice.

(b) (1) The failure to comply with this chapter does not create a claim for damages against a government employee, official, or entity.

(2) In addition to the administrative remedy under subsection (a) of this section, the sole civil or criminal remedy available to a victim or witness for a law-enforcement agency's failure to fulfill its responsibilities under this chapter is standing to file a writ of mandamus under § 564 of Title 10 to require compliance with those requirements.

(c) (1) The failure to provide a right, privilege, or notice to a victim or witness under this chapter does not affect the validity of an agreement between the State and the defendant or of an amendment, dismissal, plea, pretrial diversion, or other disposition of the case.

(2) A defendant or person accused or convicted of a crime against the victim does not have standing to object to any failure to comply with the requirements under this chapter.

(68 Del. Laws, c. 445, § 1; 69 Del. Laws, c. 167, § 1; 70 Del. Laws, c. 101, § 3; 72 Del. Laws, c. 211, § 2; 85 Del. Laws, c. 142, § 1.)

§ 9403. Rights of victims.

A victim of crime has all of the following rights:

(1) To maintain the confidentiality of their personal information as follows:

a. A law-enforcement agency may not disclose the residential address, telephone number, school, or place of employment of the victim or a member of the victim's family, except as allowed under paragraph (1)d. of this section.

b. A court may not compel a victim or a member of the victim's family testifying in a criminal proceeding to disclose their residential address, school, or place of employment on the record unless allowed under paragraph (1)d. of this section.

c. The information about a victim or a member of the victim's family under paragraphs (1)a. and (1)b. of this section is not a public record under the Freedom of Information Act, Chapter 100 of Title 29.

d. A law-enforcement agency may disclose, or a court may compel testimony about, the information under paragraphs (1)a. through (1)b. of this section if any of the following apply:

1. The individual waives confidentiality in writing.

2. The individual's residential address, school, or place of employment is the site of the crime.

3. A. Disclosure of the information is required by law or the Rules of Criminal Procedure, necessary for law-enforcement purposes, or a court finds that there is good cause and the disclosure is necessary.

B. To alert a school district or charter school, under § 8502(8)e. of this title, that a minor child or a child that has reached the age of 18 that continues to be enrolled in high school has been identified at the scene of a traumatic event.

(2) To the expeditious disposition of the criminal action.

a. The court shall consider the interest of the victim in a speedy prosecution.

b. If the victim is a child, the trial must be expedited, especially if the case involves child abuse or child sexual abuse.

c. If the victim is an individual with a cognitive disability, the court and the prosecution shall take appropriate action to ensure a prompt trial in order to minimize the length of time the victim must endure the stress of the victim's involvement in the proceedings. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance might have on the well-being of any victim who is an individual with a cognitive disability.

(3) To be safe.

a. A law-enforcement agency shall provide information to a victim about the procedures to follow if the victim is threatened, intimidated, or harassed.

b. The court shall provide a waiting area for a victim that is separate and secure from the defendant, defendant's relatives, and defense witnesses if available and the use of the area is practicable. If a separate and secure waiting area is not available or practicable, the court shall provide other safeguards to minimize the victim's contact with the defendant, defendant's relatives, and defense witnesses during proceedings.

c. When attending proceedings at a court, a victim has the right to express safety concerns and to request reasonable measures to ensure their safety, including modifications to standard practices, policies, and procedures.

d. A law-enforcement agency must provide a victim notice of the availability of information concerning pretrial release.

e. Postconviction, a victim has a right to notice of the defendant's projected release date and actual date of release or release to a community-based program.

(4) a. To confer with the prosecutor.

b. If the victim is an individual with a cognitive disability, to an explanation, in language the victim understands, of all proceedings in which the victim will be involved.

(5) To review the portions of recordings derived from body-worn cameras that includes statements made by the victim.

(6) To be present at all stages of criminal proceedings for the crime under § 3512 of this title.

a. A victim must be promptly informed of the date, time, and place of each proceeding at which the victim has a right to be present or if a proceeding has been rescheduled, unless the victim requests that notice of proceedings not be provided.

b. A member of the victim's family has the right to attend proceedings with the victim.

c. A victim may designate another individual to attend proceedings if the victim chooses not to attend.

d. At the victim's request, the court shall permit the presence of an individual to provide support to the victim at a proceeding unless the court determines that the exclusion of the individual is necessary to protect the defendant's right to a fair trial.

e. If the victim is an individual with a cognitive disability, the individual who attends the proceedings under paragraph (6)d. of this section may advise the judge, when appropriate, as a friend of the court, regarding the victim's cognitive disability and the victim's ability to understand proceedings and questions.

(7) To be notified of significant developments regarding the defendant or the case, including any of the following:

a. If the Department of Justice chooses not to pursue prosecution and the legal basis for the decision.

b. Any appeal or request for postconviction remedy, information about related hearings, and the decision from any such hearing.

c. If there is a change or a pending change in the defendant's custody status.

(8) To have a voice in the sentencing and postsentencing process, including all of the following:

a. To confer with the Investigative Services Officer during a presentence investigation under § 4331 of this title.

b. To be present at sentencing and to make a statement. This statement may be made in addition to the statement under § 4331 of this title.

c. To address, in writing or in person, the Board of Parole under § 4347 of this title and the Board of Pardons under § 4361 of this title.

(9) a. If available, to have a victim advocate present with them during all of the following:

1. A medical exam.

2. Meetings with law-enforcement, including when reporting and during interviews.

3. Trial preparation.

4. Court appearances, including a hearing for a Protection From Abuse or Sexual Violence Protective order, a trial and ancillary discussions, or sentencing.

5. A hearing of the Board of Parole or the Board of Pardons.

b. Paragraph (9)a. of this section means that a victim advocate cannot be prohibited from attending with a victim if the victim requests that the victim advocate attend.

c. Paragraph (9)a. of this section does not require that a law-enforcement agency or victim services agency make a victim advocate available to attend an event with a victim.

(10) To the prompt return of property from a law-enforcement agency when the property is no longer needed for evidentiary purposes unless the property is illegal or subject to forfeiture.

(11) a. To information about victim services.

b. If a victim is an individual with a cognitive disability, the victim's family is also entitled to the information under paragraph (11)a. of this section and to specific information regarding coping with the emotional impact of the crime and the subsequent proceedings in which the victim will be involved.

(12) a. To notice of the rights of victims under this chapter.

b. To file a complaint against the law-enforcement agency under § 9402 of this title for non-compliance with this chapter.

(68 Del. Laws, c. 445, § 1; 69 Del. Laws, c. 167, § 1; 69 Del. Laws, c. 318, §§ 1, 3; 72 Del. Laws, c. 211, §§ 3-5; 82 Del. Laws, c. 165, § 2; 85 Del. Laws, c. 142, § 1.)

§ 9404. Rights of victims; prohibition against detaining a victim exclusively for immigration violation or to turn over to federal immigration authorities absent warrant.

(a) It is the public policy of this State to protect the public from crime and violence by encouraging all persons who are victims of crimes to cooperate with the criminal justice system and not to penalize these persons for being victims or for cooperating with the criminal justice system.

(b) If an individual is a victim of a crime, a law-enforcement officer may not detain the individual exclusively for any actual or suspected immigration violation or turn the individual over to federal immigration authorities absent a judicial warrant or a valid court order.

(85 Del. Laws, c. 142, § 1.)

§ 9405. Rights of victims; location, status, and preservation of biological evidence.

(a) (1) A law-enforcement agency must submit all sexual assault kits to the Division of Forensic Science laboratory for analysis under Chapter 47 of Title 29, unless § 4713(g)(1)b. of Title 29 applies to the case connected to the SAK.

(2) Upon receipt of a sexual assault kit, the investigating law-enforcement agency shall do all of the following as soon as possible:

a. Contact the Division of Forensic Science to schedule an appointment to discuss the evidence collected and what will be submitted for testing.

b. Submit the SAK, and any additional evidence, to the Division of Forensic Science under § 4713A(a) of Title 29.

(b) Upon the request of a victim or the victim's designee, the law-enforcement agency that is investigating the victim's case shall inform the victim of any of the following:

(1) The location of biological samples, including the sexual assault kit, from the victim's case.

(2) The status of the DNA testing of the biological samples from the victim's case.

(c) A law-enforcement agency shall respond to the victim's request under subsection (b) of this section as soon as possible, but no more than 7 calendar days after the request.

(d) In addition to the rights provided under §§ 9402 through 9404 of this title, a victim has the following rights:

(1) To be informed by the law-enforcement agency handling the case whether a DNA profile was obtained from the testing of the biological sample.

(2) To be informed whether the DNA profile developed from the biological evidence has been entered into the State DNA Index System (SDIS) or the National DNA Index System (NDIS) under § 4713 or § 4713A of Title 29.

(3) To be informed whether there is a match between the DNA profile developed from the biological sample and a DNA profile contained in SDIS or NDIS, if this disclosure would not impede or compromise an ongoing investigation.

(e) (1) If a law-enforcement agency or the Division of Forensic Science intends to destroy or dispose of a biological sample from an unsolved sexual assault case, the law-enforcement agency must provide the victim with written notice of the intent to destroy or dispose of the evidence at least 20 days before the evidence is destroyed or disposed.

(2) The written notice under paragraph (e)(1) of this section must explain that the victim may request that the biological sample or its probative contents be preserved and how the victim can make that request.

(3) If a victim requests that the biological sample or its probative contents be preserved, the law-enforcement must not destroy or dispose of the evidence.

(4) Paragraphs (e)(1) through (e)(3) of this section do not apply to information expunged under § 4713(i) of Title 29.

(f) A sexual assault victim may designate a sexual assault victim advocate, or other support person of the victim's choosing, to act as a recipient of the information a law-enforcement agency is required to provide under this section.

(85 Del. Laws, c. 143, § 5.)

§ 9406. Safety of victim [Transferred].

Transferred to §§ 9403, 9410 of this title by 85 Del. Laws, c. 142, § 1, effective Aug. 20, 2025.

§ 9407. Presence at court proceedings; notice [Transferred].

Transferred to § 9403 of this title by 85 Del. Laws, c. 142, § 1, effective Aug. 20, 2025.

§ 9408. Prompt return of property [Transferred].

Transferred to § 9403 of this title by 85 Del. Laws, c. 142, § 1, effective Aug. 20, 2025.

§ 9409. Limitations on employer.

(a) An employer may not discharge or discipline a victim or a representative of the victim any of the following:

(1) Participation at the prosecutor's request in preparation for a proceeding.

(2) Attendance at a proceeding if the attendance is reasonably necessary to protect the interests of the victim.

(3) Attendance at a proceeding in response to a subpoena.

(b) An employer must comply with other applicable laws protecting victims or witnesses, including all of the following:

(1) For a subpoenaed school employee under § 1318(f)(2)a. of Title 14.

(2) For a victim of domestic violence, a sexual offense, or stalking under § 711(i) of Title 19.

(68 Del. Laws, c. 445, § 1; 69 Del. Laws, c. 167, § 1; 85 Del. Laws, c. 142, § 1.)

§ 9410. Information from a law-enforcement agency at initial contact.

(a) At the initial contact between the victim of a reported crime and the law-enforcement agency responsible for investigating that crime, the law-enforcement agency shall promptly provide the victim all of the following:

(1) A copy of the initial incident report with the explanation of a victim's rights created under § 9414 of this title.

(2) Notice of the availability of a victim service unit within the Department or, in the absence of a unit within that law-enforcement agency, the availability of the Statewide Victim Center.

(3) Information about the Victims' Compensation Assistance Program under Chapter 90 of this title.

(4) How the victim can obtain the information about the status of any arrest or pretrial release.

(5) The procedures that the victim may follow if threatened, intimidated, or if the defendant fails to comply with conditions of bail or custody.

(6) How to file a complaint under § 9402(a) of this title.

(b) Before speaking with a victim, a victim services professional must inform a victim if the victim services professional is required to share information disclosed by the victim that is relevant to the investigation and to whom that information must be disclosed.

(69 Del. Laws, c. 167, § 1; 69 Del. Laws, c. 318, §§ 1, 4; 68 Del. Laws, c. 445, § 1; 85 Del. Laws, c. 142, § 1.)

§ 9411. Information from the Department of Justice; responsibilities.

The Department of Justice shall make a reasonable attempt to notify a victim of all of the following information, if the information is applicable to the victim:

(1) All of the victim's rights under this chapter, including how to access the website under § 9414(d) of this title.

(2) A statement of the procedural steps in the processing of a criminal case.

(3) Procedures if the victim is threatened or harassed.

(4) Victim compensation information.

(5) A decision to decline prosecution and the legal basis for the decision.

(6) The right to be present at all stages of proceedings for the crime under § 3512 of this title.

(7) The right of the victim to request the attendance of a victim advocate under § 9403(9) of this title with the victim. The Department must prioritize attendance by a victim advocate when any of the following apply:

a. The victim is a child.

b. The victim is an individual with a cognitive disability.

(8) The right of the victim to consult with the prosecutor about the disposition of the case, including the victim's views on dismissal, plea negotiations, or a diversion program.

a. In felony cases, reasonable attempts to notify a victim of the terms of any plea or resolution must be communicated in advance of the plea being offered.

b. In misdemeanor cases, victims must be provided notice that pleas may be negotiated at case review hearings.

(9) Notice of the scheduling of court proceedings and changes including trial date, case review, and sentencing hearings.

(10) Notice of the crime or crimes of which the defendant is convicted.

(11) Notice of the specifics of any sentencing order.

(12) Notice of sentence reduction or modification order.

(13) Notice of any appeal or request for postconviction remedy, information about related hearings, and the decision from any such hearing.

(69 Del. Laws, c. 167, § 1; 69 Del. Laws, c. 318, §§ 1, 5, 6, 8-10; 71 Del. Laws, c. 176, §§ 23, 24; 85 Del. Laws, c. 142, § 1.)

§ 9412. Information concerning appeal or postconviction remedies [Transferred].

Transferred to § 9411 of this title by 85 Del. Laws, c. 142, § 1, effective Aug. 20, 2025.

§ 9413. Information concerning confinement.

(a) For purposes of this section, "department" means the Department of Correction or the Department of Services for Children, Youth and Their Families.

(b) The department shall notify a victim of the following regarding a defendant in the department's custody:

(1) Projected release date.

(2) Release or release to a community-based program.

(3) A hearing date before the Board of Parole or the Board of Pardons.

(4) Escape from the custody of the department. When making a notification under this paragraph (b)(4), the department shall immediately notify all victims of the defendant by telephone or in-person.

(c) Upon the request of the victim, the the department shall provide the victim with the terms of a defendant's probation, parole, or other condition of release and the defendant's compliance or noncompliance with the sentence, probation, parole, or other conditions.

(69 Del. Laws, c. 167, § 1; 69 Del. Laws, c. 318, §§ 1, 7; 72 Del. Laws, c. 345, § 1; 85 Del. Laws, c. 142, § 1.)

§ 9414. General requirements for information from law-enforcement agencies [For application of (c) and (d) of this section, see 85 Del. Laws, c. 142, § 13].

(a) (1) Unless the form of notice is specifically required, information required under this chapter may be provided verbally, electronically, or as printed material.

(2) A victim is responsible for providing a law-enforcement agency with any changes to the victim's contact information.

(3) A victim may indicate and change their preferred method of contact by law-enforcement agencies, including a preference not to be contacted. A law-enforcement agency must use the victim's preferred method of contact when possible.

(4) The Delaware Criminal Justice Information System (DELJIS) shall create a mechanism that allows law-enforcement agencies to provide notice required under this chapter by e-mail.

(b) A person responsible for information required under this chapter must make all reasonable efforts to provide the information required under this chapter to victims, and may rely upon the most recent information provided by the victim.

(c) (1) The Department of Justice shall create a summary of the rights under §§ 9403 through 9405 of this title. This summary must also include all of the following:

a. The address of the website under subsection (d) of this section.

b. Notice that the rights under this chapter do not always apply to a victim.

c. A victim must provide changes in the victim's contact information to a law-enforcement agency investigating or prosecuting the crime.

(2) DELJIS must provide that the summary under paragraph (c)(1) of this section is printed on the last page of the victim's copy of the initial incident report.

(d) The Department of Justice shall maintain a website that provides information about all of the following:

(1) The rights under this chapter explained in a user-friendly manner. At a minimum, the information required under this section must be provided as follows:

a. In English and Spanish.

b. In a format that is as accessible as possible for individuals with disabilities.

(2) a. Victims services, including contact information for victim services personnel at each law-enforcement agency, Family Resource Centers, and as provided by each victim services agency.

b. For the family of a victim with a cognitive disability about victim services, including specific information regarding coping with the emotional impact of the crime and the subsequent court proceedings in which the victim will be involved.

(3) The Victims' Compensation Assistance Program under Chapter 90 of this title.

(4) The Address Confidentiality Act under subchapter II of Chapter 96 of this title.

(5) Victim's rights under § 4347 of this title when the defendant applies for parole and under § 4361 of this title when the defendant applies for a pardon.

(6) The rights of witnesses under all of the following:

a. Subchapter II of this chapter.

b. Chapter 35 of this title.

c. School employees under § 1318 of Title 14.

d. Board of Pardons under § 4361 of this title.

(7) Information about other rights a victim may have under state law, including all of the following:

a. Chapter 35 of this title.

b. For employees who are victims of domestic violence, a sexual offense, or stalking under § 711 of Title 19.

c. For tenants who are victims of domestic violence, sexual assault, or stalking under § 5314 and § 5316 of Title 25.

(69 Del. Laws, c. 167, § 1; 85 Del. Laws, c. 142, § 1; 85 Del. Laws, c. 143, § 6.)

§ 9415. Presentence report.

(a) An Investigative Services Officer shall make a reasonable effort to confer with the victim during a presentence investigation under § 4331 of this title.

(b) If the victim is not available or declines to confer, the Investigative Services Officer shall record that information in the report.

(69 Del. Laws, c. 167, § 1; 73 Del. Laws, c. 60, § 7; 85 Del. Laws, c. 142, § 1.)

§ 9416. Consideration of victim impact statement at Board of Parole Hearing or Board of Pardons hearing [Repealed].

(69 Del. Laws, c. 167, § 1; 69 Del. Laws, c. 318, § 1; repealed by 85 Del. Laws, c. 142, § 1, effective Aug. 20, 2025.)

§ 9417. Annual reports.

(a) Each law-enforcement agency shall compile an annual report outlining compliance with this chapter at the end of each calendar year that includes all of the following:

(1) The number of complaints received of noncompliance with this chapter.

(2) A summary of the results of investigations of complaints of noncompliance that includes all of the following:

a. The number of investigations of complaints that found that the law-enforcement agency had complied with this chapter.

b. The number of investigations of complaints that found that the law-enforcement agency failed to comply with this chapter.

(3) Steps taken to increase compliance with this chapter, including steps taken in response to complaints listed under paragraph (a)(2)b. of this section.

(4) If a law-enforcement agency cannot comply with a requirement under this chapter, the specific requirement that cannot be met and a detailed explanation of the reasons for noncompliance.

(b) Beginning February 1, 2026, a law-enforcement agency shall submit the report required under subsection (a) of this section to the Criminal Justice Council (CJC) for the CJC's annual report.

(c) Beginning April 30, 2026, the CJC shall compile an annual report that provides all of the following:

(1) The total number of complaints provided in the law-enforcement reports under paragraphs (a)(1) and (a)(2) of this section.

(2) A list of steps taken by law-enforcement agencies to improve compliance with this chapter under paragraph (a)(3) of this section.

(3) A list of requirements that cannot be met, as identified by law-enforcement agencies under paragraph (a)(4) of this section, and which law-enforcement agencies were unable to meet each requirement.

(4) Any recommendations to strengthen the rights of victims or witnesses under this chapter or to improve law-enforcement compliance with this chapter.

(5) An appendix with the reports submitted by law-enforcement agencies under subsection (b) of this section.

(d) The CJC's report under subsection (c) of this section shall be posted on the CJC's website and submitted to the Governor, President Pro Tempore of the Senate and the Speaker of the House of Representatives, the Chief Clerk of the House and the Secretary of the Senate for distribution to all members of the General Assembly, the Director and the Librarian of the Division of Legislative Services, and the Delaware Public Archives.

(69 Del. Laws, c. 167, § 1; 69 Del. Laws, c. 318, § 2; 85 Del. Laws, c. 142, § 1.)

§ 9418. Victims' Rights Fund.

All fines collected under Chapter 48 of Title 21 shall be deposited into a Victims' Rights Fund established within the State Treasurer's Office. Proceeds of this Fund are to be used for the establishment of necessary infrastructure and systems development in support of victim notification initiatives.

(69 Del. Laws, c. 169, § 2.)

§ 9419. Rights of qualifying neighborhood or homeowners' associations [Repealed].

(70 Del. Laws, c. 101, § 2; repealed by 85 Del. Laws, c. 142, § 1, effective Aug. 20, 2025.)

§ 9420. Polygraph testing of a victim.

(a) A law-enforcement officer, prosecutor, or other government official may not ask or require a victim of an alleged sex offense to submit to a polygraph examination or truth telling device as a condition for proceeding with the investigation.

(b) If a law-enforcement officer, prosecutor, or other government official violates subsection (a) of this section, the refusal of a victim to submit to a polygraph examination or other truth telling device does not prevent the investigation, charging, or prosecution of an alleged sex offense.

(76 Del. Laws, c. 294, § 1; 85 Del. Laws, c. 142, § 1.)

Subchapter II

Rights of Witnesses to Crime

§ 9421. Legislative intent [Repealed].

(74 Del. Laws, c. 44, § 1; repealed by 85 Del. Laws, c. 142, § 1, effective Aug. 20, 2025.)

§ 9422. Definitions [Transferred].

Transferred to § 9401 of this title by 85 Del. Laws, c. 142, § 1, effective Aug. 20, 2025.

§ 9423. Rights of witnesses to crime.

A witness to a crime has all of the following rights:

(1) To maintain the confidentiality of their personal information as follows:

a. A law-enforcement agency may not disclose the identity, residential address, telephone number, school, or place of employment of a witness or a member of the witness' family, except as allowed under paragraph (1)d. of this section.

b. A court may not compel a witness or a member of the witness's family testifying in a criminal proceeding to disclose their residential address, school, or place of employment on the record unless allowed under paragraph (1)d. of this section.

c. The information about a witness or a member of the witness's family under paragraphs (1)a. and (1)b. of this section is not a public record under the Freedom of Information Act, Chapter 100 of Title 29.

d. A law-enforcement agency may disclose, or a court may compel testimony about, the information under paragraphs (1)a. and (1)b. of this section if any of the following apply:

1. The individual waives confidentiality in writing.

2. The individual's residential address, school, or place of employment is the site of the crime.

3. A. Disclosure of the information is required by law or the Rules of Criminal Procedure, necessary for law-enforcement purposes, or a court finds that there is good cause and the disclosure is necessary.

B. To alert a school district or charter school, under § 8502(8)e. of this title, that a minor child or a child that has reached the age of 18 that continues to be enrolled in high school has been identified at the scene of a traumatic event.

(2) If the witness is a child, to an expedited trial, especially if the case involves child abuse or child sexual abuse.

(3) If the witness is an individual with a cognitive disability, all of the following apply:

a. The witness has a right to an explanation, in language the witness understands, of all legal proceedings in which the witness will be involved.

b. The witness, and the witness's family, to information about appropriate social services and programs to assist witnesses, specifically information regarding coping with the emotional impact of the crime and the subsequent court proceedings in which the witness will be involved.

c. The court and the prosecution shall take appropriate action to ensure a prompt trial in order to minimize the length of time the witness must endure the stress of the witness's involvement in the proceedings. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact such delay or continuance might have on the well-being of a witness with a cognitive disability.

d. The court shall provide a waiting area for a witness that is separate and secure from the defendant, defendant's relatives, and defense witnesses if available and the use of the area is practicable. If a separate and secure waiting area is not available or practicable, the court shall provide other safeguards to minimize the witness's contact with the defendant, defendant's relatives, and defense witnesses during court proceedings.

e. When attending proceedings at a court, a witness has the right to express safety concerns and to request reasonable measures to ensure their safety, including modifications to standard practices, policies, and procedures.

f. At the witness's request, the court shall permit the presence of an individual to provide support to the witness at a proceeding unless the court determines that the exclusion of the individual is necessary to protect the defendant's right to a fair trial.

g. If the witness is an individual with a cognitive disability, the individual who attends the proceedings under paragraph (3)f. of this section may advise the judge, when appropriate, as a friend of the court, regarding the witness's cognitive disability and the witness's ability to understand proceedings and questions.

(4) To the prompt return of property from a law-enforcement agency when the property is no longer needed to evidentiary purposes unless the property is illegal or subject to forfeiture.

(74 Del. Laws, c. 44, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 371, § 10; 85 Del. Laws, c. 142, § 1.)

§ 9424. Additional rights and services [Transferred].

Transferred to § 9423 of this title by 85 Del. Laws, c. 142, § 1, effective Aug. 20, 2025.

§ 9425. Prohibition against detaining a witness exclusively for immigration violation or to turn over to federal immigration authorities absent warrant.

(a) It is the public policy of this State to protect the public from crime and violence by encouraging all persons who are witnesses to crimes, or who otherwise can give evidence in a criminal investigation, to cooperate with the criminal justice system and not to penalize these persons for cooperating with the criminal justice system.

(b) If an individual is a witness to a crime or can otherwise give evidence in a criminal investigation, a law-enforcement officer may not detain the individual exclusively for any actual or suspected immigration violation or turn the individual over to federal immigration authorities absent a judicial warrant or a valid court order.

(85 Del. Laws, c. 142, § 1.)

§ 9426. Requirements for information from law-enforcement agencies [For application of this section, see 85 Del. Laws, c. 142, § 13].

(a) The Department of Justice shall create a summary of the rights under §§ 9423 and 9425 of this title.

(b) The summary under subsection (a) of this section must include the address of the website under § 9414(d) of this title and at a minimum, must be in English and Spanish and in a format that is as accessible as possible for individuals with disabilities.

(c) A law-enforcement agency must provide the information under this section to a witness.

(85 Del. Laws, c. 142, § 1.)

Part VII
Special Programs

Chapter 95
Victim-Offender Alternative Case Resolution

(82 Del. Laws, c. 92, § 1.)

§ 9501. Purpose.

(a) The General Assembly finds and declares that:

(1) The resolution of felony, misdemeanor and juvenile delinquent offenses can be costly and complex in a judicial setting where the parties involved are necessarily in an adversary posture and subject to formalized procedures; and

(2) Victim-offender alternative case resolutions can meet the needs of Delaware's citizens by providing forums in which persons may voluntarily participate in the resolution of certain criminal offenses in an informal and less adversarial atmosphere.

(b) It is the intent of the General Assembly that each program established under this chapter do all of the following:

(1) Establish and use victim-offender alternative case resolution programs to help meet the need for alternatives to the courts for the resolution of certain criminal offenses, whether before or after adjudication.

(2) Encourage continuing community participation in the development, administration and oversight of local victim-offender alternative case resolution.

(3) Offer structures for victim-offender alternative case resolution which may serve as models for programs in other communities.

(4) [Repealed.]

(70 Del. Laws, c. 444, § 1; 82 Del. Laws, c. 92, § 2.)

§ 9502. Program funding; operation; supervision.

(a) There is hereby established a Victim-Offender Alternative Case Resolution Committee to be composed of the Attorney General, Chief Defender, Chief Judge of the Court of Common Pleas, Director of the Criminal Justice Council, and the Chief Judge of Family Court or their designees to administer this chapter. Funds may not be awarded or a program approved without the approval of the Victim-Offender Alternative Case Resolution Committee.

(b) To be eligible for state funds, a program must do all of the following:

(1) Be operated by a 501(c)(3) [26 U.S.C. § 501(c)(3)] organization in Delaware.

(2) Provide neutral mediators who have received training in conflict resolution techniques.

(3) Comply with this chapter and the rules adopted by the Victim-Offender Alternative Case Resolution Committee.

(4) Provide victim-offender alternative case resolution in felony, misdemeanor and juvenile delinquency cases without cost to the participants.

(5) At the conclusion of the alternative case resolution process provide a written agreement or decision to the referral source setting forth the settlement of the issues and future responsibilities of each participant.

(c) Each program that receives funds under this chapter must be operated under a contract with the Victim-Offender Alternative Case Resolution Committee and must comply with this chapter.

(d) An organization applying to the Victim-Offender Alternative Case Resolution Committee for funding is to include all of the following information in its application:

(1) Cost of operating the victim-offender mediation program, including the compensation of employees.

(2) Description of the proposed area of service and number of participants expected to be served.

(3) Proof of nonprofit status.

(4) [Repealed.]

(e) The Chair of the Victim-Offender Alternative Case Resolution Committee or the Chair's designee may inspect, examine and audit the fiscal affairs and 990 Forms of victim-offender alternative case resolution programs.

(f) A program operated under this chapter is not a state agency or an instrumentality of the State. Employees and volunteers of a program are not employees of the State.

(g) A program that receives funds from the Victim-Offender Alternative Case Resolution Committee under this chapter must annually provide the Victim-Offender Alternative Case Resolution Committee with statistical data regarding all of the following:

(1) The operating budget.

(2) The number of case referrals, categories, or types of cases referred.

(3) The number of parties served.

(4) The number of cases resolved.

(5) The nature of the resolution and amount and type of restitution to the victim or community.

(6) The rate of compliance of the accused with the agreement of the parties.

(7) The length of total case processing time by the victim-offender alternative case resolution program.

(8) If applicable, community service hours agreed to and community service hours completed.

(9) [Repealed.]

(70 Del. Laws, c. 444, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 190, § 3; 80 Del. Laws, c. 26, § 3; 82 Del. Laws, c. 92, § 3.)

§ 9503. Confidentiality.

(a) All memoranda, work notes or products, case files or programs, and data collected under this chapter are confidential and privileged. This information is not subject to disclosure in any judicial or administrative proceeding.

(b) Confidentiality under subsection (a) of this section may be waived if a court or administrative tribunal determine that the materials were submitted by a participant to the program for the purpose of avoiding discovery of the material in a subsequent proceeding.

(c) Any communication relating to the subject matter of the resolution made during the mediation process by any participant, mediator, or any other person is a privileged communication. It is not subject to disclosure in any judicial or administrative proceeding unless all parties to the communication waive the privilege.

(d) To the extent that the communication in subsection (c) of this section may be relevant evidence in a criminal matter, the privilege and limitation of evidentiary use does not apply to any communication of a threat that injury or damage may be inflicted on any person or on the property of a party to the dispute.

(e) Nothing in this section prevents the Victim-Offender Alternative Case Resolution Committee from obtaining access to any information it deems necessary to administer this chapter.

(70 Del. Laws, c. 444, § 1; 82 Del. Laws, c. 92, § 4.)

§ 9504. Eligibility.

(a) An offender may not be admitted to the program unless the Attorney General certifies that the offender is appropriate for the program, regardless of any criteria established under any program or this chapter.

(b) A person who voluntarily enters an alternative case resolution process at a victim-offender alternative case resolution program established under this chapter may revoke that person’s consent, withdraw from the alternative case resolution process, and seek judicial or administrative redress before reaching a written agreement. A legal penalty, sanction, or restraint may not be imposed on the person for such withdrawal.

(70 Del. Laws, c. 444, § 1; 70 Del. Laws, c. 186, § 1; 82 Del. Laws, c. 92, § 5.)

§ 9505. Immunity.

(a) Members of the Victim-Offender Alternative Case Resolution Committee or board of directors of an organization with a victim-offender alternative case resolution program are immune from suit in any civil action based upon any proceedings or other official acts performed in good faith as members of the board.

(b) State employees and employees and volunteers of a victim-offender alternative case resolution program are immune from suit in any civil action based on any proceedings or other official act performed in their capacity as employees or volunteers, except in cases of wilful or wanton misconduct.

(c) A victim-offender alternative case resolution program is immune from suit in any civil action based on any of its proceedings or other official acts performed by its employees, volunteers, or members of its board of directors, except in the following cases:

(1) Wilful or wanton misconduct by its employees or volunteers.

(2) Official acts performed in bad faith by members of its board.

(70 Del. Laws, c. 444, § 1; 82 Del. Laws, c. 92, § 6.)

Part VII
Special Programs
Chapter 96
Protection of Witnesses and Crime Victims
Subchapter I
Protection of Witnesses

§ 9601. Witness relocation and services.

(a) The Attorney General may provide for the health, safety, security and welfare of a witness or a potential witness for the State government in an official proceeding concerning criminal activity or other serious offense, if the Attorney General determines that an offense involving a crime of violence directed at the witness with respect to that proceeding or an offense set forth in subchapter III of Chapter 35 of this title directed at the witness or a potential witness is likely to be committed. The Attorney General may also provide for the health, safety, security and welfare of the immediate family of, or a person otherwise closely associated with, such witness or potential witness if the family or person may also be endangered on account of the participation of the witness in the judicial proceeding.

(1) The Attorney General shall issue guidelines defining the types of cases for which the exercise of the authority of the Attorney General as set forth in this subchapter would be appropriate.

(2) The State and its officers and employees shall not be subject to any civil liability on account of any decision to provide or not to provide services under this subchapter.

(b) In connection with the provision of services under this subchapter to a witness, a potential witness, or an immediate family member or close associate of a witness or potential witness, the Attorney General shall take such action as the Attorney General determines to be necessary to protect the person involved from bodily injury or otherwise to assure the health, safety, security and welfare of that person, including the psychological well-being and social adjustment of that person, for as long as, in the judgment of the Attorney General, the danger to that person exists. The Attorney General may provide some or all of the following services by regulation:

(1) Provide suitable documents to enable the person to establish a new identity or otherwise protect the person;

(2) Provide housing for the person;

(3) Provide for the transportation of household furniture and other personal property to a new residence of the person;

(4) Provide to the person a payment to meet basic living expenses, in a sum established in accordance with regulations issued by the Attorney General, for such time as the Attorney General determines to be warranted;

(5) Assist the person in obtaining employment;

(6) Provide other services necessary to assist the person in becoming self-sustaining;

(7) Disclose or refuse to disclose the identity or location of the person relocated or protected, or any other matter concerning the person or the program after weighing the danger such a disclosure would pose to the person, the detriment it would cause to the general effectiveness of the program, and the benefit it would afford to the public or to the person seeking the disclosure, except that the Attorney General shall, upon the request of law-enforcement officials or pursuant to a court order, without undue delay, disclose to such officials the identity, location, criminal records and fingerprints relating to the person relocated or protected when the Attorney General knows or the request indicates that the person is under investigation for or has been arrested for or charged with an offense that is punishable by more than one year in prison or that is a crime of violence;

(8) Exempt procurement for services, materials, and supplies, and the renovation and construction of safe sites within existing buildings from other provisions of law as may be required to maintain the security of protective witnesses and the integrity of the witness security program established pursuant to this subchapter;

(9) Authorize expenditures to provide to law-enforcement protection to ensure the safety and security of the person and/or the person’s dwelling and/or the person’s place of business; and

(10) Authorize other expenditures and/or provide other services reasonably intended to provide for the health, safety, security and welfare of the person.

The Attorney General shall establish an accurate, efficient and effective system of records concerning the criminal history of persons provided services under this subchapter in order to provide the information described in paragraph (b)(7) of this section.

(c) Deductions shall be made from any payment made to a person pursuant to paragraph (b)(4) of this section hereof to satisfy obligations of that person for family support payments pursuant to a state court order.

(d) Any person who, without the authorization of the Attorney General, knowingly discloses any information received from the Attorney General under paragraph (b)(7) of this section shall be fined $5,000 or imprisoned for 5 years, or both. The Superior Court shall have exclusive jurisdiction of any violation of this subsection.

(e) (1) Before providing services to any person under this subchapter, the Attorney General shall, to the extent practicable, obtain information relating to the suitability of the person for inclusion in the program, including the criminal history, if any, and a psychological evaluation of, the person. A psychological evaluation shall only be required if the Attorney General intends to establish a new identity

and/or a new permanent place of residence for the person. The Attorney General shall also make a written assessment in each case of the seriousness of the investigation or case in which the person's information or testimony has been or will be provided and the possible risk of danger to other persons and property which could be created by providing services to a person and shall determine whether the need for that person's testimony outweighs the risk of danger to the public. In assessing whether services should be provided to a person under this subchapter, the Attorney General shall consider the person's criminal record, alternatives to providing services under this subchapter, the possibility of securing similar testimony from other sources, the need for protecting the person, the relative importance of the person's testimony, the results of psychological examinations, whether providing such services will substantially infringe upon the relationship between a child who would be relocated in connection with such services and that child's parent who would not be so relocated, and such other factors as the Attorney General considers appropriate. The Attorney General shall not provide services to any person under this subchapter if the risk of danger to the public created by the provision of such services, including the potential harm to innocent victims, outweighs the need for that person's testimony. This subsection shall not be construed to authorize the disclosure of the written assessment made pursuant to this subsection.

(2) In addition to the requirements set forth in paragraph (e)(1) of this section, before providing services under this subchapter which are intended to establish a new identity and/or a new permanent place of residence for the person, the Attorney General shall secure a psychological evaluation of the person which shall assess the risk of danger to the public, including the potential harm to innocent victims, potentially created by the provision of such services.

(f) Before providing services to any person under this subchapter, the Attorney General shall enter into a memorandum of understanding with that person. Each such memorandum of understanding shall set forth the responsibilities of that person, including:

(1) The agreement of the person, if a witness or potential witness, to testify and provide information to all appropriate law-enforcement officials concerning all appropriate proceedings;

(2) The agreement of the person not to commit any crime;

(3) The agreement of the person to take all necessary steps to avoid detection by others of the facts concerning the services provided to that person under this subchapter;

(4) The agreement of the person to comply with legal obligations and civil judgments against that person;

(5) The agreement of the person to cooperate with all reasonable requests of officers and employees of the state and other law-enforcement officers who are providing services under this subchapter;

(6) The agreement of the person to designate another person to act as agent for the service of process;

(7) The agreement of the person to make a sworn statement of all outstanding legal obligations, including obligations concerning child custody and visitation;

(8) The agreement of the person to disclose any probation or parole responsibilities, and if the person is on probation or parole under the laws of another State, to consent to supervision by the State of Delaware; and

(9) The agreement of the person to regularly inform the appropriate program official of the activities and current address of such person. Each such memorandum of understanding shall also set forth the services which the Attorney General has determined will be provided to the person under this subchapter, and the procedures to be followed in the case of a breach of the memorandum of understanding, as such procedures are established by the Attorney General. Such procedures shall include a procedure for filing and resolution of grievances of persons provided services under this subchapter regarding the administration of the program. This procedure shall include the opportunity for resolution of a grievance by a person who was not involved in the case.

(g) (1) The attorney General shall enter into a separate memorandum of understanding pursuant to this subsection with each person to whom services are provided under this subchapter who is 18 years of age or older. The memorandum of understanding shall be signed by the Attorney General and the person to whom services are provided.

(2) The Attorney General may delegate the responsibility initially to authorize services under this subchapter only to the Chief Deputy Attorney General or the State Prosecutor.

(h) If the Attorney General determines that harm to the person for whom services may be provided under this subchapter is imminent or that failure to provide immediate services would otherwise seriously jeopardize an ongoing investigation, the Attorney General may provide temporary services to such person under this subchapter before making the written assessment and determination required by subsection (e) of this section or entering into the memorandum of understanding required by subsection (f) of this section. In such a case the Attorney General shall make such assessment and determination and enter into such memorandum of understanding without undue delay after the services are initiated.

(i) The Attorney General may terminate the services provided under this subchapter to any person who substantially breaches the memorandum of understanding entered into between the Attorney General and that person pursuant to subsection (f) of this section, or who provides false information concerning the memorandum of understanding or the circumstances pursuant to which the person was provided services under this subchapter, including information with respect to the nature and circumstances concerning child custody and visitation. Before terminating such services, the Attorney General shall send notice to the person involved of the termination of the services provided under this subchapter and the reasons for the termination. The decision of the Attorney General to terminate such services shall not be subject to judicial review.

(74 Del. Laws, c. 57, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 28, § 1.)

§ 9602. Civil judgments.

(a) If a person provided services which include the establishment of a new identity and/or new place of permanent residence under this subchapter is named as a defendant in a civil cause of action arising prior to or during the period in which the services are provided, process in the civil proceeding may be served upon that person or an agent designated by that person for that purpose. The Attorney General shall make reasonable efforts to serve a copy of the process upon the person protected at the person's last known address. The Attorney General shall notify the plaintiff in the action whether such process has been served. If a judgment in such action is entered against that person, the Attorney General shall determine whether the person has made reasonable efforts to comply with the judgment. The Attorney General shall take appropriate steps to urge the person to comply with the judgment. If the Attorney General determines that the person has not made reasonable efforts to comply with the judgment, the Attorney General may, after considering the danger to the person and upon the request of the person holding the judgment, disclose the identity and location of the person to the plaintiff entitled to recovery pursuant to the judgment. Any such disclosure of the identity and location of the person shall be made upon the express condition that further disclosure by the plaintiff of such identity or location may be made only if essential to the plaintiff's efforts to recover under the judgment, and only to such additional persons as is necessary to effect the recovery.

Any such disclosure or nondisclosure by the Attorney General shall not subject the State and its officers or employees to any civil liability.

(b) (1) Any person who holds a judgment entered by a federal or state court in that person's favor against a person provided services which include the establishment of a new identity and/or a new place of employment under this subchapter may, upon a decision by the Attorney General to deny disclosure of the current identity and location of such person, bring an action against the person in the Superior Court. Such action shall be brought within 120 days after the petitioner requested the Attorney General to disclose the identity and location of the person to whom services have been provided under this subchapter. The complaint in such action shall contain statements that the petitioner holds a valid judgment of a federal or state court against a person provided services under this subchapter and that the petitioner sought to enforce the judgment by requesting the Attorney General to disclose the identity and location of such person.

(2) The petitioner in an action described in paragraph (b)(1) of this section shall notify the Attorney General of the action at the same time the action is brought. The Attorney General shall appear in the action and shall affirm or deny the statements in the complaint that the person against whom the judgment is allegedly held is provided services under this subchapter and that the petitioner requested the Attorney General to disclose the identity and location of such person for the purpose of enforcing the judgment.

(3) Upon a determination:

a. That the petitioner holds a judgment entered by a federal or state court; and

b. That the Attorney General has declined to disclose to the petitioner the current identify and location of the person against whom the judgment was entered,

the court shall appoint a guardian to act on behalf of the petitioner to enforce the judgment. The clerk of the court shall forthwith furnish the guardian with a copy of the order of appointment. The Attorney General shall disclose to the guardian the current identity and location of the person to whom services have been provided and any other information necessary to enable the guardian to carry out that guardian's duties under this subsection.

(4) It is the duty of the guardian to proceed with all reasonable diligence and dispatch to enforce the rights of the petitioner under the judgment. The guardian shall, however, endeavor to carry out such enforcement duties in a manner that maximizes, to the extent practicable, the safety and security of the person to whom services have been provided under this subchapter. In no event shall the guardian disclose the new identity or location of such person without the permission of the Attorney General, except that such disclosure may be made to a federal or state court in order to enforce the judgment. Any good faith disclosure made by the guardian in the performance of the guardian's duties under this subsection shall not create any civil liability against the State or any of its officers or employees, or the guardian.

(5) Upon appointment, the guardian shall have the power to perform any act with respect to the judgment which the petitioner could perform, including the initiation of judicial enforcement actions in any federal or state court or the assignment of such enforcement actions to a third party under applicable federal or state law. The Superior Court Rules of Civil Procedure shall apply in any action brought under this subsection to enforce a federal or state court judgment.

(6) The cost of any action brought under this subsection with respect to a judgment, including any enforcement action described herein, and the compensation to be allowed to a guardian appointed in any such action shall be fixed by the court and shall be apportioned among the parties as follows:

a. The petitioner shall be assessed the amount the petitioner would have paid to collect on the judgment in an action not arising under the provisions of this subsection; and

b. The protected person shall be assessed the costs which are normally charged to debtors in similar actions and any other costs which are incurred as a result of an action brought under this subsection.

In the event that the costs and compensation to the guardian are not met by the petitioner or by the protected person, the court may, in its discretion, enter judgment against the state for costs and fees reasonably incurred as a result of the action brought under this subsection.

(7) No officer or employee of the Department of Justice shall in any way impede the efforts of a guardian appointed under this subsection to enforce the judgment with respect to which the guardian was appointed.

(c) The provisions of this section shall not apply to a court order to which § 9603 of this title applies.

(74 Del. Laws, c. 57, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 28, § 1.)

§ 9603. Child custody arrangement.

(a) The Attorney General may not relocate any child in connection with services provided to a person under this subchapter if it appears that a person other than that protected person has legal custody of that child.

(b) Before services which include the establishment of a new identity and/or new place of permanent residence are provided under this subchapter to any person:

(1) Who is a parent of a child of whom that person has custody; and

(2) Who has obligations to another parent of that child with respect to custody or visitation of that child under a court order,

the Attorney General shall obtain and examine a copy of such order for the purpose of assuring that compliance with the order can be achieved. If compliance with a visitation order cannot be achieved, the Attorney General may provide services under this subchapter to the person only if the parent being relocated initiates legal action to modify the existing court order under paragraph (e)(1) of this section. The parent being relocated must agree in writing before being provided such services to abide by any ensuing court orders issued as a result of an action to modify.

(c) With respect to any person provided services which include the establishment of a new identity and/or new place of permanent residence under this subchapter:

(1) Who is the parent of a child who is relocated in connection with such services; and

(2) Who has obligations to another parent of that child with respect to custody or visitation of that child under a state court order,

the Attorney General shall, as soon as practicable after the person and child are so relocated, notify in writing the child's parent who is not so relocated that a child has been provided services under this subchapter. The notification shall also include statements that the rights of the parent not so relocated to visitation or custody, or both, under the court order shall not be infringed by the relocation of the child and the Department of Justice responsibility with respect thereto. The Department of Justice will pay all reasonable costs of transportation and security incurred in insuring that visitation can occur at a secure location, but in no event shall it be obligated to pay such costs for visitation in excess of 30 days a year. Additional visitation may be paid for, in the discretion of the Attorney General, by the Department of Justice in extraordinary circumstances. In the event that the unrelocated parent pays visitation costs, the Department of Justice may, in the discretion of the Attorney General, extend security arrangements associated with such visitation.

(d) (1) With respect to any person provided services which include the establishment of a new identity and/or new place of permanent residence under this subchapter:

a. Who is the parent of a child who is relocated in connection with such services; and

b. Who has obligations to another parent of that child with respect to custody or visitation of that child under a court order,

an action to modify that court order may be brought by any party to the court order in the Family Court in the county in which the child's parent resides who has not been relocated in connection with such services.

(2) With respect to actions brought under paragraph (d)(1) of this section, the Family Court shall establish a procedure to provide a reasonable opportunity for the parties to the court order to mediate their dispute with respect to the order. The court shall provide a mediator for this purpose. If the dispute is mediated, the court shall issue an order in accordance with the resolution of the dispute.

(3) If, within 60 days after an action is brought under paragraph (d)(1) of this section hereof to modify a court order, the dispute has not been mediated, any party to the court order may request arbitration of the dispute. In the case of such a request, the court shall appoint a commissioner to act as arbitrator, who shall be experienced in domestic relations matters. The court and the commissioner shall, in determining the dispute, give substantial deference to the need for maintaining parent-child relationships, and any order issued by the court shall be in the best interests of the child. In actions to modify a court order brought under this subsection, the court and the commissioner shall apply the law of the State in which the court order was issued. The costs to the state of carrying out a court order may be considered in an action brought under this subsection to modify that court order but shall not outweigh the relative interests of the parties themselves and the child.

(4) Until a court order is modified under this subsection, all parties to that court order shall comply with their obligations under that court order subject to the limitations set forth in this section.

(5) With respect to any person provided services which include the establishment of a new identity and/or new place of permanent residence under this subchapter who is the parent of a child who is relocated in connection with such services, the parent not relocated in connection with such services may bring an action in the Family Court for violation by that protected person of a court order with respect to custody or visitation of that child. If the court finds that such a violation has occurred, the court may hold the person to whom services have been provided in contempt.

Once held in contempt, the person to whom such services have been provided shall have a maximum of 60 days, in the discretion of the Attorney General, to comply with the court order. If the person fails to comply with the order within the time specified by the

Attorney General, the Attorney General shall disclose the new identity and address of the protected person to the other parent and terminate any financial assistance to such person unless otherwise directed by the court.

(6) The State shall pay litigation costs, including reasonable attorneys' fees, incurred by a parent who prevails in enforcing a custody or visitation order, but shall retain the right to recover such costs from the person to whom services have been provided under this subchapter.

(e) (1) In any case in which the Attorney General determines that, as a result of the relocation of a person and a child of whom that person is a parent in connection with the provision of services under this subchapter, the implementation of a court order with respect to custody or visitation of that child would be substantially impossible, the Attorney General may bring, on behalf of the person provided services under this subchapter, an action to modify the court order. Such action may be brought in the county in which the parent resides who would not be or was not relocated in connection with the services provided under this subchapter. In an action brought under this paragraph, if the Attorney General establishes, by clear and convincing evidence, that implementation of the court order involved would be substantially impossible, the court may modify the court order but shall, subject to appropriate security considerations, provide an alternative as substantially equivalent to the original rights of the nonrelocating parent as feasible under the circumstances.

(2) With respect to any state court order in effect to which this section applies, if the parent who is not relocated in connection with the services provided under this subchapter intentionally violates a reasonable security requirement imposed by the Attorney General with respect to the implementation of that court order, the Attorney General may bring an action in the county in which that parent resides to modify the court order. The court may modify the court order if the court finds such an intentional violation. The procedures for mediation and arbitration provided herein shall not apply to actions for modification brought under this subsection.

(f) In any case in which a person provided services which include the establishment of a new identity and/or new place of permanent residence under this subchapter is the parent of a child of whom that person has custody and has obligations to another parent of that child concerning custody and visitation of that child which are not imposed by court order, that person, or the parent not relocated in connection with such services may bring an action in the county in which the parent not relocated resides to obtain an order providing for custody or visitation, or both, of that child. In any such action, all the provisions of subsection (d) of this section shall apply.

(g) In any case in which an action under this section involves court orders from different States with respect to custody or visitation of the same child, the court shall resolve any conflicts by applying the rules of conflict of laws of the state in which the court is sitting.

(h) (1) Subject to paragraph (h)(2) of this section, the costs of any action described in subsection (d), (e) or (f) of this section shall be paid by the State.

(2) The Attorney General shall insure that any state court order in effect to which this section applies is carried out. The Department of Justice shall pay all costs and fees described in subsections (c) and (d) of this section.

(i) As used in this section, the term "parent" includes any person who stands in the place of a parent by law.

(74 Del. Laws, c. 57, § 1; 78 Del. Laws, c. 28, § 1.)

§ 9604. Cooperation of other state agencies and governments; reimbursement of expenses.

Each state agency shall cooperate with the Attorney General in carrying out the provisions of this subchapter and may provide, on a reimbursable basis, such personnel and services as the Attorney General may request in carrying out those provisions.

(74 Del. Laws, c. 57, § 1; 78 Del. Laws, c. 28, § 1.)

§ 9605. Additional authority of Attorney General.

The Attorney General may enter into such contracts or other agreements as may be necessary to carry out this subchapter. Any such contract or agreement which would result in the State being obligated to make outlays may be entered into only to the extent and in such amount as may be provided in advance in an Appropriation Act.

(74 Del. Laws, c. 57, § 1; 78 Del. Laws, c. 28, § 1.)

§ 9606. Source of funding.

All expenses incurred by the Attorney General to provide any service pursuant to this subchapter shall be paid from the Special Law Enforcement Assistance Fund established by § 4110 of this title.

(74 Del. Laws, c. 57, § 1; 78 Del. Laws, c. 28, § 1.)

Subchapter II

Address Confidentiality Act

§ 9611. Definitions.

When used in this subchapter, the following words and phrases shall have the meanings ascribed to them in this section:

(1) "Actual address" shall mean a residential address, school address or work address of an individual.

(2) "Image" includes, but is not limited to, any photograph, video, sketch, or computer-generated image that provides a means to visually identify the person depicted.

(3) "Internet" has the meaning used in § 931 of this title.

(4) “Law-enforcement agency” means the police department of any political subdivision of this State, the Delaware State Police, the Capitol Police, and the Delaware Department of Justice.

(5) “Post or display publicly” means to communicate, transmit, or otherwise make available to any other person.

(6) “Program” means the Address Confidentiality Program of the Department of Justice.

(7) “Program participant” means any person certified by the Department of Justice as eligible to participate in the address confidentiality program established by this subchapter.

(8) “Protected witnesses” means any person to whom the Department of Justice is providing witness protection services pursuant to this chapter.

(9) “Reproductive health service provider or employee” means a person who provides or assists in providing reproductive health services.

(10) “Reproductive health services” has the same meaning as defined in § 1702 of Title 24.

(11) “Substitute address” means the official address or confidential address designated by the Attorney General.

(12) “Victim of domestic violence” means a person who is a victim of domestic violence as that term is defined by § 1041 of Title 10, or any equivalent provision in the laws of any other state, the United States, or any territory, District or subdivision thereof or any other foreign jurisdiction.

(13) “Victim of human trafficking” means a victim of an offense set forth in § 787 of this title, or any equivalent provision in the laws of any other state, the United States, or any territory, District or subdivision thereof, or any other foreign jurisdiction. This definition is to include victims of both “labor” and “sex” trafficking.

(14) “Victim of kidnapping” means a victim of an offense set forth in § § 781 through 786 of this title, or any equivalent provision in the laws of any other state, the United States, or any territory, District or subdivision thereof, or any foreign jurisdiction.

(15) “Victim of sexual assault” means a victim of an offense set forth in §§ 768 through 780, and 787 of this title, or any equivalent provision in the laws of any other state, the United States, or any territory, District or subdivision thereof or any other foreign jurisdiction.

(16) “Victim of stalking” means a victim of an offense set forth in §§ 1312 and 1312A [transferred to § 1312] of this title, or any equivalent provision in the laws of any other state, the United States, or any territory, District or subdivision thereof or any other foreign jurisdiction.

(78 Del. Laws, c. 28, § 1; 80 Del. Laws, c. 147, § 2; 83 Del. Laws, c. 427, § 1; 84 Del. Laws, c. 156, § 1; 84 Del. Laws, c. 348, § 1.)

§ 9612. Address Confidentiality Program.

(a) The Department of Justice shall establish a program to be known as the Address Confidentiality Program. Upon application and certification, persons eligible pursuant to this subchapter shall be provided a substitute address by the Program.

(b) The Program shall forward all correspondence sent by first class, express, registered and certified mail at no expense to a program participant and may arrange to receive and forward other classes or kinds of mail at the program participant’s expense.

(c) Upon a person’s certification for participation in the Program, the Department of Justice will provide notice of that fact and the program participant’s substitute address to the appropriate officials and parties involved in an ongoing civil or criminal case in which a program participant is a victim, witness, or party.

(d) All records relating to applicants and program participants are the property of the Department of Justice. These records, including but not limited to program applications, a participants’ actual addresses and waiver proceedings, shall be deemed to be confidential, and shall also not be subject to the provisions of Chapter 100 of Title 29.

(78 Del. Laws, c. 28, § 1; 84 Del. Laws, c. 156, § 1.)

§ 9613. Persons eligible to apply.

All of the following persons are eligible to apply to become program participants:

(1) A victim of domestic violence, sexual assault, human trafficking, kidnapping, or stalking who has filed for a protection from abuse order or who is or was named as a victim in any criminal or delinquency proceeding brought for the purpose of determining liability for the commission of any crime or offense as those terms are defined in § 233 of this title, and who further states that the victim fears future violent acts by the perpetrator of the abuse.

(2) A person who has a valid agreement with the Department of Justice as set out in § 9601(f) of this title.

(3) A person who is a member of the same household as a program participant. A parent or guardian may apply to the program on behalf of a minor; or in the case of an adult individual who is incapacitated, application may be made by the person holding power of attorney.

(4) A person who has obtained or is seeking relief from a domestic violence program or service, as certified by the director of that program or the director’s designee.

(5) A person who is a reproductive health service provider or employee who fears for such person’s safety because of providing reproductive health services.

(78 Del. Laws, c. 28, § 1; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 427, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 156, § 1; 84 Del. Laws, c. 348, § 2.)

§ 9614. Application, certification and termination process.

A person shall file an application with the Program in a manner prescribed by the Program. The Department of Justice shall have the authority to promulgate appropriate policies and procedures regarding certification and termination. Certification shall be valid for a period of 3 years following the date of certification unless the certification is withdrawn or canceled before the expiration of that period, or a person's participation in the program is otherwise terminated.

(78 Del. Laws, c. 28, § 1.)

§ 9615. Agency use of designated address.

Federal, state and local government agencies shall accept the substitute address designated on a valid program participation card issued to the program participant by the Program as the program participant's address except when any of the following apply:

(1) When the federal, state or local government agency has been granted a waiver pursuant to § 9617 of this title.

(2) When the program participant is any of the following:

a. A released offender complying with pretrial supervision, probation or parole or similar requirements imposed by any other jurisdiction.

b. A convicted sexual offender who has fulfilled the offender's sentence but must register the offender's community residence as required under § § 4120-4121 of this title or any similar registration requirement imposed by any other jurisdiction.

(78 Del. Laws, c. 28, § 1; 84 Del. Laws, c. 156, § 1.)

§ 9616. Disclosure of actual address.

The Department of Justice shall not disclose the actual address of a program participant except when any of the following apply:

(1) A federal, state or local government agency has been granted a waiver by the Program and the disclosure is made pursuant to § 9617 of this title.

(2) The Program determines that disclosure is required due to an emergency and the disclosure is made pursuant to § 9618 of this title.

(3) A court of competent jurisdiction orders the Program to disclose the program participant's actual address and disclosure is made pursuant to the court order.

(78 Del. Laws, c. 28, § 1; 84 Del. Laws, c. 156, § 1.)

§ 9616A. Publicly posting or displaying program participant's actual address, telephone number, or image on the Internet.

(a) No person shall post or display publicly on the Internet, or solicit, sell, or trade on the Internet, the actual address, telephone number, or image of a program participant with the intent to do either of the following:

(1) Incite another person to imminently use that information to commit a crime involving violence or a threat of violence against, or to cause bodily harm to, the program participant identified in the posting or display, or any member of the program participant's household.

(2) Threaten the program participant identified in the posting or display, or any member of the program participant's household, in a manner that places the person or persons threatened in objectively reasonable fear for their personal safety.

(b) No person shall post or display publicly on the Internet the actual address or telephone number of a program participant if that program participant, a parent or guardian of that program participant if the program participant is a minor, or a person holding power of attorney for the program participant if the program participant is an incapacitated adult individual, has made a written demand of that person not to disclose the program participant's actual address or telephone number. A written demand made under this subsection shall include a sworn statement declaring that the program participant is subject to the protection of this subchapter and describing a reasonable fear for the safety of that program participant or any member of the program participant's household, based on a violation of subsection (a) of this section. A written demand made under this subsection shall be effective for 3 years even if the program participant's certification is withdrawn or canceled, or the program participant's participation is otherwise terminated, before the end of the 3-year period. This subsection shall not apply to a person defined in § 4320(4) of Title 10.

(c) An interactive computer service or access software provider, as defined in 47 U.S.C. § 230(f), shall not be liable under this section unless the interactive computer service or access software provider intends to abet or cause bodily harm that is likely to occur or threatens to cause bodily harm to a program participant or any person residing at or regularly present at the same actual address.

(80 Del. Laws, c. 147, § 3; 84 Del. Laws, c. 156, § 1.)

§ 9617. Waiver process.

(a) A federal, state or local government agency may request disclosure of a program participant's actual address pursuant to this section. The Department of Justice shall have the authority to promulgate appropriate policies and procedures regarding the waiver process.

(b) The Department of Justice shall promptly conduct a review of all requests received pursuant to this section. In conducting a review, the Program shall notify the program participant of the request and consider all information received and any other appropriate information that the Program may require to make a determination.

(c) Any government agency granted a waiver by the Program pursuant to this section shall be permitted to use the actual address in the manner authorized by the Department of Justice.

(d) Upon denial of a federal, state or local government agency's request for waiver, the Program shall provide prompt written notification to the agency stating that the agency's request has been denied and setting forth the specific reasons for the denial.

(e) Within 15 days after notification that the Program has denied the federal, state or local government agency's request for waiver, the agency may file a request for review of the decision by the Attorney General.

(f) Nothing in this section shall be construed to prevent the Program from granting a waiver to a federal, state or local government agency pursuant to this section upon receipt of a program participant's written consent to do so.

(78 Del. Laws, c. 28, § 1.)

§ 9618. Emergency disclosure.

The Program shall establish a system to promptly respond to requests for emergency disclosures if the disclosure satisfies any of the following conditions:

(1) It will prevent physical harm or significant economic loss to a program participant or to a program participant's family member.

(2) It is made to a law-enforcement agency for law-enforcement purposes and the circumstances warrant immediate disclosure.

(78 Del. Laws, c. 28, § 1; 84 Del. Laws, c. 156, § 1.)

§ 9619. Penalties.

(a) Any person who knowingly provides false information in regard to a material fact contained in any application made pursuant to this subchapter shall be subject to termination from the program and to criminal penalties under § 1233 of this title, or any other applicable provision of this Code.

(b) Any person who intentionally, knowingly or recklessly attempts to gain access to or gains access to a program participant's actual address by fraud or misrepresentation may be subject to criminal penalties under §§ 873, 876, and 932 of this title, or any other applicable provision of this Code.

(c) A person who lawfully obtains a program participant's actual address and who subsequently discloses or uses the actual address in a manner not authorized by this subchapter may be subject to criminal penalties under §§ 873, 876, and 932 of this title, or any other applicable provision of this Code.

(d) A person who violates § 9616A(a) of this title is guilty of a class A misdemeanor, except that the violation is:

(1) A class G felony if the violation results in physical injury to the program participant or a member of the program participant's household; or

(2) A class D felony if the violation results in serious physical injury to the program participant or a member of the program participant's household.

(e) The remedies for aggrieved persons set forth in § 941 of this title are available to program participants for violations of § 9616A of this title.

(78 Del. Laws, c. 28, § 1; 80 Del. Laws, c. 147, § 4.)

Part VII
Special Programs

Chapter 97
Establishment of the Delaware Police Accreditation Commission

§ 9701. Legislative intent.

WHEREAS, the safety of all Delawareans is of paramount importance; and

WHEREAS, municipal, county, university, and Delaware River and Bay Authority police departments, in addition to the Delaware State Police and other State agency police departments, provide a critical role in protecting the lives and property of the citizens of Delaware; and

WHEREAS, many smaller police departments within the State do not have the resources or manpower to complete the rigorous standards issued by the Commission on Accreditation of Law Enforcement Agencies, Inc.; and

WHEREAS, the effectiveness of public safety departments would be better served by a statewide accreditation council and standards achievable by a majority of the departments; and

WHEREAS, the citizens who reside in those jurisdictions would benefit by those departments achieving State accreditation and maintaining those standards; and

WHEREAS, the establishment of Delaware standards for a State accreditation program requires statewide coordination and leadership.

(76 Del. Laws, c. 231, § 1.)

§ 9702. Establishment of the Delaware Police Accreditation Commission.

(a) The Delaware Police Accreditation Commission (hereinafter "the DPAC") is hereby created.

(b) The DPAC is comprised of the following 12 members serving by virtue of position, or a designee appointed by the member, as follows:

(1) The Attorney General.

(2) The President Pro Tem of the State Senate.

(3) The Speaker of the House of Representatives.

(4) The Chairperson, Delaware Police Chiefs' Council.

(5) The Superintendent, Delaware State Police.

(6) The Colonel of the New Castle County Police.

(7) The Chairperson, Sussex County Chiefs organization.

(8) The Chairperson, Kent County Chiefs organization.

(9) The Chief of Police, City of Dover.

(10) The Executive Director, Delaware League of Local Governments.

(11) The Secretary of the Department of Safety and Homeland Security will serve as Chair, but may not vote unless necessary to break a tie.

(12) The Chief of the Wilmington Police Department.

(c) A designee of a member serves at the pleasure of the member that appointed the designee.

(d) The Chairperson of the DPAC may form subcommittees consistent with the needs of the DPAC to address police accreditation issues including technical support, operations support, and training support. The subcommittees may include individuals who are not members of the DPAC, but who have an interest or expertise in police accreditation issues. Each subcommittee shall be chaired by a member of the DPAC.

(76 Del. Laws, c. 231, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 260, § 1; 82 Del. Laws, c. 141, § 8.)

§ 9703. Specific functions, bylaws.

The purpose of the DPAC shall be to provide policy level direction and draft and implement state level police accreditation standards for matters related to accreditation. To that end, it shall:

(1) Develop a statewide police accreditation program.

(2) Develop standards for the police accreditation program to ensure consistency of police operations statewide.

(3) Promote cooperation among state, municipal, university, and Delaware River and Bay Authority police agencies in addressing statewide accreditation needs in Delaware.

(4) Provide recommendations to the Governor and the Delaware General Assembly, when appropriate, concerning issues related to state level police accreditation standards in Delaware.

(5) The DPAC shall operate in accordance with bylaws that it adopts. These bylaws may be amended, supplemented, or repealed by the DPAC in accordance with the Freedom of Information Act, Chapter 100 of Title 29.

(76 Del. Laws, c. 231, § 1.)

Part VII
Special Programs

Chapter 98

Voluntary Firearms Do-Not-Sell Registry Act [For application of this chapter, see 84 Del. Laws, c. 372, § 3]

(84 Del. Laws, c. 372, § 1.)

§ 9801. Definitions [For application of this section, see 84 Del. Laws, c. 372, § 3].

For purposes of this chapter:

(1) "DELJIS" means the Delaware Criminal Justice Information System.

(2) "Firearm" means as defined in § 8571 of this title.

(3) "Law-enforcement agency" means an agency established by this State, or by any county or municipality within this State, to enforce criminal laws or investigate suspected criminal activity.

(4) "Registry" means the Voluntary Firearms Do-Not-Sell Registry created by this chapter.

(5) "Superintendent" means the Superintendent of the Delaware State Police.

(6) "Transfer" means as defined in § 1448B of this title.

(84 Del. Laws, c. 372, § 1.)

§ 9802. Voluntary Firearms Do-Not-Sell Registry [For application of this section, see 84 Del. Laws, c. 372, § 3].

(a) The Superintendent of the Delaware State Police shall create a Voluntary Firearms Do-Not-Sell Registry in which an applicant may voluntarily enroll for the purpose of being prohibited from purchasing a firearm. No person may knowingly sell or transfer a firearm to an individual enrolled on the Registry.

(b) The Superintendent shall develop a process and forms for inclusion on, and removal from, the Registry to be maintained by the Delaware State Police within DELJIS. The Superintendent must make the forms for inclusion and removal available by download through the Delaware State Police website and require the applicant to provide, at a minimum, the following information:

(1) Name.

(2) Address.

(3) Date of birth.

(4) Other contact information specified by the Superintendent.

(5) Signature of applicant.

(c) The form for inclusion onto the Registry shall inform the applicant of the process for removal from the Registry.

(d) An applicant requesting inclusion onto the Registry shall deliver the completed form in person to a law-enforcement agency.

(1) The law-enforcement agency shall verify the applicant's identity before accepting the form and may not accept a form from someone other than the applicant named in the form.

(2) Upon receipt of the application and verification of the applicant's identity, the law-enforcement agency must add the applicant's name to the Registry via DELJIS within 12 hours.

(e) An individual who is added to the Registry may not request removal from the Registry unless the individual has been on the Registry for at least 30 days.

(f) An individual requesting removal from the Registry shall deliver a completed removal form in person to any law-enforcement agency within the State. Once a law-enforcement agency receives a removal form, the law-enforcement agency must verify the individual's identity and remove the individual from the Registry no sooner than 30 days after the law-enforcement agency receives the removal form.

(g) All forms and records created in accordance with this section are not public records under Delaware's Freedom of Information Act [Chapter 100 of Title 29]. The Registry is subject to the same confidentiality protections that are given to information and records pertaining to the Firearm Transaction Approval Program under § 8573 of this title.

(h) All law-enforcement agency websites must post in a conspicuous place information about the Voluntary Firearms Do-Not-Sell Registry along with downloadable forms for inclusion and removal from the Registry.

(84 Del. Laws, c. 372, § 1.)

§ 9803. Penalties [For application of this section, see 84 Del. Laws, c. 372, § 3].

(a) A person who knowingly sells or transfers a firearm to an individual in violation of this chapter is guilty of a class A misdemeanor. A second or subsequent offense by an individual is a class G felony. The Superior Court has exclusive jurisdiction for all offenses under this subsection.

(b) It is unlawful for an individual to knowingly make a false statement or representation regarding their identity when requesting inclusion or removal from the Registry. An individual who violates this subsection shall be guilty of a class A misdemeanor. The Superior Court has exclusive jurisdiction for all offenses under this subsection.

(84 Del. Laws, c. 372, § 1.)

§ 9804. Nondiscrimination [For application of this section, see 84 Del. Laws, c. 372, § 3].

A person may not discriminate against any individual with respect to health-care services, employment, education, housing, insurance, governmental benefits, or contracting because that person is enrolled on the Registry, is not enrolled on the Registry, or has previously been enrolled on the Registry.

(84 Del. Laws, c. 372, § 1.)

§ 9805. Rules and regulations [For application of this section, see 84 Del. Laws, c. 372, § 3].

The Superintendent may promulgate rules and regulations necessary to administer and enforce this chapter.

(84 Del. Laws, c. 372, § 1.)

Part VII
Special Programs

Chapter 99
Family Justice Centers [For application of this chapter, see 84 Del. Laws, c. 508, § 2]

(84 Del. Laws, c. 508, § 1.)

§ 9901. Family Justice Centers; established [For application of this section, see 84 Del. Laws, c. 508, § 2].

(a) Family Justice Centers are hereby established and located within the Criminal Justice Council.

(b) The Family Justice Center Council established under § 9906 of this title must employ an Executive Director of the Family Justice Centers to carry out the mission of the Family Justice Centers. The Executive Director serves at the pleasure of the Council.

(84 Del. Laws, c. 508, § 1.)

§ 9902. Definitions [For application of this section, see 84 Del. Laws, c. 508, § 2].

For the purposes of this chapter:

(1) "Abuse" means as defined in § 1041 of Title 10.

(2) "Council" means the Family Justice Center Council set forth in § 9906 of this title.

(3) "Domestic violence" means as defined in § 1041 of Title 10.

(4) "Executive Director" means the Executive Director of the Family Justice Centers.

(5) "Family Justice Center" means a multi-agency, multidisciplinary service center that provides services to victims and survivors of domestic violence, abuse, sexual assault, stalking, or human trafficking in accordance with the mission set forth in § 9903 of this title.

(6) "Human trafficking" means as defined in § 787 of this title.

(7) "Sexual assault" means physical contact of a sexual nature perpetrated without consent or where consent is unable to be given.

(8) "Stalking" means a course of conduct directed at a specific person that would cause a reasonable person to fear physical injury to the person or to another person, or that would cause a reasonable person to suffer other significant mental anguish or distress.

(9) "Victim," "victim of crime," "survivor," or "survivor of crime" means an individual who was subjected to 1 or more instance of domestic violence, abuse, sexual assault, stalking, or human trafficking, whether or not the victim or survivor reported the offense to law enforcement and whether or not any alleged perpetrator was charged or convicted.

(84 Del. Laws, c. 508, § 1.)

§ 9903. Mission [For application of this section, see 84 Del. Laws, c. 508, § 2].

Family Justice Centers provide multi-agency and multidisciplinary support and services to victims or survivors of domestic violence, abuse, sexual assault, stalking, and human trafficking, to ensure that victims or survivors are able to access most or all needed services in 1 location in order to enhance victim safety, to increase offender accountability, and to reduce to a minimum the number of times a victim or survivor is questioned and examined and the number of places a victim must visit to receive assistance.

(84 Del. Laws, c. 508, § 1.)

§ 9904. Executive Director; powers and duties [For application of this section, see 84 Del. Laws, c. 508, § 2].

(a) The Executive Director shall report to the Council. For matters involving anything that may affect the Criminal Justice Council's budget, the Executive Director shall also report to the Executive Director of the Criminal Justice Council. The Executive Director of the Criminal Justice Council has final approval over matters involving anything that may affect the Criminal Justice Council's budget.

(b) In pursuit of the mission of the Family Justice Centers, the Executive Director has the following powers and duties:

(1) Identify locations for the establishment of at least 1 Family Justice Center in each county based on need and access.

(2) Work with the Council and Criminal Justice Council to identify and secure funding for the establishment of Family Justice Centers in each county.

(3) Name or approve a name recommended by the Council for each Family Justice Center that is established.

(4) Develop policies and procedures, in collaboration with state, local, and community-based crime victim service providers and local survivors of violence and abuse, to ensure coordinated services are provided to victims and survivors of crime and to enhance the safety of victims, survivors, and professionals at the Family Justice Centers.

(5) Maintain a formal victim and survivor feedback, complaint, evaluation, and input process to address victim and survivor concerns about services provided or the conduct of any Family Justice Center professionals, agency partners, or volunteers providing services in the Family Justice Center.

(6) Employ, contract, or otherwise secure the assistance of such personnel and other service providers as are necessary to carry out the functions of this chapter, subject to the approval of the Council and within the limits of any funds secured by the Executive Director and any appropriation made by the General Assembly, including the following:

a. Law-enforcement personnel.

b. Medical personnel.

c. Attorneys.

d. Systems-based victim services personnel.

e. Domestic violence program advocates.

f. Community-based rape crisis, domestic violence, and human trafficking advocates.

g. Social service agency staff members.

h. Family Court staff.

i. Division of Family Services staff.

j. Division of Public Health staff.

k. Division of Social Services staff.

l. Nonprofit agency counseling professionals.

m. Civil legal service providers.

n. Supervised volunteers from partner agencies.

o. Other professionals providing services to victims and survivors.

(7) Create, maintain, and ensure compliance with the following:

a. Policies and procedures pertaining to record confidentiality that incorporate all federal and state privacy laws.

b. Policies and procedures pertaining to securing written consent from a victim or survivor for the collection and sharing of confidential records under § 9905 of this title.

(8) Develop, approve, and provide for an annual training program for service providers consisting of not less than 8 hours per year on subjects including, but not limited to, privileges and confidentiality, information sharing, risk assessment, safety planning, victim advocacy, and high-risk case response.

(9) Publish an annual report on the Family Justice Center website recapping the development of the Family Justice Centers as well as de-identified statistics and recommendations that include the following:

a. The number of victims and survivors who received assistance, the number of children and other family members of victims and survivors who received assistance, and the number of victims, survivors, and children and other family members of victims and survivors who received assistance multiple times.

b. The reasons that victims, survivors, and family members of victims and survivors requested assistance.

c. Barriers, if any, encountered by victims, survivors, and family members of victims and survivors to receiving available services at a Family Justice Center, including actual or perceived barriers based on immigration status, criminal history, substance abuse or mental health issues, or privacy concerns.

d. Recommendations of means to mitigate any identified barriers to accessing services and for improving the utilization rate of services.

(84 Del. Laws, c. 508, § 1.)

§ 9905 Victims' rights; privacy [For application of this section, see 84 Del. Laws, c. 508, § 2].

(a) Nothing in this chapter is intended to or may be used to abrogate existing laws regarding privacy or information sharing. Family Justice Center staff members, volunteers, or other individuals given access to victims and survivors or given information pertaining to victims and survivors by a Family Justice Center shall comply with the laws governing their respective professions.

(b) Victims and survivors may not be denied services on the grounds of criminal history. No criminal history search may be conducted of a victim or survivor at a Family Justice Center by staff or a partnering service provider without the written consent of the victim or survivor, except if the staff or service provider is a law-enforcement officer or other lawfully-authorized individual conducting a criminal history search pursuant to a criminal investigation.

(c) Victims and survivors may not be required to participate in the criminal justice system or cooperate with law enforcement to receive counseling, medical care, or other services at a Family Justice Center.

(d) The Family Justice Centers must maintain a victim and survivor consent policy and remain in compliance with all state and federal laws protecting the confidentiality of the types of information and documents that may be in the file pertaining to a victim or survivor, including, but not limited to, medical, legal, and victim counselor records. Each Family Justice Center shall have a designated privacy officer to develop and oversee privacy policies and procedures consistent with state and federal privacy laws and the Fair Information Practice Principles promulgated by the United States Department of Homeland Security. At no time may a victim or survivor be required to sign a client consent form to share information to access services.

(e) Each Family Justice Center must obtain informed, written, and reasonably time-limited consent from a victim or survivor before sharing information obtained from the victim or survivor with any staff member or agency partner, except as follows:

(1) A Family Justice Center is not required to obtain consent from a victim or survivor before sharing information obtained from the victim or survivor with any staff member or agency partner if the person sharing the information is a mandated reporter, a peace officer, or a member of the prosecution team and is required to report or disclose specific information or incidents. These persons shall inform the victim that they may share information obtained from the victim or survivor without the consent of the victim or survivor.

(2) Family Justice Centers must inform the victim or survivor that information shared with staff members, partner agencies, or other service providers at a Family Justice Center may be shared with law-enforcement professionals without the consent of the victim or survivor if there is a mandatory duty to report or if the victim or survivor is a danger to themself or others. Family Justice Centers must obtain written acknowledgment that the victim or survivor has been informed of this policy.

(f) Consent by a victim or survivor for sharing information within a Family Justice Center or for a limited disclosure of information by a Family Justice Center made for the purpose of clinical assessment, risk assessment, safety planning, or service delivery is not and may not be construed as a universal waiver of any existing evidentiary privilege that makes confidential any communications or documents between the victim or survivor and any service provider, including, but not limited to, any lawyer, doctor, therapist, or nurse. Any oral or written communication or any document authorized by the victim or survivor to be shared for the purposes of enhancing safety and providing more effective and efficient services to the victim or survivor may not be disclosed to any third party, unless that third-party disclosure is authorized by the victim or survivor, or required by other state or federal law or by court order.

(g) An individual staff member, volunteer, other individual service provider, or agency that has victim or survivor information obtained as a result of the use of a Family Justice Center by the victim or survivor may not be required to disclose that information unless the victim or survivor has consented to the disclosure or it is otherwise required by Delaware state or federal law or by court order.

(h) Family Justice Center staff members, volunteers, agency professionals, and other service providers must attend a formal training program created or approved by the Executive Director or a person designated by the Executive Director consisting of not less than 8 hours per year on subjects, including, but not limited to, privileges and confidentiality, information sharing, risk assessment, safety planning, victim advocacy, and high-risk case response.

(84 Del. Laws, c. 508, § 1.)

§ 9906. Family Justice Center Council [For application of this section, see 84 Del. Laws, c. 508, § 2].

(a) The Family Justice Center Council is hereby established.

(b) The Family Justice Center Council has the powers and duties necessary to oversee and ensure the operation of Family Justice Centers.

(c) The Council consists of the following members:

(1) The Chief Judge of the Family Court, or the designee of the Chief Judge of the Family Court.

(2) One member of the House of Representatives, appointed by the Speaker of the House of Representatives.

(3) One member of the Senate, appointed by the President Pro Tempore of the Senate.

(4) The Attorney General, or the designee of the Attorney General.

(5) The Child Advocate, or the designee of the Child Advocate.

(6) A representative of the law-enforcement community appointed by the Secretary of the Department of Safety and Homeland Security.

(7) The Secretary of the Department of Services for Children, Youth and Their Families, or the designee of the Secretary of the Department of Services for Children, Youth and Their Families.

(8) The Secretary of the Department of Health and Social Services, or the designee of the Secretary of the Department of Health and Social Services.

(9) The Secretary of the Department of Labor, or the designee of the Secretary of the Department of Labor.

(10) Twelve at-large members who are selected by Council members under paragraphs (c)(1) through (c)(9) of this section. The Council members selecting the at-large members must consider geographic diversity and ensure representation of each county when selecting an at-large member. An at-large member is a full member of the Council. The at-large members must be comprised of the following:

a. One member representing advocates or advocacy agencies that work on behalf of victims and survivors of domestic violence.

b. One member representing advocates or advocacy agencies that work on behalf of victims and survivors of sexual assault.

c. One member representing advocates or advocacy agencies that work on behalf of victims and survivors of human trafficking.

d. One member representing advocates or advocacy agencies that work on behalf of child survivors.

e. One member representing a nonprofit agency that provides culturally- or linguistically-appropriate victim services.

f. One member representing the mental health care provider community.

g. One member representing legal service providers or legal advocates that work on behalf of victims and survivors.

h. One member of the public who is a survivor of domestic violence.

i. One member of the public who is a survivor of sexual assault.

j. One member of the public who is a survivor of human trafficking.

k. One member representing the sexual assault nurse examiner or forensic nurse examiner community.

l. One member representing system-based police or prosecution victim service specialists.

(d) The term of an at-large member selected by the Council is 3 years. An at-large member may be selected for a term of less than 3 years to ensure terms expire on a staggered basis. At-large members are eligible for re-selection.

(e) In case of a vacancy before the expiration of an at-large member's term, the Council shall select a successor within 60 days of the vacancy.

(f) A member may be removed by the Council if the member does not attend 2 or more consecutive Council meetings.

(g) The Council must meet at least 4 times per year. Nine members constitute a quorum.

(h) The Chief Judge of the Family Court shall convene the initial meeting of the Council. At the initial meeting of the Council, a Chair and Vice Chair must be elected by the Council members. Thereafter, the Council shall elect a Chair and Vice Chair biennially, at the first meeting of the calendar year in odd-numbered years, to serve a 2-year term. The Vice Chair's duty shall be to act as Chair in the absence of the Chair.

(i) The Chair must convene and preside over meetings of the Council and prepare an agenda for meetings.

(j) The Council shall establish committees composed of Council members and other knowledgeable individuals, as it deems advisable, to assist in planning, policy, goal and priority recommendations and developing implementation plans to achieve the purposes of the Council.

(k) The Council shall promulgate rules of procedure governing its operations, provided that they are in accordance with Chapters 100 and 101 of Title 29.

(*l*) The Council shall submit a written report of its activities and recommendations to the Governor, the Chief Justice of the Supreme Court, the Clerk of the House, the Secretary of the Senate, and the Director and Librarian of the Division of Legislative Services at least once every year on or before October 15.

(84 Del. Laws, c. 255, § 36; 84 Del. Laws, c. 508, § 1; 85 Del. Laws, c. 130, § 1.)

Title 21

Motor Vehicles

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Part I
General Provisions
Chapter 1
Definitions

§ 101. Words and phrases [For application of this section, see 85 Del. Laws, c. 40, § 15].

For the purposes of this title, unless the context otherwise clearly indicates:

(1) “All terrain vehicle” or “ATV” means an “off-highway vehicle” or “OHV” that is motorized and designed to travel on 4 low-pressure tires and having a seat to be straddled by the operator and handlebars for steering control. “ATV” does not include a farm vehicle being used for farming, a vehicle used for military, fire, emergency or law-enforcement purposes, a construction or logging vehicle used in performance of its common function, electric personal assistive mobility device or a registered aircraft.

(2) “Autocycle” means a 3-wheel vehicle that has a steering wheel and seating that does not require the operator to straddle or sit astride it.

(3) “Automobile transporter” means any vehicle combination designed and used for the transport of assembled highway vehicles, including truck camper units.

(4) “Axle load scale” means a scale having a platform adapted to determine the combined weight of all wheels on a single axle or of all wheels on a tandem or tri-axle of a vehicle.

(5) “Bicycle” shall include that certain class of vehicles which are exclusively human-powered by means of foot pedals, which the driver normally rides astride, which have not in excess of 3 wheels and which may be commonly known as unicycles, bicycles and tricycles.

(6) “Business district” means the territory contiguous to and including a highway when 50 percent or more of the frontage thereon for a distance of 300 feet or more is occupied by buildings in use for business.

(7) “Camping trailer” includes any nonmotorized vehicular portable unit mounted on wheels and designed to provide temporary living quarters for recreational, camping or travel use. A “camping trailer” may be constructed with or without collapsible partial side walls that fold for towing by another vehicle and unfold in set-up mode, however, the trailer must weigh 5,000 pounds or less.

(8) “Certificate of origin” means the document, in the form prescribed by the Director of the Division of Motor Vehicles, issued in conformance with this chapter certifying the manufacturer’s vehicle identification number and the motor number, when used, of the motor vehicle sold, the name of the manufacturer, the manufacturer’s shipping weight, a general description of the body, if any, and the type and model.

(9) “Chauffeur” includes every person who is employed for the principal purpose of operating a motor vehicle and every person who drives a motor vehicle while in use as a public or common carrier of persons or property.

(10) “Combination of vehicles” means any series of trucks, truck tractors, trailers or semi-trailers connected to each other by whatever means.

(11) “Commercial vehicle” means a vehicle of a type required to be registered under this title designed, used or maintained for the transportation of persons or property for hire, compensation or profit, except taxicabs.

(12) “Competition vehicle” is a vehicle that is specifically designated by its manufacturer as being intended solely for use during a special or competition event, and which is exclusively so used.

(13) “Covered heavy-duty tow and recovery vehicle” means any vehicle transporting a disabled vehicle from the place where the disabled vehicle became disabled to the nearest appropriate repair facility and that has a gross vehicle weight that is equal to or exceeds the gross vehicle weight of the disabled vehicle being transported.

(14) “Crane” means any self-propelled vehicle to which has been permanently mounted or attached any crane, whether or not such vehicle was originally a truck, tractor or other type of motor vehicle or was designed and built as a complete crane unit; but the word “crane,” as herein defined, shall not be construed to mean any truck or other vehicle equipped with or to which has been affixed any device used for the purpose of providing a means for towing other vehicles.

(15) “Dealer” includes every person engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers in this State and having an established place of business in this State.

(16) “Decal” means the self-adhesive sticker issued by the Department bearing the registration number assigned to an off-highway vehicle.

(17) “Department” means the Department of Transportation of this State acting directly or through its duly authorized officers and agents.

(18) “Electric bicycle” means a bicycle with 2 or 3 wheels that is equipped with fully-operable pedals, a saddle or seat for the rider, and an electric motor of less than or equal to 750 watts that meets the requirements of 1 of the following 3 classes:

a. “Class 1 electric bicycle” shall mean an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour or less.

b. “Class 2 electric bicycle” shall mean an electric bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that ceases to provide assistance when the bicycles reaches the speed of 20 miles per hour or less.

c. “Class 3 electric bicycle” shall mean an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches a speed of no less than 20 miles per hour and no more than 28 miles per hour.

(19) “Electric motor vehicle” means a motor vehicle which is powered only by electric or electromagnetic motors.

(20) “Electric personal assistive mobility device” (EPAMD) means a self-balancing, 2-nontandem-wheeled device designed to transport only 1 person, with an electric propulsion system that limits the maximum speed of the device to 15 miles per hour or less.

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

(22) “Electronic signature” means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(23) “Essential parts” means all integral parts and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.

(24) “Express highway” means a state highway especially designed for through traffic over which owners of abutting property shall have no easement or right of direct access, light or air, by reason of the fact that such property abuts such highway.

(25) “Farm equipment” means an implement that:

a. Is designed and adapted only for agricultural, horticultural or livestock raising operations; or

b. Is designed and adapted only for lifting or carrying an implement described in paragraph (25)a. of this section.

(26) “Farm tractor” includes every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry.

(27) “Federal-aid primary system highway” includes any roadway designated by the United States Secretary of Transportation as part of the federal-aid primary system in existence on June 1, 1991, as amended, that can safely accommodate the applicable vehicle widths and lengths provided under 49 U.S.C. § 31111 and 49 U.S.C. § 31113.

(28) “Foreign vehicle” includes every motor vehicle, trailer or semitrailer which is brought into this State otherwise than in the ordinary course of business by or through a manufacturer or dealer and which has not been registered in this State.

(29) “Highway” means the entire width between boundary lines of every way or place of whatever nature open to the use of the public as a matter of right for purposes of vehicular travel, but does not include a road or driveway upon grounds owned by private persons, colleges, universities or other institutions.

(30) “Intersection” means the area embraced within the prolongation of the lateral curb lines or, if none, then the lateral boundary lines of 2 or more highways which join one another at an angle, whether or not 1 such highway crosses the other.

(31) “Judgment” includes any judgment which has become final by expiration without appeal of the time within which an appeal might have been perfected or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof or upon a cause of action on an agreement of settlement for such damages.

(32) “Jurisdiction” shall mean any state, territory or federal district of the United States or a foreign country.

(33) “License” means any license, temporary instruction permit or temporary license issued under the laws of this State pertaining to the licensing of persons to operate motor vehicles.

(34) “Licensed practitioner” means a physician, physician assistant (PA), or APRN licensed under Title 24.

(35) “Local authorities” includes every county, municipal and other local board or body having authority to adopt local police regulations under the Constitution and laws of this State.

(36) “Low speed motorized scooter” means any motorized scooter that cannot travel more than 15 miles per hour.

(37) “Manufacturer” includes every person engaged in the business of manufacturing motor vehicles, trailers or semitrailers or OHVs.

(38) “Metal tires” means all tires the surface of which on contact with the highway is wholly or partly of metal or other hard, nonresilient material.

(39) “Mobile home” is a structure transportable in 1 or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length, or when erected on-site, is more than 400 square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating and air conditioning. The structure must be constructed in accordance with construction requirements promulgated by the federal Department of Housing and Urban Development (HUD).

(40) “Moped” means a pedal or nonpedal bicycle having 2 tandem wheels, either of which is 10 inches or more in maximum diameter, and having an internal combustion engine characterized in that the maximum piston displacement is less than 55cc, or an electric motor

that may be used exclusively to propel the bicycle at a speed of more than 20 miles per hour or, if the rider is pedaling, continues to provide assistance even when the bicycle reaches a speed of more than 28 miles per hour. “Moped” does not include an electric bicycle.

(41) “Motorcycle” includes every motor vehicle designed to travel on not more than 3 wheels in contact with the ground, except any such vehicle as may be included within the definition of “autocycle” or “tractor” and excepting electric personal assistive mobility device (EPAMD) and electric bicycle.

(42) “Motorized skateboard or scooter” means any device that is designed to travel on at least 2 wheels with the deck or chassis of such device open and close to the ground, that has handlebars or a hand-controlled throttle or brake, that is designed to be stood or sat upon by the operator, and that is powered by a motor that is capable of propelling the device without human propulsion. “Motorized skateboard or scooter” shall not include any automobile or device that is included within the definitions of “moped,” “motorcycle,” “off-highway vehicle (OHV),” any type of “tractor,” “triped,” “motorized wheelchair,” “electric bicycle,” or “electric personal assistive mobility device (EPAMD)” set forth in this section.

(43) “Motorized wheelchair” includes any self-propelled vehicle which is incapable of a speed in excess of 8 miles per hour and which is designed for, and used by, a handicapped person.

(44) “Motor vehicle” includes every vehicle, as defined in this section, which is self-propelled, except farm tractors, electric bicycles, electric personal assistive mobility devices, and OHVs.

(45) “Multiple draft weighting” means separately weighing each end or individual element of a vehicle or combination of vehicles and adding together the results obtained.

(46) “Natural gas vehicle” means a vehicle operated by an engine that is fueled primarily by natural gas.

(47) “Non-plug-in electric vehicle” means a motor vehicle powered by both an internal combustion motor which uses gasoline, diesel, or another fuel that is subject to the provisions of Chapter 51 of Title 30 and an electric or electromagnetic motor or form of propulsion, which is recharged during the operation of the motor vehicle and is not able to be recharged using a charging port and external power source, such as an electrical outlet or charging station to recharge the vehicle’s batteries.

(48) “Nonresident” means every person who is not a resident of this State.

(49) “Nonresident’s operating privilege” means the privilege conferred upon a nonresident by the laws of this State pertaining to the operation by the nonresident of a motor vehicle or OHV, or the use of a motor vehicle or OHV owned by the nonresident, in this State.

(50) “Off-highway vehicle” or “OHV” means a motor driven off-road vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland or other natural terrain. It includes, but is not limited to, a multi-wheel drive or low pressure tire vehicle, a motorcycle or related 2-wheel vehicle, an amphibious machine, a ground effect air-cushion vehicle or other means of transportation deriving motive power from a source other than muscle or wind. “OHV” does not include a farm vehicle being used for farming, a vehicle used for military, fire, emergency or law-enforcement purposes, a construction or logging vehicle used in performance of its common function, electric bicycle, electric personal assistive mobility device or a registered aircraft. However, nothing in this chapter shall be construed to include snowmobiles.

(51) “OHV dealer” includes every person engaged in the business of buying, selling or exchanging off-highway vehicles in that portion of this State located north of the Chesapeake and Delaware Canal. Persons offering OHVs for final delivery in that portion of this State located north of the Chesapeake and Delaware Canal through direct-mail order or through a catalog-order facility, regardless of where located, are considered to be OHV dealers and subject to this chapter.

(52) “OHV operator” includes every person who is in actual physical control of an off-highway vehicle.

(53) “Operator” includes every person who is in actual physical control of a motor vehicle upon a highway, except that for the purposes of Chapter 29 of this title the term “operator” shall include a chauffeur.

(54) “Organized or special event” is any competition involving motor vehicles that is conducted under the auspices of a recognized sanctioning body or under the authority of a governmental agency having jurisdiction over the area concerned.

(55) “Other fuel vehicle” means a motor vehicle other than an electric motor vehicle, plug-in electric vehicle, or non-plug-in electric vehicle, that is powered by an engine or motor which does not function solely on gasoline, diesel, or other fuel subject to the provisions of Chapter 51 of Title 30. It includes a motor vehicle that operates using liquified petroleum gas, propane, natural gas, ethanol, methanol, hydrogen, or another combustible fuel source.

(56) “Overweight vehicle” means any vehicle having a gross weight, including load thereon, in excess of that permitted by law; including, but not limited to, a gross weight in excess the weight for which a valid registration has been issued.

(57) “Owner” means a person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or in the event a mortgagor of a vehicle is entitled to possession then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this title.

(58) “Park trailer” is a vehicle more than 8 body feet in width that is primarily designed to provide temporary living quarters for recreation camping or seasonal use; built on a single chassis mounted on wheels which has a gross trailer area not exceeding 400 square feet in the set-up mode and is certified by the manufacturer as complying with ANSI 119.5 standard.

(59) “Person” means any individual, partnership, corporation, joint venture or legal entity of whatever nature.

(60) “Plug-in electric vehicle” means a motor vehicle powered by both an internal combustion motor which uses gasoline, diesel, or another fuel that is subject to the provisions of Chapter 51 of Title 30 and an electric or electromagnetic motor or form of propulsion, which is recharged using a charging port and external power source, such as an electrical outlet or charging station.

(61) “Pneumatic tires” means all tires inflated with compressed air.

(62) “Private road or driveway” includes every road or driveway not open to the use of the public for purposes of vehicular travel.

(63) “Proof of financial responsibility” means proof of ability to respond in damages for liability on account of accidents occurring subsequent to the effective date of said proof arising out of ownership, maintenance or use of a motor vehicle in the amount of $25,000 because of bodily injury to or death of 1 person in any 1 accident, and, subject to such limit for 1 person, in the amount of $50,000 because of bodily injury to or death of 2 or more persons in any 1 accident and in the amount of $10,000 because of injury to or destruction of property of others in any 1 accident, or a combined single limit of $60,000.

(64) “Reconstructed vehicle” means any vehicle which has been assembled or constructed largely by means of essential parts, new or used, derived from other vehicles or makes of vehicles of various names, models and types, or which, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles.

(65) “Recreational trailer” includes every trailer which weighs more than 5,000 pounds, is designed to provide temporary living quarters and which is built into and is an integral part of, or permanently attached to, a trailer chassis. The trailer must contain permanently installed independent life support systems which meet the ANSI/NFPA 501 C Standard [ANSI A119.2/NFPA 501C], and provide at least 4 of the following facilities: Cooking facilities; refrigeration or ice box; self-contained toilet; heating and/or air conditioning; a portable water supply system, including a faucet and sink; separate 110-125 volt electrical power supply; or an LP-gas supply.

(66) “Recreational vehicle” includes every motor vehicle used for temporary human living quarters, not the residence of the owner or occupant, and used for recreational or vacation activities, including motor homes, self-propelled campers and other motor vehicles with permanently attached camper components. Recreational vehicle may also include every van which is used primarily for personal pleasure and not for commercial use, regardless of the equipment or furnishings contained within such van.

(67) “Registration” means the registration certificate or certificates and registration plates issued under the laws of this State pertaining to the registration of motor vehicles.

(68) “Residence district” means the territory contiguous to and including a highway not comprising a business district where 50 percent or more of the property on such highway for a distance of 300 feet or more is improved with residences or residences and buildings in use for business.

(69) “Right-of-way” means the privilege of the immediate use of the highway.

(70) “Road tractor” includes every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon independently or any part of the weight of a vehicle or load so drawn.

(71) “Roadway” means that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes 2 or more separate roadways, the term “roadway” as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(72) “Safety zone” means the area or space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

(73) “Scale” means a device used to determine or calculate weight.

(74) “School bus” means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events, or any vehicle which meets the regulatory requirements adopted by the Department of Education with the advice of the Division of Motor Vehicles as specified under § 2901 of Title 14. “School bus” does not include a bus used as a common carrier.

(75) “Secretary” means the Secretary of Transportation of this State or the Secretary’s duly authorized designee.

(76) “Semitrailer” includes every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another vehicle, and piling and pole trailers are to be considered to fall within the meaning of this definition.

(77) “Single draft weighing” means weighing of the entire vehicle at 1 time by use of vehicle scales, axle load scales, wheel load weighers or any combination of these weighing devices.

(78) “Solid rubber tire” includes every tire made of rubber other than a pneumatic tire.

(79) “Special construction equipment” means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to: Ditch-digging apparatus, well-boring apparatus, road construction or maintenance machinery such as asphalt spreaders, air compressors and drills, bituminous mixers, bucket loaders, tractors other than truck tractors, levelling graders, finishing machines, road rollers, scarifiers, earth-moving scrapers and

carryalls, welders, power shovels and drag lines, self-propelled cranes, earth-moving equipment and construction box storage trailers (except when such trailers are used for transporting merchandise). The term does not apply to dump trucks, truck mounted transit mixers, tow trucks or shovels or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(80) "Specially constructed vehicle" means any vehicle which has not been originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles.

(81) a. "Special mobile equipment" means a motor vehicle that:

(1) Is not used primarily for highway transportation of people or property;

(2) Is operated or moved on a public highway or road only as an incident to its nonhighway use;

(3) Is used in agriculture;

(4) Is not operated at speeds greater than 30 miles per hour on the highway; and

(5) Does not travel a distance of greater than 50 miles on the highway on any 1 trip.

b. "Special mobile equipment" excludes a road construction or maintenance machine, mobile crane, ditch digger, well driller, concrete mixer, job-site office vehicle or portable power generator.

(82) "State" includes a state, territory, organized or unorganized, or district of the United States of America, except that for the purposes of Chapter 29 of this title the term "state" shall include any province of the Dominion of Canada.

(83) "Taxicab" includes every self-propelled motor vehicle as defined in § 1801(12) of Title 2.

(84) "Trackless trolley coach" includes every device for passenger transportation (commonly called an electric trackless trolley coach) equipped with tires of rubber or other resilient material, not operated on rails, propelled by electrical energy supplied through overhead wires, which device may also contain auxiliary means for self-propulsion by a motor using gasoline, oil or other similar fuel.

(85) "Trackless trolley operator" includes every person who is in actual physical control of any trackless trolley coach upon a highway.

(86) "Trailer" includes a mobile home, park trailer, travel trailer, house trailer, office trailer, camping trailer or any vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle.

(87) "Transporter" means a person engaged in the business of transporting mobile homes or vehicles within Delaware under contract with another entity or individual. "Transporter" does not include a person engaged in the transfer of motor vehicles that are registered for operation on the road in any state, but does include a person engaged in the following:

a. Delivering mobile homes or vehicles from a manufacturing, assembling, or distributing plant to a point of destination for the purpose of weighing, testing, transporting, or delivering such mobile home or vehicle.

b. Delivering mobile homes or vehicles for the purpose of moving such vehicles in connection with making installations, improvements, or repairs to such vehicles.

c. Delivering unregistered motor vehicles from a licensed motor vehicle dealer to another licensed motor vehicle dealer or licensed motor vehicle repair facility.

(88) "Triped" shall mean a pedal or nonpedal cycle having 3 wheels, either of which is 10 inches or more in maximum diameter, and having an internal combustion motor characterized in that the maximum piston displacement is less than 55 cc, or an electric motor rated between 751 watts and 2,000 watts. "Triped" does not include electric bicycle.

(89) "Truck camper" includes any portable unit that is constructed to provide temporary living quarters for recreational, camping or travel use, consisting of a roof, floor and sides, which is designed to be loaded onto and unloaded from the bed of a pickup truck.

(90) "Truck tractor" includes every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(91) "Unique vehicle" means a vehicle, frame, or body, which was not manufactured to meet all Federal Motor Vehicle Safety Standards (FMVSS) in effect for the model year in which it was manufactured. It includes a vehicle which at the time of registration does not meet the requirements of the Department of Natural Resources and Environmental Control (DNREC) emissions inspection program under 7 DE Admin. Code 1126 or 1131. A unique vehicle may be registered and branded by the Division of Motor Vehicles and may have special restrictions as determined by the Division. A unique vehicle includes a vehicle which is more than 25 years old, which was not originally manufactured for import into the United States, or which is not otherwise eligible to be titled and registered pursuant to Chapter 21 of this title.

(92) "Used vehicle" includes every motor vehicle or OHV which has been sold, bargained, exchanged, given away or title transferred from the person who first acquired it from the manufacturer or importer, dealer or agent of the manufacturer or importer and so used as to have become what is commonly known as "secondhand" within the ordinary meaning thereof.

(93) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks and excepting electric trackless trolley coaches, electric bicycles, electric personal assistive mobility devices and excepting OHVs.

(94) "Vehicle scale" means a scale adapted to weighing highway vehicles and possessing a platform on which all wheels of a vehicle may rest simultaneously.

(95) “Well-drilling machine” means any self-propelled vehicle to which has been permanently mounted or attached any rig or other equipment used for the purpose of drilling wells, whether or not such vehicle was originally a truck, tractor or other type of motor vehicle or was designed and built as a complete well-drilling unit.

(96) “Wheel load weigher” means a scale especially adapted to determine the weight of any single or set of wheels on a vehicle.

(97) “When children are present” shall, when posted in conjunction with speed limitation signage in a school zone, refer to that period of time immediately before, during or immediately after a scheduled school day during which children are physically present along, adjacent to, or crossing the regulated roadway of the school zone. The phrase shall not refer to the presence of children in the school building as the time for imposition of the speed restriction.

(36 Del. Laws, c. 10, §§ 1, 85, 86; 37 Del. Laws, c. 10, § 2; Code 1935, §§ 5539, 5623, 5719ii; 41 Del. Laws, c. 220, § 1; 42 Del. Laws, c. 166, § 1; 43 Del. Laws, c. 249, § 1; 44 Del. Laws, c. 194, § 1; 45 Del. Laws, c. 281, § 1; 46 Del. Laws, c. 270, § 2; 47 Del. Laws, c. 17, § 1; 47 Del. Laws, c. 133; 47 Del. Laws, c. 406, § 2; 48 Del. Laws, c. 305, § 1; 48 Del. Laws, c. 359, § 1; 21 Del. C. 1953, § 101; 54 Del. Laws, c. 160, §§ 3, 4; 57 Del. Laws, c. 188, § 24; 57 Del. Laws, c. 670, § 5; 58 Del. Laws, c. 112, § 2; 58 Del. Laws, c. 517; 59 Del. Laws, c. 57, § 1; 60 Del. Laws, c. 701, § 6; 61 Del. Laws, c. 63, § 1; 61 Del. Laws, c. 142, §§ 1-5; 62 Del. Laws, c. 114, § 1; 62 Del. Laws, c. 150, § 1; 62 Del. Laws, c. 151, § 1; 62 Del. Laws, c. 237, § 1; 62 Del. Laws, c. 249, § 1; 62 Del. Laws, c. 389, §§ 1-3; 63 Del. Laws, c. 414, § 1; 64 Del. Laws, c. 198, § 3; 64 Del. Laws, c. 207, § 1; 64 Del. Laws, c. 259, § 1; 64 Del. Laws, c. 339, § 1; 65 Del. Laws, c. 340, § 1; 66 Del. Laws, c. 58, §§ 1, 2; 66 Del. Laws, c. 254, §§ 1, 2; 69 Del. Laws, c. 217, § 1; 69 Del. Laws, c. 454, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 234, § 1; 73 Del. Laws, c. 346, §§ 1-5; 74 Del. Laws, c. 110, §§ 7, 8, 9; 74 Del. Laws, c. 133, § 3; 74 Del. Laws, c. 282, § 1; 75 Del. Laws, c. 251, §§ 1, 2; 76 Del. Laws, c. 334, § 2; 77 Del. Laws, c. 141, § 8; 77 Del. Laws, c. 312, § 8; 77 Del. Laws, c. 411, § 1; 78 Del. Laws, c. 106, § 1; 79 Del. Laws, c. 397, §§ 1, 2; 80 Del. Laws, c. 136, § 1; 80 Del. Laws, c. 168, § 1; 81 Del. Laws, c. 306, § 1; 82 Del. Laws, c. 93, § 1; 83 Del. Laws, c. 505, § 1; 84 Del. Laws, c. 302, § 1; 84 Del. Laws, c. 304, § 1; 84 Del. Laws, c. 332, § 1; 85 Del. Laws, c. 40, § 1; 85 Del. Laws, c. 161, § 1.)

Part I
General Provisions
Chapter 3
Department of Public Transportation and Department of Safety and Homeland Security

§ 301. General duty of Departments.

The Department of Transportation and/or the Department of Safety and Homeland Security, in keeping with their respective responsibilities, and all officers thereof shall enforce this title, unless otherwise designated in this title or by other laws of this State.

(36 Del. Laws, c. 10, § 3; Code 1935, § 5541; 21 Del. C. 1953, § 302; 74 Del. Laws, c. 110, § 11.)

§ 302. Rules and regulations.

(a) The Secretary of Transportation and/or the Secretary of Safety and Homeland Security, in keeping with their respective responsibilities, may adopt and enforce such administrative rules and regulations and designate such agencies as may be necessary to carry out this title. The Secretary of Transportation and/or the Secretary of Safety and Homeland Security, in keeping with their respective responsibilities, may also adopt and enforce such rules and regulations relative to equipment, weight, size and operation of motor vehicles, provided such rules and regulations are not contrary to a positive law, as may be necessary and proper in order to conform to the rules and regulations of the Interstate Commerce Commission and in order to establish a more uniform Motor Vehicle Code and more uniform traffic rules and regulations. No rule or regulation adopted pursuant to the authority granted by this section shall extend, modify or conflict with any law of this State, or the reasonable implications thereof.

(b) Any rules, regulations, procedures or agreements enacted, authorized or entered by the Secretary of Public Safety prior to July 1, 2003, shall remain in effect until such time as these rules, regulations, procedures or agreements are replaced, terminated or amended by the appropriate departmental Secretary.

(36 Del. Laws, c. 10, § 3; Code 1935, § 5541; 43 Del. Laws, c. 243, § 1; 21 Del. C. 1953, § 305; 57 Del. Laws, c. 670, § 6D; 67 Del. Laws, c. 344, § 7; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, §§ 12, 13.)

§ 303. Forms.

The Secretary shall provide suitable forms for applications, registration cards, license number plates and all other forms required for the purposes of this title and shall prepay transportation charges thereon.

(36 Del. Laws, c. 10, § 3; Code 1935, § 5541; 43 Del. Laws, c. 243, § 1; 21 Del. C. 1953, § 306; 57 Del. Laws, c. 670, § 6D.)

§ 304. Examiners for operators' licenses; appointment; use of local officers.

(a) The examiners of applicants for operators' licenses shall be appointed by and shall be under the supervision of the Secretary.

(b) The Department may designate local officers of the law or may appoint persons within this State to act for the Department for the purpose of examining applicants for operators' licenses. Such persons so designated or appointed shall conduct the examinations of the applicants for operators' licenses in the manner prescribed by the Department under this title and shall make a written report of the findings and recommendations upon such examinations to the Department.

(36 Del. Laws, c. 10, § 60; 37 Del. Laws, c. 10, §§ 18, 19; Code 1935, § 5598; 21 Del. C. 1953, § 308; 57 Del. Laws, c. 670, § 6D; 62 Del. Laws, c. 190, § 1.)

§ 305. Privacy act governing the release of motor vehicle driving history and license records.

(a) *In general.* — Except as provided in subsections (b), (d), (e) and (i) of this section, the Division of Motor Vehicles and any officer, employee or contractor thereof or any other person shall not knowingly disclose or otherwise make available to any person or entity personal information about any individual obtained by the Division in connection with a motor vehicle record. Only driver license and driver performance records which are 3 years old or less shall be made available to authorized persons or agencies, except persons requesting their own records, law-enforcement officers, the courts and other motor vehicle jurisdictions may also have access to those records and to vehicle title and registration information which are over 3 years old and are being retained by the Division. Division motor vehicle records can be transmitted to other motor vehicle jurisdictions electronically over authorized networks.

(b) *Permissible uses.* — Personal information referred to in subsection (a) of this section shall only be disclosed for use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls or advisories; performance monitoring of motor vehicles, motor vehicle parts and motor vehicle dealers by motor vehicle manufacturers; maintenance of voter registration records; and removal of nonowner records from the original owner records of motor vehicle manufacturers; maintenance of voter registration records to carry out the purposes of the Automobile Information Disclosure Act [15 U.S.C. § 1231 et seq.], the Motor Vehicle Information and Cost Saving Act [repealed], the National Traffic and Motor Vehicle Safety Act of 1966 [repealed], the Anti-Car Theft [Act] of 1992 [P.L. 102-519] and the Clean Air Act [42 U.S.C. § 7401 et seq.]. Personal information may be disclosed only upon proof of the identity of the person requesting the record or records and sworn representation by such person that the released personal information will be strictly limited to 1 or more of the following described uses:

(1) For use by any government agency, including any court, state election agency or law-enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a government agency, in carrying out its functions.

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls or advisories; performance monitoring of motor vehicles, motor vehicle parts and motor vehicle dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original owner records of motor vehicle manufacturers.

(3) For use in the normal course of business by a legitimate business or its agents, employees or contractors, but only:

a. To verify the accuracy of personal information submitted by the individual to the business or its agents, employees or contractors; and

b. If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by pursuing legal remedies against or recovering on a debt or security interest against the individual.

(4) For use in connection with any civil, criminal, administrative or arbitration proceeding in any federal, state or local court or agency or before any self-regulating body, including the service of process, investigation in anticipation of litigation and the execution or enforcement of judgments and orders or pursuant to an order of a federal, state or local court.

(5) For use in research activities and for use in producing statistical reports, so long as the personal information is not published, redisclosed or used to contact individuals.

(6) For use by any insurer or insurance support organization or by a self-insured entity or its agents, employees or contractors, in connection with claims investigation activities, anti-fraud activities, rating or underwriting.

(7) For use in providing notice to the owners or lien holders of towed or impounded vehicles.

(8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. § 31101 et seq.).

(10) For use in connection with the operation of private toll transportation facilities.

(11) Persons requesting their own records, law-enforcement officers, judicial and other motor vehicle jurisdictions through the supporting information networks may have access to all records retained by the Division.

(12) [Repealed.]

(13) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

(c) *Requests for additional protection of personal information.* — A person may submit a notarized affidavit to be supplied by the Division requesting that person's address, phone number and social security number contained in the driver or vehicle records of the Division be kept confidential except from those named in paragraphs (b)(1), (2) and (6) of this section. The affidavit must swear or affirm that the request is being made because of the person's fear of harm from another individual to themselves, a family or household member or their property. A properly submitted notarized affidavit satisfying these conditions shall be honored by the Division and shall remain in effect until the record is purged from the Division's files or until the requesting person submits written notice requesting the release of that person's personal information. This section does not prohibit the Division from the normal practice of returning a vehicle title with personal information displayed to a lienholder or lessor. In addition, the Division may return a vehicle title and registration card to a dealership who has submitted the title application for their customer.

(d) *Court approval for release of information.* — Persons or agencies other than those named in subsections (b) and (c) of this section shall be prohibited from acquiring any information pertaining to an individual's address, telephone number, vehicle title, vehicle registration, driver license and driver performance that is in the possession of the Division of Motor Vehicles except in the following case:

Any individual who can show that there is a lawful need for the prohibited information and that the information cannot be reasonably acquired through any alternate means may present such evidence to the administrative hearing officer of the Division of Motor Vehicles. Upon consideration of the evidence presented, the administrative hearing officer may then in the administrative hearing officer's discretion provide an order for the release of part or all of the requested information from the Division of Motor Vehicles to the requesting individual.

In this instance, the Division shall send by United States mail notification to any individuals identified in subsection (c) of this section whose information has been requested that the administrative hearing officer has ordered the release of such information and that such information will be furnished to the requesting party. Upon denial of the request, the individual may file a de novo appeal to the Justice of the Peace Courts. Upon receipt of the application fee of $10 from the individual, the Justice of the Peace Court, in its discretion, may order the release of part or all of the requested information by the DMV to the requesting individual. The Division shall notify the individuals by United States mail if the Justice of the Peace Court orders release of part or all of the requested information.

(e) *Disclosure with consent.* — Personal information may be disclosed to any person requesting such information if such person demonstrates, in such form and manner as the Department prescribes, that the person has obtained a notarized, written consent from the person whose information is protected. Such consent must be provided each time personal information is released. Each written consent form shall be retained by the Division in electronically digitized, microfilm or paper format for a minimum period of 5 years.

(f) (1) *Fees for copies and information.* — The Secretary shall charge a fee of $25 for each motor vehicle record supplied to persons other than those governmental agencies designated in paragraph (b)(1) of this section. If special handling is needed to certify a record or notarize an affidavit, the fee for such handling shall be $30 to include the requested record.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, the Director of the Division of Motor Vehicles is authorized to enter into contractual agreements for the bulk sale of vehicle records for uses that are permissible under this section. These contracts may include pricing models that are based on the Division's cost to produce, maintain and distribute such records. Purchases of motor vehicle driving history and license records pursuant to the provision of this section shall be governed exclusively by the conditions of paragraph (f)(1) of this section.

(g) *Signature on all records released.* — Any record or certified record supplied by the Department pursuant to this title shall contain the signature or facsimile signature of the Director of the Division of Motor Vehicles or of another official of the Division who is a custodian of such records and is designated by the Director to sign or to have a facsimile signature affixed. For purposes of this subsection, a "facsimile signature" can be a preprinted signature, a rubber-stamped signature or any other recognized facsimile.

(h) *Contract to protect confidentiality.* — Governmental agencies, businesses and individuals designated by subsection (b) of this section to obtain vehicle registration, title, driver's license or driver performance records and obtain such personal information by electronic means will sign contracts acknowledging their responsibility to protect personal information as follows:

(1) The personal information obtained from the Division's records will not be resold or redisclosed in part or whole except for those authorized purposes covered in subsection (b) of this section.

(2) [Repealed.]

(i) *Additional conditions.* — In addition to provision for payment of applicable fees, the Department may, prior to the disclosure of personal information as permitted in this section, require the meeting of certain conditions by the requesting person for the purpose of obtaining reasonable assurance concerning the identity of the person requesting the release of information and, to the extent required, that the use will be only as authorized or the consent of the person who is the subject of the information has been properly obtained. Such conditions may include, but need not be limited to, the making and filing of a written application in such form and containing such information and certification requirements as the Department may prescribe.

Governmental agencies, businesses and individuals who request motor vehicle records by electronic means or who access Division records on a continual basis and are authorized access to the records per subsections (b) through (e) of this section, inclusively, shall sign contracts acknowledging their responsibility to protect personal information under this subsection. The contract will contain this section and the requester will specify, at a minimum:

(1) The legal basis authorizing access to personal data contained in the Division's records;

(2) Purposes and intended uses for this data;

(3) Designation of data elements needed to satisfy their purposes;

(4) Agreement not to disclose the information obtained unless permitted by this subsection; and

(5) Other requirements as deemed necessary by the Division.

Law enforcement, the courts, other motor vehicle jurisdictions and those governmental agencies and businesses designated by the Secretary of Transportation are exempt from this subsection.

A person's driver's license electronically digitized photograph and signature, Social Security number or medical or disability information shall not be releasable without the express written consent of the person to whom such information pertains, except for uses permitted under paragraph (b)(1), (b)(6) or (b)(9) of this section. A signed release from the licensee whose information is sought shall constitute a permitted use if notarized. This subsection shall not in any way affect the use of organ donor information on an individual driver's license or affect the administration of organ donor initiatives by the Division.

Personal information shall not be available by telephone or other methods of request other than by personal appearance and in writing unless approved by the Director of Motor Vehicles or the Director's designee.

The Division, in its discretion, may deny access to any or all records if it finds the requesting agency's or person's purpose in requesting such information is improper or that the request was made in bad faith.

The Division will record, but can deny the release of residential addresses to any agency, business or person outside of the Division when requested by the court or when law-enforcement documentation proves the person is in immediate danger if this information is released. The record will contain a releasable mailing address to enable the Division and law-enforcement agencies to contact that individual.

The Director may destroy any records of the Division which have been maintained on file for 3 years, unless otherwise required by this title, which the Director may deem obsolete and of no further service in carrying out the powers and duties of the Division; provided, that the Director of the Division of Historical and Cultural Affairs has authorized such destruction.

Any record or certified record supplied by the Department pursuant to this title shall contain the signature or facsimile signature of the Director or of another official of the Division who is a custodian of such records and is designated by the Director to sign such records or have such other official's signature affixed. For purposes of this subsection, a "facsimile signature" can be a preprinted signature, a rubber stamped signature or any other recognized facsimile.

(j) *Wrongful disclosure.* — If the Division discovers at any time that any information protected under subsection (c) of this section has been wrongfully disclosed, it shall notify the holder of that information that the information was wrongfully disclosed and may not be used, resold or redisclosed in any way. The Division shall also inform the person who the information pertains to that the person's personal information was disclosed.

(k) *Resale or redisclosure.* — (1) An authorized recipient of personal information may resell or redisclose the information for any use permitted under subsection (b) of this section.

(2) [Repealed.]

(3) Any authorized recipient who resells or rediscloses personal information shall be required by the Department to maintain, for a period of not less than 5 years, records as to the information obtained and the permitted use for which the information was obtained and to make such records available for inspection by the Department, upon request.

(*l*) *Regulations and waiver procedure.* — The Department is authorized to adopt administrative regulations to carry out the purposes of this section. The regulations may include procedures under which the Department, upon receiving a request for personal information that is not subject to disclosure, may mail a copy of such request to each individual who is the subject of the information, informing such individual of the request, together with a statement to the effect that disclosure is prohibited and will not be made unless the individual affirmatively elects to waive such individual's right to privacy under this section.

(m) *Unlawful acts.* — (1) *Procurement for unlawful purposes.* — It shall be unlawful for any person knowingly to obtain or disclose personal information from a motor vehicle record for any use not permitted under this title.

(2) *False representation.* — It shall be unlawful for any person to make false representation to obtain any personal information from an individual's motor vehicle record.

(n) *Penalties.* — Any person requesting the disclosure of personal information from Department records who misrepresents the person's identity or knowingly makes a false statement to the Department in order to obtain restricted information or who knowingly violates any other provision of this chapter shall be guilty of a class A misdemeanor.

(o) *Civil actions.* — (1) *Cause of action.* — A person who knowingly obtains, discloses or uses personal information from a motor vehicle record for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains.

(2) *Remedies.* — The court may award:

a. Actual damages, but not less than liquidated damages in the amount of $2,500;

b. Punitive damages upon proof of wilful or reckless disregard of the law;

c. Reasonable attorney's fees and other litigation costs reasonably incurred; and

d. Such other preliminary and equitable relief as the court determines to be appropriate.

(p) *Definitions.* — In this chapter:

(1) "Motor vehicle record" means any record that pertains to a motor vehicle operator's or driver's permit or license, motor vehicle title, motor vehicle registration or identification document issued by a Division of Motor Vehicles or other state or local agency authorized to issue any such forms or credentials;

(2) "Person" means an individual, organization or entity, but does not include a state or agency thereof; and

(3) "Personal information" means information that identifies an individual, including an individual's photograph, Social Security number, driver identification number, name, address, telephone number and medical or disability information, but does not include information on vehicular accidents, driving or equipment-related violations and driver's license or registration status.

(36 Del. Laws, c. 10, § 5; Code 1935, § 5543; 21 Del. C. 1953, § 310; 55 Del. Laws, c. 339; 57 Del. Laws, c. 670, §§ 6D, 6E; 58 Del. Laws, c. 366; 58 Del. Laws, c. 377; 60 Del. Laws, c. 469, § 1; 65 Del. Laws, c. 81, §§ 1-3; 66 Del. Laws, c. 82, § 1; 68 Del. Laws, c. 170, §§ 1-4; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 511, § 1; 72 Del. Laws, c. 479, §§ 1-4; 74 Del. Laws, c. 110, §§ 14, 15; 74 Del. Laws, c. 308, § 129; 75 Del. Laws, c. 4, § 10; 78 Del. Laws, c. 131, §§ 1, 2; 80 Del. Laws, c. 77, § 16; 84 Del. Laws, c. 42, § 1.)

§ 306. [Reserved].

§ 307. Deposits and disbursements.

(a) All moneys received by the Division of Motor Vehicles under this title and Title 30 shall be deposited daily to the credit of the Transportation Trust Fund.

(b) Those funds directed to be received by the Department of Safety and Homeland Security pursuant to § 309 or § 706 of this title shall be deposited daily to the credit of the State's General Fund.

(c) Except as may be otherwise provided in § 309 or § 706 of this title, no action or claim that is otherwise permitted against the State or an agency or authority of the State to recover any moneys that are erroneously or illegally collected by or paid to the Departments of Transportation and Safety and Homeland Security under this title, may be commenced or otherwise asserted after expiration of 1 year from the earlier of:

(1) The date of the payment; or

(2) The date the payment was required to be made.

(36 Del. Laws, c. 10, § 147; Code 1935, § 5686; 42 Del. Laws, c. 77, §§ 1, 2; 21 Del. C. 1953, § 312; 67 Del. Laws, c. 46, § 55; 67 Del. Laws, c. 285, § 56(a); 68 Del. Laws, c. 156, §§ 54, 55(e); 74 Del. Laws, c. 110, §§ 16, 17.)

§ 308. Contingent fund for refund of renewal registration fees.

The Department shall retain out of the revenue collected by it a sum sufficient to provide at all times a contingent fund of $1,000, out of which it shall pay any refunds for renewal registration fees provided for in Chapter 21 of this title. Such funds shall be deposited in the financial institution which is the legal depository of the state moneys and shall be disbursable on order of the Secretary.

(36 Del. Laws, c. 10, § 26; 38 Del. Laws, c. 27, §§ 1, 2; 40 Del. Laws, c. 38, § 1; Code 1935, §§ 5564, 5719q; 45 Del. Laws, c. 287, § 2; 46 Del. Laws, c. 270, § 1; 21 Del. C. 1953, § 313.)

§ 309. Sale of motor vehicle in possession of Secretary of Safety and Homeland Security.

(a) Whenever the owner or person entitled to the possession of any motor vehicle, or part thereof, in the custody of the Secretary of Safety and Homeland Security (hereinafter "Secretary") cannot be located and fails to claim the motor vehicle, or part thereof, for a period of 3 months after the motor vehicle, or part thereof, came into the custody of the Secretary, the motor vehicle may be disposed of by the Secretary at public sale at some place which is convenient and accessible to the public at any time between the hours of 10:00 a.m. and 6:00 p.m.

(b) The time, place and terms of the sale, together with a full detailed description of the motor vehicle, or part thereof, shall be inserted in 1 or more newspapers published in the city or county where the sale is to take place at least once each week for 2 successive weeks prior to the sale. A registered notice shall be mailed at least 10 days prior to the sale to the owner, lienholder, if any, shown on the records of the Secretary of Safety and Homeland Security or person entitled to the possession of the motor vehicle, or part thereof, if such person's address be known, or if it can be ascertained by the exercise of reasonable diligence. If the address cannot be ascertained by the exercise of reasonable diligence, then such notice shall not be required to be given.

(c) Any excess in the amount of the selling price of the motor vehicle, or part thereof, at the sale, over and above the expenses thereof, and the amount of the storage and repair charges incurred by the Secretary of Safety and Homeland Security (hereinafter "Secretary") during the period in which the motor vehicle, or part thereof, was in the Secretary's custody, and after the payment of all liens to which the motor vehicle, or part thereof, may be subject, in order of their priority, shall be accounted for and deposited by the Secretary to the credit of the State Treasurer as other receipts of the Department. If the owner or person entitled to the possession of the motor vehicle, or part thereof, presents to the Secretary a claim for such excess at any time within 1 year from the date of the sale, the Secretary shall draw a warrant upon the State Treasurer for such excess and such excess shall thereupon be paid over by the State Treasurer to the owner or person entitled to the possession of the motor vehicle, or part thereof.

(36 Del. Laws, c. 10, § 147A; 37 Del. Laws, c. 10, § 36; Code 1935, § 5687; 21 Del. C. 1953, § 314; 57 Del. Laws, c. 670, § 6D; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, §§ 18-21.)

§ 310. Notice to Secretary of Safety and Homeland Security of motor vehicles in possession of imprisoned persons.

Where a person is committed to prison in default of paying a fine for a violation of this title or any other law of this State and such person was in possession of a motor vehicle at the time of such person's arrest, the arresting officer and the clerk of the court or the justice of the peace who made the commitment shall immediately notify the Secretary of Safety and Homeland Security and Secretary of Transportation of the make of the car, the engine and serial numbers and the license number.

(41 Del. Laws, c. 221, § 1; 21 Del. C. 1953, § 315; 57 Del. Laws, c. 670, § 6D; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, §§ 22, 23.)

§ 311. Notice to Secretary of Safety and Homeland Security of motor vehicles stored and unmoved for 30 days.

All persons who are engaged in the business of storing of automobiles shall notify the Secretary of Safety and Homeland Security of the make, engine and serial numbers and license number of all motor vehicles stored and unmoved in any public garage for a period more than 30 days.

(41 Del. Laws, c. 221, § 1; 21 Del. C. 1953, § 316; 57 Del. Laws, c. 670, § 6D; 74 Del. Laws, c. 110, §§ 24, 25.)

§ 312. Report of stolen or recovered motor vehicles; index.

(a) Every sheriff and every police commissioner and chief of police or peace officer of every jurisdiction, upon receiving information that a motor vehicle has been stolen or that a motor vehicle having been stolen has been recovered, shall immediately report such information upon the appropriate official form to the Department of Safety and Homeland Security.

(b) The Department of Safety and Homeland Security shall file all such reports of stolen or recovered motor vehicles and appropriately index the same and shall also file similar reports received from other states.

(36 Del. Laws, c. 10, § 43; Code 1935, § 5581; 21 Del. C. 1953, § 317; 62 Del. Laws, c. 190, § 3; 74 Del. Laws, c. 110, §§ 26, 27.)

§ 313. Accident statistics and reports; evidence.

(a) The Department of Safety and Homeland Security shall prepare and supply to law-enforcement agencies forms for accident reports that require sufficiently detailed information about the cause, conditions then existing, and the persons and vehicles involved in a highway accident.

(b) Except as provided under this section, accident reports and any data or statistics derived from an accident report are without prejudice, are solely for the information of the Department of Safety and Homeland Security and the Department of Transportation, and are not a public record under the Freedom of Information Act, Chapter 100 of Title 29. The fact that an accident report has been made is admissible in evidence solely to prove compliance with this section but no accident report or any part or statement contained in a report is admissible in evidence for any other purpose in any trial, civil or criminal, arising out of an accident.

(c) (1) An accident report may be disclosed only to the following:

a. A person, or the person's legal representative, who requests a copy of the person's own accident report.

b. An insurer, insurance support organization, or a self-insured entity or its agent, employee, or contractor, in connection with claims investigation activities, anti-fraud activities, rating, or underwriting.

(2) a. The person requesting an accident report under paragraph (c)(1) of this section must submit proof of identity and payment of the fee established by the law-enforcement agency with primary jurisdiction over the accident.

b. A fee under paragraph (c)(2)a. of this section must approximate and reasonably reflect the amount necessary to defray the costs incurred by the law-enforcement agency to provide a copy of the accident report.

(3) Notwithstanding paragraphs (c)(1) through (c)(2) of this section, an accident report associated with a criminal prosecution may be withheld from disclosure until the criminal prosecution has concluded.

(d) Upon written request, the Department of Transportation may prepare a document containing a quantitative analysis of de-identified data if the person requesting the information provides proof of identity and a representation that the data will be strictly used for any of the following purposes:

(1) To comply with federal, state, or local law or regulation.

(2) By any of the following in carrying out official functions:

a. A municipality or its agents.

b. A municipal planning organization or its agents.

c. A member of the General Assembly.

(e) The State shall make some de-identified data public through press releases, publication, or a state-managed website. The Department of Safety and Homeland Security has the sole discretion to determine what data may be disclosed under this subsection, except that the data on the state-managed website must include all of the following:

(1) Accident classification.

(2) Manner of impact.

(3) Alcohol or drug involvement.

(4) Date and time of accident.

(5) Conditions regarding road surface, lighting, and weather.

(6) Seat belt or helmet use.

(7) Geographic location.

(8) Primary contributing circumstances.

(f) Notwithstanding any provision under this section, the Director of the Delaware Criminal Justice Information System (DELJIS) may enter into a contractual agreement for the sale of de-identified data if the contracting party's use of the information is related to public safety. A contract under this subsection may include pricing models based on DELJIS's cost to produce, maintain, and distribute the records containing the information. The Department of Safety and Homeland Security has sole discretion to determine the data that may be disclosed under this subsection.

(36 Del. Laws, c. 10, § 109; Code 1935, § 5647; 21 Del. C. 1953, § 318; 57 Del. Laws, c. 670, § 6C; 74 Del. Laws, c. 110, §§ 28, 29; 82 Del. Laws, c. 136, § 1; 83 Del. Laws, c. 148, § 1.)

§ 314. Uncollectible fees; penalties.

(a) Whenever any payment given to the Department in payment of any fee or for any other purpose is returned to the Department as uncollectible, the Secretary shall charge the person presenting such payment, in addition to the protest fee, a reasonable fee, not to exceed $25, to cover the cost of its collection. The Department shall notify the individual presenting such payment by certified mail sent to the last known address of the individual that such payment has been returned as uncollectible and allow the individual 10 days to furnish payment.

(b) If payment is not received within 10 days following the date of mailing such certified mail, the Department shall forthwith suspend the individual's driver's license or vehicle registration obtained by means of the uncollectible payment until payment and a penalty fee

in the amount of $25 has been paid in full. If the uncollectible payment was issued for a registration of a motor vehicle or vehicle, the driver's license of the owner of such motor vehicle or vehicle shall also be suspended.

(37 Del. Laws, c. 10, § 23; Code 1935, § 5618; 21 Del. C. 1953, § 319; 57 Del. Laws, c. 670, § 6D; 58 Del. Laws, c. 580; 60 Del. Laws, c. 606, § 1; 65 Del. Laws, c. 178, § 1; 68 Del. Laws, c. 396, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 332.)

§ 315. Failure to report change of address; penalty.

Whoever, holding an operator's license issued to such person under the laws of this State or having a motor vehicle or tractor registered in such person's name under the laws of this State, fails or neglects within 1 month after any change of such person's address to notify the Department of any such change of address shall be fined, for the first offense, not less than $10 nor more than $50. For each subsequent like offense, such person shall be fined not less than $50 nor more than $100.

(36 Del. Laws, c. 10, §§ 141, 145; 40 Del. Laws, c. 38, § 4; Code 1935, §§ 5679, 5683; 45 Del. Laws, c. 292, § 2; 48 Del. Laws, c. 195; 21 Del. C. 1953, § 320; 65 Del. Laws, c. 77, § 10; 65 Del. Laws, c. 503, § 1; 70 Del. Laws, c. 186, § 1.)

§ 316. Exceptions from application of certain provisions of this title.

Every motor vehicle, trailer, semitrailer and pole trailer when driven or moved upon a highway shall be subject to this title with respect to registration, certificate of title and inspection except:

(1) Any such vehicle driven or moved upon a highway in conformance with this title relating to manufacturers, transporters, dealers or nonresidents or under a temporary registration permit issued by the Department as hereinafter authorized;

(2) Any vehicle used or intended to be used solely upon private property which must cross or use the public highway only incidentally in order to gain access from one portion of such property to another. This paragraph (2) shall not apply to mobile homes or house trailers.

(3) Any vehicle owned by the government of the United States and plainly marked to indicate such ownership and identify the particular vehicle, unless said vehicle is under lease with a right of purchase in the lessee.

(36 Del. Laws, c. 10, § 7; Code 1935, § 5545; 43 Del. Laws, c. 244, § 1; 48 Del. Laws, c. 244; 21 Del. C. 1953, § 321; 64 Del. Laws, c. 466, § 4.)

§ 317. [Reserved].

§ 318. Notarial fees; penalty.

(a) Notaries' public fees for administering and certifying, under hand and notarial stamp or seal, the necessary oaths or affirmations to an applicant for the registration and titling of a motor vehicle and the necessary operator's license shall not exceed 50 cents for the first certification and 25 cents for each additional certification.

(b) Any notary public charging, demanding or receiving a greater fee for the service herein specified shall be fined not more than $200 or imprisoned not more than 6 months in the discretion of the court.

(33 Del. Laws, c. 65; Code 1935, §§ 1145, 5595, 5719t; 46 Del. Laws, c. 270, § 1; 21 Del. C. 1953, § 323; 84 Del. Laws, c. 233, § 46.)

Part I
General Provisions
Chapter 4
Reciprocal Agreements
Subchapter I
General Provisions

§ 401. Power of Secretary to make agreements with other states; general character; conditions.

(a) The Secretary of Transportation may enter into an agreement or arrangement with the duly authorized representatives of another jurisdiction, granting to vehicles or to owners of vehicles which are properly registered or licensed in such jurisdiction and for which evidence of compliance is supplied benefits, privileges and exemptions from the payment, wholly or partially, of any taxes, fees or other charges imposed upon such vehicles or owners with respect to the operation or ownership of such vehicles under the laws of this State. Such an agreement or arrangement shall provide that vehicles properly registered or licensed in this State when operated upon highways of such other jurisdiction shall receive exemptions, benefits and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in such jurisdiction when operated in this State. Each such agreement or arrangement shall, in the judgment of the Secretary of Transportation, be in the best interest of this State and the citizens thereof and shall be fair and equitable to this State and the citizens thereof and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this State from the uninterrupted flow of commerce.

(b) The Secretary of Transportation may enter into an agreement or arrangement with the duly authorized representatives of another jurisdiction, granting to licensed drivers who are properly licensed in such jurisdictions and for which evidence of compliance is supplied benefits, privileges and exemptions of a similar kind or to a similar degree as are extended to drivers properly licensed in this State.

Each such agreement or arrangement shall, in the judgment of the Secretary of Transportation, be in the best interest of this State and the citizens thereof and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this State from the uninterrupted flow of commerce.

(21 Del. C. 1953, § 402; 49 Del. Laws, c. 424; 54 Del. Laws, c. 274; 57 Del. Laws, c. 670, § 23B; 60 Del. Laws, c. 451, §§ 1, 2; 74 Del. Laws, c. 110, §§ 30, 31.)

§ 402. Equalizing fee on vehicles registered to nonresidents.

(a) Except as otherwise provided by reciprocity agreement or other arrangement entered into by the Secretary or by a declaration issued by the Secretary, no motor vehicle or trailer or semitrailer registered in another jurisdiction which requires the payment of a registration fee or fees or taxes of any other nature from an owner of a similar vehicle properly registered in this State for the operation of such vehicle on the highways of such other State shall be operated on the highways of this State unless a fee is paid to the Department, equal in amount to the fee or tax collected by the authorized official or public agency of such other jurisdiction for the operation on its highways of the motor vehicle, trailer or semitrailer properly registered in this State. In the event that the fee or tax collected by such other jurisdiction is imposed for the registration of the vehicle therein, then in no case shall the fee paid to the Department be less than the amount now or hereafter provided for by the laws of this State for the registration of a similar vehicle.

(b) The Secretary shall from time to time promulgate such regulations as may be necessary for the effective enforcement of this section.

(21 Del. C. 1953, § 403; 49 Del. Laws, c. 424; 54 Del. Laws, c. 274; 57 Del. Laws, c. 670, §§ 23B, 23C; 64 Del. Laws, c. 339, § 2; 70 Del. Laws, c. 186, § 1.)

§ 403. Base state registration reciprocity.

An agreement or arrangement entered into or a declaration issued under the authority of § 401 of this title may authorize the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction which vehicles otherwise would be required to be registered or licensed in this State, and in such event the exemptions, benefits and privileges extended by such agreement, arrangement or declaration shall apply to such vehicles, when properly licensed or registered in such base jurisdiction.

(21 Del. C. 1953, § 404; 49 Del. Laws, c. 424; 54 Del. Laws, c. 274.)

§ 404. Declarations of extent of reciprocity; when.

In the absence of an agreement or arrangement with another jurisdiction, the Secretary of Transportation may examine the laws and requirements of such jurisdiction and declare the extent and nature of exemptions, benefits and privileges to be extended to vehicles properly registered or licensed or licensed drivers in such other jurisdiction, or to the owners of such vehicles, which shall, in the judgment of the Secretary of Transportation, be in the best interest of this State and the citizens thereof and which shall be fair and equitable to this State and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this State from the uninterrupted flow of commerce.

(21 Del. C. 1953, § 405; 49 Del. Laws, c. 424; 54 Del. Laws, c. 274; 57 Del. Laws, c. 670, §§ 23A, 23D; 60 Del. Laws, c. 451, § 3; 74 Del. Laws, c. 110, § 32.)

§ 405. Extension of reciprocal privileges to lessees authorized.

An agreement or arrangement entered into or a declaration issued under the authority of § 401 of this title may contain provisions under which a leased vehicle properly registered by the lessor thereof may be entitled, subject to terms and conditions stated therein, to the exemptions, benefits and privileges extended by such agreement, arrangement or declaration.

(21 Del. C. 1953, § 406; 54 Del. Laws, c. 274.)

§ 406. Automatic reciprocity; when.

If no agreement, arrangement or declaration is in effect with respect to another jurisdiction as authorized by § 401 of this title, any vehicle properly registered or licensed in such other jurisdiction, and for which evidence of compliance is supplied, shall receive, when operated in this State, the same exemptions, benefits and privileges granted by such other jurisdiction to vehicles properly registered in this State. Reciprocity extended under this section shall apply to commercial vehicles only when engaged exclusively in interstate operations.

(21 Del. C. 1953, § 407; 54 Del. Laws, c. 274.)

§ 407. Suspension of reciprocity benefits.

Agreements, arrangements or declarations made under the authority of § 401 of this title may include provisions authorizing the Secretary of Transportation to suspend or cancel the exemptions, benefits or privileges granted thereunder to a vehicle or a driver which is in violation of any of the conditions or terms of such agreements, arrangements or declarations.

(21 Del. C. 1953, § 408; 54 Del. Laws, c. 274; 57 Del. Laws, c. 670, § 23D; 60 Del. Laws, c. 451, § 4; 74 Del. Laws, c. 110, § 33.)

§ 408. Agreements to be written, filed and available for distribution.

All agreements, arrangements or declarations or amendments thereto shall be in writing and shall be filed in the office of the Secretary of Transportation. Copies thereof shall be made available by the Secretary of Transportation upon request and upon payment of a fee therefor in an amount necessary to defray the costs of reproduction thereof.

(21 Del. C. 1953, § 409; 54 Del. Laws, c. 274; 57 Del. Laws, c. 670, § 23E; 74 Del. Laws, c. 110, § 34.)

§ 409. Reciprocity agreements in effect on May 5, 1964.

All reciprocity registration or driver agreements, arrangements and declarations relating to vehicles or drivers in force and effect on May 5, 1964, shall continue in force and effect until specifically amended or revoked as provided by law or by such agreements or arrangements.

(21 Del. C. 1953, § 410; 54 Del. Laws, c. 274; 60 Del. Laws, c. 451, §§ 5, 6.)

§ 410. Protection of State's income.

The Secretary of Transportation shall enter into no agreement, etc., that shall result in a serious or appreciable reduction of income to the State.

(21 Del. C. 1953, § 411; 54 Del. Laws, c. 274; 57 Del. Laws, c. 670, § 23D; 74 Del. Laws, c. 110, § 35.)

Subchapter II

International Registration Plan

§ 420. General authority.

(a) If any jurisdiction permits or requires the licensing of fleets of vehicles in interstate or combined interstate and intrastate commerce and the payment of registration, license or other fixed fees on an apportionment basis commensurate with and determined by the miles traveled on highways in that jurisdiction, as compared with the miles traveled on highways in other jurisdictions, or on any other equitable basis of apportionment, and if that jurisdiction exempts vehicles registered in other jurisdictions under that apportionment basis from the requirements of full payment of its own registration, license or other fixed fees, the Secretary of the Department of Transportation by agreement may adopt the exemption as to vehicles of those fleets, whether owned by residents or nonresidents of this State and regardless of where the vehicles are based.

(b) Under the terms, conditions or restrictions that the Secretary of the Department of Transportation consider proper, these agreements may provide:

(1) That owners of vehicles operated in interstate or combined interstate and intrastate commerce in this State may pay registration, license, or other fixed fees on an apportionment basis commensurate with and determined by the miles traveled on highways in this State, as compared with the miles traveled on highways in other jurisdictions or on any other equitable basis of apportionment; or

(2) a. For issuance of trip permit registration; and

b. For collection of a fee for any vehicle or combination of vehicles which may be lawfully operated in the jurisdiction if full registration or proportional registration were obtained.

(c) The registration of fleet vehicles under this section is subject to the rights, terms and conditions granted by or contained in any applicable agreement, arrangement or declaration made by the Secretary of the Department of Transportation.

(d) If the departments enter into any agreement under the authority of this section, and the provisions set forth in the agreement are in conflict with any other rules or regulations by the departments, the agreement's provisions shall prevail notwithstanding.

(68 Del. Laws, c. 156, § 52; 74 Del. Laws, c. 110, §§ 36-38.)

§ 421. Base state registration.

An agreement, arrangement or declaration made under this subchapter may authorize the registration or licensing in another jurisdiction of vehicles that are located in or operated from a base in that jurisdiction and that otherwise would be required to be registered or licensed in this State. In this event, the benefits, privileges and exemptions extended by the agreement, arrangement or declaration shall apply to those vehicles, if licensed or registered in the base jurisdiction.

(68 Del. Laws, c. 156, § 52.)

Subchapter III

Toll Interoperability

§ 422. Authority to enter in reciprocity agreements with toll agencies and motor vehicle agencies for toll interoperability and collection of tolls and penalties.

The Secretary may enter into reciprocal agreements with duly authorized representatives of other agencies, authorities or jurisdictions, including without limitation entities operating pursuant to compacts authorized by Acts of the Congress of the United States, that impose tolls, charges, and related penalties on motor vehicles, in accordance with this subchapter for the purpose of toll interoperability and the collection of tolls, penalties and charges in connection therewith. For purposes of this subchapter, such agencies, authorities and jurisdictions shall be referred as "away agencies."

(79 Del. Laws, c. 33, § 1.)

§ 423. Minimum provisions for reciprocity agreements.

When an away agency certifies with supporting evidence that the operator of a motor vehicle registered in this State either owes a toll(s) or failed to pay a toll, the Department may collect the civil penalties and tolls properly imposed by the away agency as though those penalties and tolls were imposed by the Department if the reciprocity agreement confirms that:

(1) The away agency has its own effective reciprocal procedures for collecting penalties and tolls collected by the Department and does, in fact, reciprocate in collecting penalties and tolls of the Department by employing sanctions that include denial of a person's right to register or reregister a motor vehicle;

(2) The away agency provides due process and appeal protections to avoid the likelihood that a false, mistaken, or unjustified claim will be pursued against an owner;

(3) An owner of a motor vehicle registered in Delaware may present evidence to the away agency by mail, telephone, electronic means, or other means to invoke rights of due process, without having to appear personally in the jurisdiction where the violation is alleged to have occurred; and

(4) The reciprocal collection agreement between the Department and the away agency provides that each party may charge the other a fee sufficient to cover the costs of the collection services, including costs incurred by the agency that registers motor vehicles.

(79 Del. Laws, c. 33, § 1.)

Part I
General Provisions

Chapter 5
Marking of Highways and Erection of Traffic Signals and Other Signs

§ 501. Erection of signs by local authorities; signs necessary to enforce local regulations.

Local authorities in their respective jurisdictions may erect and maintain signs designating residence and business districts, highways and steam or interurban railway grade crossings and such other signs as may be deemed necessary to carry out this title and such additional signs as may be appropriate to give notice of local parking and other special regulations. Local parking and other special regulations shall not be enforceable against an alleged violation if, at the time and place of the alleged violation, an appropriate sign giving notice thereof is not in proper position and sufficiently legible to be seen by an ordinarily observant person.

(36 Del. Laws, c. 10, § 137; Code 1935, § 5674; 21 Del. C. 1953, § 502.)

§ 502. Signs on private property.

The Department of Transportation may erect and maintain all appropriate signals, lights or any other type of sign on private property over which the Department of Safety and Homeland Security has assumed jurisdiction. Nothing in this section shall be construed to prohibit the erection and maintenance of signs and signals by the private owners of the real property, so long as such signs and signals are for the safety and convenience of the public and are approved by the Department of Transportation.

(21 Del. C. 1953, § 503; 58 Del. Laws, c. 515, § 2; 60 Del. Laws, c. 503, § 23; 74 Del. Laws, c. 110, § 138.)

§§ 503-506. [Reserved.]

Part I
General Provisions

Chapter 7
Enforcement; Arrest, Bail and Appeal

§ 701. Arrest without warrant for motor vehicle violations.

(a) The Secretary of Safety and Homeland Security, the Secretary of Safety and Homeland Security's deputies, Division of Motor Vehicles investigators, State Police, state detectives and other police officers authorized by law to make arrests for violation of the motor vehicle and traffic laws of this State, provided such officers are in uniform or displaying a badge of office or an official police identification folder, may arrest a person without a warrant:

(1) For violations of this title committed in their presence; or

(2) For violations of § 4169 of this title, relating to speed violations, when the speed is determined by radar, electronic devices, electromechanical devices, audio sensor devices, visual sensor devices or aerial spotting, even though the officer making the arrest did not actually observe the radar speed meter or observe the violation from the aircraft, provided such arresting officer is in a position to observe the vehicle being detected and provided that the officer is working in conjunction with the reading or observing officer and is immediately advised of the violation and that the vehicle being apprehended is the vehicle detected; or

(3) For violations of § 4108(a)(3) of this title relating to red traffic lights, when the violation is determined by personal observation by another law-enforcement officer who communicates the information to the arresting officer by radio or other telecommunications device, provided that the arresting officer is working in conjunction with the observing officer, the arresting officer is immediately advised of the violation and the vehicle being apprehended is the vehicle detected; or

(4) For violations of § 4176C(a) of this title relating to electronic communication devices, when the violation is determined by personal observation by another law-enforcement officer who communicates the information to the arresting officer by radio or other telecommunications device, provided that the arresting officer is working in conjunction with the observing officer, the arresting officer is immediately advised of the violation and the vehicle being apprehended is the vehicle detected;

(5) For violations of § 4802(a)(1) or (2) or § 4803 of this title relating to seat belts, when the violation is determined by personal observation by another law-enforcement officer who communicates the information to the arresting officer by radio or other telecommunications device, provided that the arresting officer is working in conjunction with the observing officer, the arresting officer is immediately advised of the violation and the vehicle being apprehended is the vehicle detected; or

(6) For violations of § 4172 of this title relating to speed exhibitions, drag races and other speed contests, when the violation is determined by personal observation, video surveillance device, other method of identifying the vehicle, or a review of any existing video recording of the violation. The violation may also be determined by personal observation by another law-enforcement officer who immediately communicates the information to the arresting officer, provided the arresting officer is working in conjunction with the observing officer, and the vehicle being apprehended is the vehicle detected.

(b) Any police officer authorized to arrest without warrant under subsection (a) of this section is further authorized at the scene of a motor vehicle accident, upon reasonable and probable cause to believe, based upon personal investigation which may include information obtained from eyewitnesses, that a violation has been committed by any person then and there present, to arrest such person without a warrant of arrest.

(c) Any arrests for violations of § 4168 or § 4169 of this title or any local ordinance equivalent thereof by a municipal, town or city police department within its jurisdiction as defined by its charter on a state highway shall occur only if:

(1) A "reduced speed ahead" sign is posted at a sufficient distance as determined by the Department of Transportation prior to the start of the speed zone being enforced if the speed limit enforced is less than 55 miles per hour or a "speed limit 55" (or 65, as appropriate) "strictly enforced" sign is posted at a sufficient distance as determined by the Department of Transportation prior to the start of the speed zone being enforced;

(2) A speed limit sign with the limit is posted at the start of the speed zone;

(3) A yellow "strictly enforced" sign is posted below the speed limit sign;

(4) An "entering corporate limits of " sign, with the name of the city, town or municipality inserted on the sign, is posted at the corporate limits;

(5) A "leaving corporate limits of " sign, with the name of the city, town or municipality inserted on the sign, is posted at the end of the corporate limits; and

(6) Any signs required under this subsection shall be installed by the Department of Transportation, with the costs borne by the Department of Transportation. Said signs shall be no less than 2# by 3# in size, and shall be posted on the left and right sides of the highway being monitored.

(d) "State highways," as used in subsection (c) of this section, include the following:

(1) U.S. 13;

(2) U.S. 113;

(3) Delaware Route 1 (SR 1);

(4) Interstate I-95;

(5) Interstate I-495;

(6) Delaware Route 141;

(7) Delaware Route 2;

(8) Delaware Route 896;

(9) Delaware Route 4;

(10) U.S. Route 40;

(11) U.S. Route 301;

(12) U.S. 202; and

(13) Interstate I-295.

(e) No municipal, town or city police department shall operate any speed enforcement equipment outside of its corporate limits, notwithstanding any municipal charter provision or provision of this Code to the contrary.

(36 Del. Laws, c. 10, § 145; Code 1935, § 5683; 48 Del. Laws, c. 195; 21 Del. C. 1953, § 701; 56 Del. Laws, c. 264; 57 Del. Laws, c. 670, § 7A; 58 Del. Laws, c. 132; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 325, §§ 1, 2; 73 Del. Laws, c. 206, § 1; 74 Del. Laws, c. 110, § 39; 79 Del. Laws, c. 331, § 1; 79 Del. Laws, c. 410, § 1; 83 Del. Laws, c. 294, § 3.)

§ 702. Failure to answer summons; penalty.

(a) Whoever fails to answer any summons to appear in any court of competent jurisdiction to answer for any violation of the motor vehicle laws of this State, after notice thereof served personally or securely fastened to the motor vehicle of which such person is the owner or operator, shall be fined, for the first offense, not less than $25 nor more than $50. For each subsequent like offense, such person shall be fined not less than $50 nor more than $100, or imprisoned not less than 2 nor more than 15 days or both.

(b) The offense set forth in subsection (a) of this section above shall not be charged in any case in which a court of competent jurisdiction has already issued a capias or bench warrant for the failure to answer the original summons, or in any case where the defendant's driver's license or driving privileges have been suspended as a result of failure to pay the summons through voluntary assessment pursuant to § 709(j) of this title.

(36 Del. Laws, c. 10, §§ 141, 145; 40 Del. Laws, c. 38, § 4; Code 1935, §§ 5679, 5683; 45 Del. Laws, c. 292, § 2; 48 Del. Laws, c. 195; 21 Del. C. 1953, § 703; 65 Del. Laws, c. 503, § 2; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 18, § 1.)

§ 703. Jurisdiction of offenses.

(a) A person arrested without a warrant for a violation of any section of this title, or arrested for any moving traffic violation or any municipal ordinance regulating traffic within its territorial limits as set forth in Chapter 41 of this title shall have such case heard and determined by a justice of the peace.

(b) Notwithstanding subsection (a) of this section, the arresting officer may issue a summons to the person arrested for an appearance at a subsequent date before a justice of the peace.

(c) The arresting officer shall take the person arrested without a warrant, or shall summon the person arrested to appear at a subsequent date, before a Justice of the Peace Court which is located in the same county wherein the violation occurred, unless a Justice of the Peace Court located in another county is closer to the place where the violation occurred, in which case the arresting officer may take the person arrested without a warrant, or may summon the person arrested to appear at a subsequent date, before said Court.

Notwithstanding the foregoing, any case in which a person is arrested or issued a summons within the corporate limits of the city of Milford for a violation of a provision of this title, with the exception of violations of § 4177 of this title, shall be heard and adjudicated in the nearest available Justice of the Peace Court location in Kent County. Violations of § 4177 of this title within the corporate limits of the city of Milford may be initiated or transferred to any Justice of the Peace Court location so designated by the Justice of the Peace Court to hear such cases. Once properly within the jurisdiction of a particular Justice of the Peace Court location, that location shall retain jurisdiction until final adjudication, unless a transfer of venue is permitted by statute or court rule.

(d) Anything else in this or any other chapter or title notwithstanding, those proceedings in the Justice of the Peace Courts specified by court rule may be conducted by audiovisual device. Audiovisual monitors shall be situated in the courtroom and where the defendant is present so as to provide the public, the court and the defendant with a view of the proceedings. Such proceedings may be conducted by a Justice of the Peace Court in the same or another county from that in which the defendant is physically located.

(e) Notwithstanding any other provision of this section to the contrary, in those incorporated municipalities which provide duly constituted alderman's courts or mayor's courts, the alderman and mayor shall continue to hear and adjudicate those cases in which a person is arrested without a warrant and where the alderman's court or the mayor's court is the court of original jurisdiction. As justice

requires, the alderman's court or the mayor's court may administratively transfer a case that would be within the jurisdiction of that court to the Justice of the Peace Court.

(f) Notwithstanding subsection (e) of this section, no alderman, mayor or other municipal official shall be authorized to adjudicate any alleged moving traffic violation unless said court complies with the following:

(1) All convictions in said alderman's court or mayor's court for moving traffic violations and the disposition of those cases shall become a matter of record to be filed with the State Division of Motor Vehicles. Records of all such convictions shall be forwarded to the Division no later than 10 days after disposition of the case.

(2) The adjudicating official shall receive a salary but no other compensation for performing such official's duties. All fees, fines, costs and other funds collected by the court in the course of its business shall be deposited to the account of the municipality from which the adjudicating official derives authority.

(g) Superior Court shall have jurisdiction to issue writs of mandamus to adjudicating officials of any alderman's court or mayor's court to compel compliance with this section.

(36 Del. Laws, c. 10, § 145; Code 1935, § 5683; 21 Del. C. 1953, § 704; 50 Del. Laws, c. 414, § 1; 55 Del. Laws, c. 256, §§ 1, 2; 56 Del. Laws, c. 402; 57 Del. Laws, c. 670, § 7B; 58 Del. Laws, c. 447; 60 Del. Laws, c. 553, §§ 1, 2; 63 Del. Laws, c. 221, §§ 1-3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 43, § 3; c. 176, § 27; 76 Del. Laws, c. 28, § 1; 82 Del. Laws, c. 231, § 1.)

§ 703A. Reporting of offenses to the Division of Motor Vehicles by the courts.

All record convictions for any person for violations of this title, Title 4, Title 10, Title 11 and Title 16, which apply to motor vehicle violations, the suspension and/or revocation of a license and/or driving privileges shall be reported within 30 days to the Division of Motor Vehicles by each court within the State. Such reporting shall be deemed acceptable if in written form or by electronic data transfer. The original conviction documents shall be retained by the court and forwarded to the Division upon request.

(70 Del. Laws, c. 87, § 1.)

§ 704. Jurisdiction over certain children; notice that child has been taken into custody.

(a) Justices of the peace shall have jurisdiction over a child 16 or 17 years of age or older charged with having violated this title, except as provided in § 927 of Title 10 and except when said child is charged with having violated 1 or more of the offenses specified in § 927 of Title 10 and, in the same incident, is charged with having violated other Title 21 offenses not specified in § 927 of Title 10, in which event the entire case shall be heard in the Family Court.

(b) Justices of the peace and arresting officers shall conform to the procedure for advising the accused of all rights of election of trial in the Court of Common Pleas as provided in § 5901 of Title 11.

(c) Section 703 of this title shall also be applicable to all alleged offenders.

(d) Justices of the peace shall adhere to the procedures, where applicable, as specified in Chapter 9 of Title 10, for offenders over whom they have jurisdiction pursuant to this section.

(e) Any peace officer having taken a child into custody or any justice of the peace before whom said child is brought by a peace officer shall make a reasonable attempt to notify the person having the care of the child that the child has been taken into custody.

(f) The jurisdiction of the Family Court in matters involving the violation of this title by children 16 years of age or over is hereby terminated, with the exception of those offenses over which the Family Court has expressly retained jurisdiction under § 927 of Title 10 and except for such actions for the violation of this title which were commenced prior to August 5, 1976.

(21 Del. C. 1953, § 704A; 58 Del. Laws, c. 115, § 1; 58 Del. Laws, c. 273; 60 Del. Laws, c. 708, §§ 4, 5; 63 Del. Laws, c. 326, § 1; 71 Del. Laws, c. 176, §§ 28, 29.)

§ 705. Bail.

In the event of an arrest for the violation of any section of this title, if the defendant is unable to give sufficient bail for a hearing or for the defendant's presence at court, the justice of the peace before whom the defendant is first taken may accept as a forfeit, conditioned upon the defendant's appearance, a sum of money equal in amount to the maximum fines which could be imposed for the offense charged and the costs or in lieu of such bail or forfeit may accept any article of sufficient value or hold in custody a motor vehicle found in the possession of the defendant. Such justice of the peace after the trial of the defendant, if sufficient bail according to law has not been given in the meantime, shall make such order as to the disposal of such motor vehicle or other articles as to the justice of the peace seems just and proper.

(36 Del. Laws, c. 10, § 145; Code 1935, § 5683; 21 Del. C. 1953, § 705; 70 Del. Laws, c. 186, § 1.)

§ 706. Disposition of fines and costs.

(a) All fines collected for the violation of any of the provisions of this title, in the limits of any county, incorporated city or town in this State where arrests are procured by the authorized representatives of that county, incorporated city or town, shall be paid to that county, incorporated city or town within which such offense was committed for the use of that county, incorporated city or town. Nothing

in this section shall be construed to entitle any county to fines, penalties or forfeitures arising from an arrest made under this title by an authorized representative of that county for a violation committed within any incorporated city or town. All the fines, penalties and forfeitures imposed and collected in any county of this State for violation of any of the laws of this title in relation to motor vehicles, where the arrests are procured by the authorized representatives of the Department of Safety and Homeland Security, shall inure and be paid to the State Treasurer for the General Fund. Such fines, penalties and forfeitures shall be collected as other fines, penalties and forfeitures are collected under the laws of this State, and the officers collecting them shall make a monthly report thereof to the State Treasurer on blanks to be furnished for that purpose by the Department of Safety and Homeland Security. All costs collected for the violation of any of the provisions of this title shall be paid to the jurisdiction whose court imposed said costs.

(b) All fines and costs collected as a result of radar or other speed timing devices, where the device is operated to determine speed beyond the corporate limits of an incorporated city or town but within the jurisdiction of the extended corporate limits provided by the applicable municipal charter, shall be paid to the State Treasurer for the General Fund.

(c) Violation, refusal or neglect to comply with any of the provisions regarding the disposal of fines and forfeitures as provided in subsection (a) of this section shall constitute misconduct in office and shall be ground for removal therefrom.

(36 Del. Laws, c. 10, § 145; Code 1935, § 5683; 21 Del. C. 1953, § 706; 57 Del. Laws, c. 670, § 7C; 60 Del. Laws, c. 432, § 1; 65 Del. Laws, c. 141, §§ 1-4; 71 Del. Laws, c. 152, §§ 1, 2; 74 Del. Laws, c. 110, § 138.)

§ 707. Sunday hearings; bail.

(a) Any justice of the peace or mayor may hear and determine cases involving alleged violation of the traffic laws on Sunday.

(b) Any judgment rendered or bail bond taken in pursuance of the provisions of this title shall be of full force and effect as though such judgment were rendered or bail bond accepted on days other than Sundays, if the justice of the peace or mayor so rendering or accepting bail bond on Sunday heretofore would have had jurisdiction on days other than Sundays to render such judgment or accept such bail bond.

(34 Del. Laws, c. 220, §§ 1, 2; Code 1935, § 5684; 21 Del. C. 1953, § 707.)

§ 708. Appeal.

(a) Any person convicted under this title, or under any municipal ordinance or other law, for a motor vehicle violation within the State before an alderman or mayor of any incorporated city or town, shall have the right of an appeal, unless otherwise stated in this title, to the Court of Common Pleas, upon giving bond in the sum of $500 to the State with surety satisfactory to the mayor or judge before whom such person was convicted, such appeal to be taken and bond given within 15 days from time of conviction. Such appeal shall operate as a stay or supersedeas of all proceedings in the court below in the same manner that a certiorari from the Superior Court operates. The taking of such appeal shall constitute a waiver by the appellant of the appellant's right to a writ of certiorari in the Superior Court.

(b) Except as provided in subsection (a) of this section, any person convicted under this title shall have the right of an appeal to the Court of Common Pleas only in those cases in which the sentence imposed was imprisonment, or a fine exceeding $100, upon giving bond with surety satisfactory to the alderman, justice of the peace or a judge before whom such person was convicted, such appeal to be taken and bond given with 15 days from the time of conviction. Such appeal shall operate as a stay or supersedeas of all proceedings in the court below in the same manner that a certiorari from the Superior Court operates. The taking of such appeal shall constitute a waiver by the appellant of the appellant's right to a writ of certiorari in the Superior Court.

(36 Del. Laws, c. 10, § 146; Code 1935, § 5685; 48 Del. Laws, c. 337, § 1; 21 Del. C. 1953, § 708; 63 Del. Laws, c. 342, § 1; 69 Del. Laws, c. 427, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 66, § 1; 71 Del. Laws, c. 176, § 30.)

§ 709. Payment of motor vehicle fines.

(a) Applicability. — Any duly constituted peace officer in the State who charges any person with any of the offenses hereinafter designated "motor vehicle offenses subject to voluntary assessment" may indicate on the Uniform Traffic Complaint and Summons that the fine shall be paid by voluntary assessment unless the driver requests a hearing. When a voluntary assessment is permitted and the Uniform Traffic Complaint and Summons is properly executed by the officer, the driver may dispose of the charge without the necessity of personally appearing in the court to which the Uniform Traffic Complaint and Summons is returnable. The court to which the summons is returnable shall be determined by § 703 of this title unless the summons permits a voluntary assessment, in which case it shall be returnable to either the applicable court or a voluntary assessment center established by the Justice of the Peace Court. Notwithstanding any provision of this section and chapter to the contrary, the City of Wilmington may establish the exclusive voluntary assessment center for parking summonses issued for designated offenses within the boundaries of the City of Wilmington, and the Town of Elsmere may establish a voluntary assessment center for any violation of a town ordinance within the boundaries of the Town of Elsmere.

(b) *Definitions.* — (1) "Payment," as used in this section, shall mean remittance in part or in full of the fine and of the costs as herein provided and of the penalty assessment added to the fine pursuant to the Delaware Victim Compensation Law, Chapter 90 of Title 11, and other penalty assessment as provided by law.

(2) "Signature" shall include a written signature or an electronic signature as defined by § 101 of this title.

(3) "Voluntary assessment" means the process set forth in this section by which a driver may voluntarily remit payment of a Title 21 violation without having to appear in a court.

(c) *Places and time of payment.* — Payments made pursuant to this section shall be remitted to the court or voluntary assessment center to which the summons is returnable and shall be disbursed in accordance with § 706 of this title. The court or voluntary assessment center must receive the payment within 30 days of the arrest. Payment to the voluntary assessment center shall be paid only by check, money order or credit card.

(d) *Jurisdiction.* — This section shall apply to any licensed resident of the State; to residents of those jurisdictions with which the State has entered a reciprocal agreement pursuant to Chapter 4 of this title; and to those out-of-state residents who, in the discretion of the arresting peace officer, are deemed to be reliable prospects for a voluntary assessment disposition.

(e) *Offenses designated as "motor vehicle offenses subject to voluntary assessment"; exceptions.* — All offenses as now or hereafter set forth in this title and all motor vehicle offenses falling within the scope of § 5211(a) of Title 30 are hereby designated as motor vehicle offenses subject to voluntary assessment except for the following offenses:

(1) Violation of § 2118 of this title;

(2) Violation of § 2118A of this title;

(3) Violation of § 2701 of this title;

(4) Violation of § 2751 of this title;

(5) Violation of § 2752 of this title;

(6) Violation of § 2756 of this title;

(7) Violation of § 4103 of this title;

(8) Violation of § 4166(d) of this title;

(9) Violation of § 4172 of this title;

(10) Violation of § 4175 of this title;

(11) Violation of § 4175A of this title;

(12) Violation of § 4177 of this title;

(13) Violation of § 4177L of this title;

(14) Violation of § 4201 of this title;

(15) Violation of § 4202 of this title;

(16) Any violation of Chapter 67 of this title; and

(17) Violations of other Title 21 sections which are deemed not appropriate for processing by voluntary assessment.

(f) *Procedure for voluntary assessment.* — (1) At the time of making an arrest for any offense subject to this section, the arresting officer shall determine whether the offense may be handled as a voluntary assessment. If the officer determines that the offense may be so treated, the officer may indicate on the Uniform Traffic Complaint and Summons that payment shall be made by voluntary assessment, unless the driver requests a hearing on the charge or charges. The officer shall inform the arrested person of the court or voluntary assessment center to which payment should be submitted if the person does not request a hearing. No officer shall receive or accept custody of a payment.

(2) A driver who has been given a Uniform Traffic Complaint and Summons which specifies that payment be made by voluntary assessment shall pay the fine, together with costs and penalty assessments, within 30 days from the date of arrest during which time payment must be received by the applicable court or voluntary assessment center.

(3) In lieu of paying the voluntary assessment, a driver who has been given a voluntary assessment may request a hearing by notifying, in writing, the court or the voluntary assessment center to which payment is to be made within 30 days of the date of arrest. If the driver makes a timely request for a hearing, the charge shall be prosecuted as if the voluntary assessment had not been permitted and the officer shall swear to the ticket prior to trial.

(4) If a voluntary assessment is not issued or the driver declines to accept the voluntary assessment, the officer shall follow the procedure for arrest as set forth in Chapter 19 of Title 11.

(g) *Penalty.* — The penalty for offenses for which a voluntary assessment payment is made shall be the minimum fine for each specific offense charged and fines shall be cumulative if more than 1 offense is charged. Provisions of this subsection as to penalties under voluntary assessment shall not apply if the voluntary assessment payment is not received by the voluntary assessment center or the applicable court within 30 days from the date of arrest.

(h) *Court costs; applicability of Delaware Victim Compensation Law.* — In lieu of any other court costs, and provided the offense is not subject to other proceedings under this section, each fine for an offense under this section shall be subject to court costs for processing a voluntary assessment agreement as prescribed by § 9801 of Title 10. Each fine for an offense under this section shall be subject also to the penalty assessment which is or may be provided for in the Delaware Victim Compensation Law, Chapter 90 of Title 11, and any other penalty assessments as provided by law.

(i) *Effect of payment of fine or signature; repeat offenders.* — (1) Payment of the prescribed fine, costs and penalty assessment is an admission of guilt, a waiver of the right to a hearing, and a complete satisfaction of the violation, except as provided in paragraph (i)(2) of this section. Anything in this section notwithstanding, if an agreement for a voluntary assessment is signed by the driver, the signature

of the driver shall constitute an acknowledgment of guilt of the stated offense and an agreement to pay the fine, together with costs and penalty assessment within 30 days from the date of arrest. Payment does not waive any administrative penalty which may be lawfully charged to the violator's driving record by the Department of Safety and Homeland Security.

(2) In the event that, following compliance with the payment provisions of this section, it is determined that within the 2-year period immediately preceding the violation, the violator was convicted of or made a payment pursuant to this section in satisfaction of a violation of the same section of this title, personal appearance before the court to which the summons is returnable or the court which is associated with the applicable voluntary assessment center may be required.

(j) *Failure to pay a voluntary assessment.* — (1) a. The voluntary assessment center shall, pursuant to § 2731 of this title, forward to the Division of Motor Vehicles the name and address of any driver who was issued a Uniform Traffic Complaint and Summons for which a voluntary assessment could be made and who has failed to do 1 of the following:

1. Pay the voluntary assessment within 30 days from the date of arrest.

2. Notify the court or voluntary assessment center within 30 days from the date of arrest, in writing, that the driver is requesting a hearing on the charge stated in the Uniform Traffic Complaint and Summons.

3. Appear at trial on the charge stated in the Uniform Traffic Complaint and Summons on the date and time required by the court.

4. Pay the fine on the charge stated in the Uniform Traffic Complaint and Summons in accordance with a deferred payment order.

b. When the name and address of any driver has been forwarded to the Division of Motor Vehicles under paragraph (j)(1)a. of this section, the Division of Motor Vehicles shall refuse to renew or issue a duplicate of the driver's license of a Delaware resident, in accordance with § 2732(g) of this title.

c. When the name and address of any driver has been forwarded to the Division of Motor Vehicles under paragraph (j)(1)a. of this section, the Division of Motor Vehicles may suspend the driving privileges in this State of a nonresident of Delaware and immediately advise the Motor Vehicle Administrator of the state in which the person is a resident that the person's license to drive be suspended in accordance with § 2733(m) of this title.

(2) If a driver pays a voluntary assessment more than 30 days after the date of arrest, the voluntary assessment center or court shall provide the driver with a receipt which shall serve as proof to the Division of Motor Vehicles that the fine has been paid, upon request. The driver shall provide the voluntary assessment center with a self-addressed, stamped envelope in order to receive a copy of the receipt by mail. Such payment shall be an admission of guilt, a waiver of the right to a hearing, and a complete satisfaction of the violation, except as provided in paragraph (i)(2) of this section.

(3) If a driver who has failed to pay a voluntary assessment or request a hearing within 30 days of the date of arrest appears at court, the charge shall be prosecuted as if the voluntary assessment had not been permitted and the officer shall swear to the Uniform Traffic Complaint and Summons prior to trial. The minimum fine provisions of subsection (g) of this section shall not apply. If the driver who appears pleads not guilty, the court shall provide the driver with a copy of the appearance bond to provide as proof of court appearance to the Division of Motor Vehicles.

(4) [Repealed.]

(k) *Nonexclusive procedure.* — The procedure prescribed in this section is not exclusive of any other method prescribed by law for the arrest and prosecution of persons violating this title.

(60 Del. Laws, c. 509, § 1; 63 Del. Laws, c. 303, § 1; 67 Del. Laws, c. 281, § 27; 70 Del. Laws, c. 157, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 240, § 3; 73 Del. Laws, c. 234, § 2; 74 Del. Laws, c. 110, § 138; 76 Del. Laws, c. 251, § 1; 78 Del. Laws, c. 230, § 1; 80 Del. Laws, c. 137, § 1; 80 Del. Laws, c. 201, § 1; 83 Del. Laws, c. 145, § 2; 84 Del. Laws, c. 229, § 1.)

§ 710. State Police size and weight enforcement technicians.

(a) The Secretary of Public Safety may designate civilian members of the Division of State Police as size and weight enforcement technicians. Members of the Division of State Police so designated shall be empowered to perform the duties prescribed in subsection (b) of this section when working in conjunction with, and in the physical presence of, sworn members of the Division.

(b) Civilian members of the Division of State Police, where designated pursuant to subsection (a) of this section, shall:

(1) Direct, control and regulate vehicle and pedestrian traffic;

(2) Inspect drivers' licenses, vehicle registrations, motor fuel tax cab cards, and other documentations required by law;

(3) Measure and weigh vehicles and vehicle loads as set forth in § 4506 of this title;

(4) Issue voluntary assessments, summons and make traffic arrests for violations of this title and Chapter 52 of Title 30.

(64 Del. Laws, c. 181, § 1.)

§ 711. Summons or citations in offenses involving injury.

In any matter in which a violation of this title is alleged to involve physical injury to a person, other than the person charged with the violation, each summons or uniform traffic citation issued by the arresting or investigating officer in the matter shall include thereon a designation that it relates to injury-related offense.

(71 Del. Laws, c. 247, § 1.)

§ 712. Uniform Traffic Complaint and Summons.

(a) Notwithstanding any other provision of law to the contrary, a Uniform Traffic Complaint and Summons may be issued electronically or in written form. The office may sign the Uniform Traffic Complaint and Summons using an electronic and/or a written signature.

(b) Whenever a person is detained for commission of an offense under this title or § 5211(a) of Title 30, the arresting officer shall verify the driver's identification and shall enter identification information from the driver's license in the Uniform Traffic Complaint and Summons; specify on the Uniform Traffic Complaint and Summons the amount of the fine and whether it may be made by voluntary assessment or whether appearance at the court is required; give a copy to the arrested person; and release such person from custody.

(c) The printed copy of an electronically issued Uniform Traffic Complaint and Summons shall contain a conspicuous statement of the total number of charges on the first page and shall list each individual charge. All charges based on the same arrest shall be issued on the same electronically issued Uniform Traffic Complaint and Summons unless evidence necessitates the subsequent issuance of a warrant.

(d) The Uniform Traffic Complaint and Summons shall be delivered forthwith from the time of arrest to the voluntary assessment center or to the court to which the summons is returnable. The electronic Uniform Traffic Complaint and Summons shall be available for immediate entry in the DELJIS system or its successor.

(e) When a Uniform Traffic Complaint and Summons is issued electronically, any printout or other output readable by sight shall be an original except that once a ticket is sworn to prior to trial, the signed and sworn to ticket shall be the original from that point forward.

(73 Del. Laws, c. 234, § 3.)

§ 713. Classification of motor vehicle offenses.

Notwithstanding § 4203 of Title 11, any criminal offense in this title, unless otherwise declared with respect to particular offenses, or unless an offense described in § 709(e)(1)-(16) of this title, shall be a violation. The provisions of § 4207 of Title 11 notwithstanding, the court may impose a sentence in accordance with the sentence specified in the law defining the offense or a law in this title specifying a sentence for the offense, and, if no sentence is so specified, the court may impose a fine up to $575. All second offenses, before being punishable as such, shall have been committed within 24 months after the commission of the first offense, unless otherwise specifically provided.

(77 Del. Laws, c. 60, § 2; 78 Del. Laws, c. 230, § 1; 81 Del. Laws, c. 247, § 1.)

Part I
General Provisions
Chapter 8
Provisions Regarding Civil Traffic Offenses

§ 801. Applicability.

The provisions of this chapter shall apply to civil penalties created pursuant to §§ 4101(d) and 4802 of this title and to other civil penalties provided for in this title.

(75 Del. Laws, c. 204, § 1.)

§ 802. Authority to stop.

Any police officer is authorized to make an administrative stop for purposes of enforcing a civil traffic statute, upon a reasonable and articulable suspicion that a violation of such statute has occurred.

(75 Del. Laws, c. 204, § 1.)

§ 803. Right of transfer.

The provisions of § 5303 of Title 11 shall not apply to a civil traffic offense. However, the Justice of the Peace Court may establish procedures for transferring to the Court of Common Pleas a civil traffic offense with a criminal offense which occurred in the same incident.

(75 Del. Laws, c. 204, § 1.)

§ 804. Jurisdiction over certain children.

The Justice of the Peace Court shall have jurisdiction over children age 16 or 17 years of age or older charged with a civil traffic offense except when said child is also charged in the same incident with having violated 1 or more offenses specified in § 927 of Title 10, in which event the entire case shall be heard in the Family Court. When the Justice of the Peace Court has jurisdiction over a child charged with a civil traffic offense, the provisions of this chapter shall apply. Section 921(10) of Title 10 or Justice of the Peace Court Civil Rule 55 notwithstanding, such child may pay a civil penalty by voluntary assessment and a default judgment may be entered against such child in any instance in which it would be entered against an adult.

(75 Del. Laws, c. 204, § 1.)

§ 805. Payment of penalties and costs.

(a) *Payment of penalties and costs.* — Upon being found responsible for a civil traffic offense, all the costs shall be paid by the party found responsible.

(b) The videophone assessment provided for in § 4101(d) of Title 11 shall not be assessed.

(c) The victim's compensation penalty assessment provided for in § 9016 of Title 11 shall not be assessed.

(d) Court costs shall be governed by Justice of the Peace Court rule, consistent with § 9801 of Title 10.

(e) Immediately upon imposition by a court of a civil penalty or costs or both, including a default judgment, the same shall be a judgment against the person found responsible for the full amount of the penalty or costs or both. If not paid promptly upon its imposition or in accordance with the terms of the order of the court, the clerk shall, upon motion, cause the judgment to be transferred to the civil judgment docket whence it may be executed and enforced or transferred in the same manner as other judgments of the court; provided, however, that where a stay of execution is otherwise permitted by law such a stay shall not be granted as a matter of right but only within the discretion of the court.

(f) Any governmental entity to whom civil penalties or costs are payable pursuant to subsection (j) of this section or any other provision of law may pursue execution on such judgment.

(g) Upon any reversal of a finding of responsibility, the State Treasurer shall remit to each person, or to the attorney of such person, any civil penalty or costs or both which was later set aside by a court of higher jurisdiction upon a certiorari or appeal from the lower court, as provided in § 4103 of Title 11 for fines.

(h) When a court imposes a civil penalty, costs or both, the court may direct that the defendant pay the entire amount at the time of imposition or may direct that the defendant pay a specified portion of the civil penalty, or costs, or both at designated periodic intervals. The Court may order the defendant to participate in work referral until the civil penalties and costs are paid. Failure to participate in court-ordered work referral shall not result in contempt of court. Failure to participate in court-ordered work referral may result in the transfer of the judgment to the Office of State Court Collections Enforcement to be collected according to § 4104 of Title 11.

(i) For purposes of ensuring the payment of civil penalties and costs and the enforcement of any orders imposed, the court shall retain jurisdiction over the person found responsible for a civil traffic offense until any civil penalty or costs imposed are paid in full. The court may discharge the civil penalty and costs of any person found responsible when the court receives evidence that such person is deceased.

(j) The provisions of § 706 of this title shall be applicable to the disposition of amounts collected for civil penalties and related costs.

(75 Del. Laws, c. 204, § 1; 77 Del. Laws, c. 294, § 1; 80 Del. Laws, c. 183, § 1.)

§ 806. Payment by voluntary assessment.

Civil traffic offenses shall be payable by mail to the voluntary assessment center or other applicable entity. The provisions of this chapter shall govern the failure to pay a voluntary assessment for a civil traffic offense.

(75 Del. Laws, c. 204, § 1.)

§ 807. Default judgment.

If a defendant:

(1) Requests a hearing and fails to appear on a civil traffic charge; or

(2) Fails to either pay the voluntary assessment within the time specified on the notice or summons, or to notify the court or voluntary assessment center or applicable entity within the required time, that the defendant wishes to have a hearing on the charge,

a default judgment may be entered against the defendant. Such judgments may be vacated or enforced consistent with § 805(e) of this title.

(75 Del. Laws, c. 204, § 1; 70 Del. Laws, c. 186, § 1.)

§ 808. Forwarding of names to the Division of Motor Vehicles.

(a) Except as to persons operating a commercial motor vehicle in violation of § 4176C of this title, § 703A of this title shall not apply to persons found responsible for civil traffic offenses. No record of a finding of responsible for a civil traffic violation shall be forwarded to the Division of Motor Vehicles and no entry shall be made on the person's driving record for a civil traffic violation.

(b) The court, voluntary assessment center or other authorized entity shall forward to the Division of Motor Vehicles the name and address of a person who has:

(1) Been found responsible in court for a civil traffic offense and been ordered to pay a civil penalty, costs, or both, and who fails to pay such civil penalty, costs, or both at the time of the order or in accordance with a payment schedule;

(2) Failed to either pay the voluntary assessment within the time specified on the summons or notice or notify the court or other authorized entity within the required time, that the person wishes to have a hearing on the charge, or, submit an affidavit stating that the person was not the driver, if applicable; or

(3) Has requested a trial on the charge and has failed to appear at the time and place set for trial.

(75 Del. Laws, c. 204, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 279, § 2.)

§ 809. Suspension of license.

When a person's name and address is forwarded to the Division of Motor Vehicles pursuant to § 808(b) of this title and the offense was one for which the person received personal service of the notice or summons, or the offense was one for which service was made by mail and the person has either requested a hearing and failed to appear or been found responsible for the offense and failed to pay the civil penalty, costs, or both, either at the time of the order or in accordance with a payment schedule, the Division of Motor Vehicles:

(1) Shall forthwith suspend the driver's license of a resident of this State, unless the person's name and address was forwarded to the Division of Motor Vehicles under § 709(j) of this title, in which case the provisions of § 709(j) of this title shall apply.

(2) May suspend the driving privileges in this State of a nonresident of this State and immediately advise the motor vehicle administrator of the state in which the person is a resident that the person's license to drive be suspended until proof is provided that the person has paid the civil penalty, costs, or both, has appeared in court following a default in appearance or payment and made arrangements to pay the civil penalty, costs, or both, or has had a default judgment vacated and been found not responsible.

(75 Del. Laws, c. 204, § 1; 80 Del. Laws, c. 137, § 2; 80 Del. Laws, c. 201, § 1.)

§ 810. Refusal of registration renewal.

When a person's name and address is forwarded to the Division of Motor Vehicles pursuant to § 808(b) of this title and the offense was 1 for which the person received service of the notice or summons by mail and the person has not responded within the required time by either paying the civil penalty or requesting a hearing or, submitting an affidavit stating that the person was not the driver, if applicable, the Division of Motor Vehicles may deny the renewal of the registration of the owner's vehicle operated at the time the summons was issued. The Division shall register any vehicle for which it has refused registration upon proof that the person has paid the civil penalty, costs, or both, or has appeared in court following a default in appearance or payment and made arrangements to pay the civil penalty or costs or both or has had a default judgment vacated and been found not responsible.

(75 Del. Laws, c. 204, § 1; 70 Del. Laws, c. 186, § 1.)

§ 811. Appeal.

Any appeals of civil penalties assessed under this chapter shall be taken in the same manner as provided in § 708 of this title.

(75 Del. Laws, c. 204, § 1.)

§ 812. Court rules or policies.

The Justice of the Peace Court, upon approval by the Chief Justice, may develop court rules, administrative directives, or other forms of policies for handling of civil traffic offenses.

(75 Del. Laws, c. 204, § 1.)

Part II
Registration, Title and Licenses

Chapter 21
Registration of Vehicles

Subchapter I
General Provisions

§ 2101. Operation of unregistered vehicle; exceptions.

(a) No person shall drive or move, nor shall any person, being the owner of a vehicle, knowingly permit to be driven or moved upon any highway any vehicle, except trackless trolley coaches, of a type required to be registered hereunder, which is not registered and for which current registration plates have not been issued as provided in this chapter or for which the appropriate fees have not been paid when and as required by this chapter, except that when application accompanied by the proper fee has been made for registration and certificate of title for a vehicle, the same may be operated temporarily pending complete registration upon displaying a duplicate application duly verified or other evidence of such application or otherwise under rules and regulations promulgated by the Department.

(b) A motor vehicle or vehicle being towed by a motor vehicle registered as a tow truck or wrecker shall not be in violation of subsection (a) of this section or § 2115 of this title if such towed vehicle has 1 end hoisted off the ground while being towed. The term "tow truck or wrecker" does not apply to a vehicle registered as a truck tractor.

(c) A motor vehicle or vehicle being operated on public roadways for the purpose of being transported between the Wilmington Port Authority and short-term parking areas within 1 mile of the facility's gates need not be registered. These vehicles must have insurance that meets the minimum requirements of § 2118 of this title, before they are operated on any public roadway.

(d) Notwithstanding any law or regulation to the contrary, a motor vehicle need not be registered and shall not be in violation of § 2115 of this title, if the vehicle is being driven by a repair technician for drive cycle testing, certified under the Delaware Emission Education Program ("DEEP") who has in that technician's possession:

(1) A permit issued by the Department of Natural Resources permitting such operation;

(2) Testing equipment for an on board diagnostic test is installed in the vehicle; and

(3) The operator has evidence of a current and applicable garage keeper's policy on hand, evidencing insurance coverage available for such operation.

(36 Del. Laws, c. 10, § 7; Code 1935, § 5545; 47 Del. Laws, c. 265; 21 Del. C. 1953, § 2101; 49 Del. Laws, c. 220, § 20; 63 Del. Laws, c. 339, § 1; 74 Del. Laws, c. 130, § 1; 77 Del. Laws, c. 293, § 1.)

§ 2102. Registration of vehicles of new residents; penalty.

(a) Every owner of a motor vehicle, trailer, or other vehicle shall, within 60 days after taking up residence in this State, apply to the Secretary and obtain registration for the vehicle. Vehicle owners who have apportioned power units registered in Delaware under the International Registration Plan are exempt from the requirement to register their trailers in accordance with the International Registration Plan agreement. Members of the military and their families who have vehicles registered in their home state are also exempt from this requirement.

(b) Whoever violates subsection (a) of this section shall be fined for the first offense not less than $400 nor more than $600. For each subsequent like offense, such person shall be fined not less than $800 nor more than $1,200, or imprisoned not less than 10 days nor more than 30 days, or both.

(Code 1935, § 5546A; 48 Del. Laws, c. 293, § 1; 21 Del. C. 1953, § 2102; 57 Del. Laws, c. 670, § 8A; 60 Del. Laws, c. 385, § 1; 64 Del. Laws, c. 466, § 5; 65 Del. Laws, c. 503, § 3; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 335, § 1.)

§ 2103. Temporary registration permits.

The Department may, in its discretion, grant temporary or limited registration permits, in no case to be valid for more than 15 days, and may issue appropriate certificates or other evidence therefor as listed below:

(1) When application for a certificate of title has been made accompanied by the proper fee, a temporary permit without additional fee may be issued pending action upon such application by the Department;

(2) During suspension of registration because of failure of the vehicle upon inspection to meet the legal performance requirements or equipment standards, a temporary permit without additional fee may be issued to allow the vehicle to be driven away to be repaired and returned for inspection or to be driven to a storage place;

(3) When a registration has expired, a temporary permit may be issued upon the payment of a fee of $20 in addition to the regular fee for reregistration so that the vehicle may be driven to a place for repair, if necessary, and to an inspection station preparatory to reregistration;

(4) For the movement of unregistered vehicles by persons entitled to move the same, when it is not proposed to secure a certificate of title or a transfer of title to such vehicle, a temporary permit may be issued for which a fee of $20 shall be charged;

(5) For moving vehicles of which the ownership has been transferred by process of law as provided in §§ 2501-2507 of this title, a permit may be issued without charge.

(6) Trip permit registrations pursuant to the International Registration Plan, as authorized in Chapter 4 of this title, may be issued for any vehicle or combination of vehicles which could lawfully operate in this State if full registration or proportional registration were obtained. A permit for this purpose shall be valid for 3 days, including the day issued, for which a fee of $15 shall be charged.

(Code 1935, § 5546A; 43 Del. Laws, c. 244, § 3; 21 Del. C. 1953, § 2103; 53 Del. Laws, c. 221, § 1; 67 Del. Laws, c. 260, § 1; 68 Del. Laws, c. 156, § 57(a), (b); 70 Del. Laws, c. 202, § 1; 80 Del. Laws, c. 77, § 14.)

§ 2104. Application for registration.

(a) Every owner of a vehicle desiring registration shall make application to the Department for the registration thereof upon the appropriate form or forms furnished by the Department. Every such application shall bear the signature of the owner in a manner acceptable to the Department.

(b) The application shall contain:

(1) The name and address of the owner: When the owner is an individual, the address shall be the bona fide residence of the individual; when the owner is a partnership, association, trust or corporation, the address shall be that of the principal office thereof wherever located together with the address of the principal office within this State, if any;

(2) A description of the vehicle including, insofar as the following specified data may exist with respect to a given vehicle, the make, model, color, type of body, the serial number of the vehicle, or any number as may be assigned by the Department, and whether new or used and, if a new vehicle, the date of sale by the manufacturer or dealer to the person intending to operate said vehicle;

(3) Such further information as may reasonably be required by the Department to enable it to determine whether the vehicle is lawfully entitled to registration;

(4) The Department shall allow the registration of trailers for individuals who are not bona fide residents of Delaware if the individual provides documented proof of ownership of a residence in Delaware and signs a declaration indicating the trailer will remain in Delaware at all times.

(c) In the event that the vehicle for which registration is applied is a specially constructed, reconstructed or a foreign vehicle, such fact shall be stated in the application, and with reference to every foreign vehicle which has been registered theretofore outside of this State, the owner shall surrender to the Department all registration cards and certificates of title or other evidence of such foreign registration or ownership as may be in the owner's possession or under the owner's control, except where in the course of interstate operation of a vehicle registered in another state it is desirable to retain registration of the vehicle in such other state, such applicant need not surrender, but shall submit for inspection, evidences of such foreign registration or ownership, and the Department upon a proper showing may register the vehicle in this State, but shall not issue a certificate of title therefor.

(d) (1) The Department shall allow the registration of motor vehicles owned by individuals who are not bona fide residents of Delaware upon presentation of an affidavit by the applicant, on a form approved by the Department, swearing or affirming:

a. That the vehicle is principally garaged in Delaware;

b. That the applicant is the owner of at least 1 other vehicle which is registered and insured in the state of the applicant's domicile; and

c. To such other information not inconsistent with this subsection as may be deemed appropriate by the Department or the Insurance Commissioner.

(2) An affiant shall notify the Division of Motor Vehicles and the affiant's automobile insurance company of any changes in the above conditions within 30 calendar days from the date of change.

(3) The penalties prescribed by Chapter 24 of Title 18 shall apply to a violation of this subsection.

(36 Del. Laws, c. 10, § 8; 37 Del. Laws, c. 10, § 3; Code 1935, § 5546; 43 Del. Laws, c. 244, § 2; 21 Del. C. 1953, § 2104; 50 Del. Laws, c. 182, § 1; 62 Del. Laws, c. 190, § 5; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 250, § 1; 71 Del. Laws, c. 319, § 1; 75 Del. Laws, c. 240, § 1; 81 Del. Laws, c. 183, § 1.)

§ 2105. Registration of heavy vehicles.

(a) Every person applying to register a vehicle at a registered gross vehicle weight in excess of 26,000 pounds shall provide to the Department with the application documentation of the manufacturer's gross vehicle weight rating for such vehicle.

(b) Any of the following items shall constitute acceptable documentation of the manufacturer's gross vehicle weight rating in accordance with this section:

(1) A valid manufacturer's gross vehicle weight rating plate, sticker or plaque permanently affixed to the vehicle; or

(2) New vehicle delivery documents which contain the vehicle identification number (VIN), and the gross vehicle weight rating; or

(3) A written statement from the manufacturer setting forth the vehicle identification number (VIN), the weight ratings of the major component parts of the vehicle, including axle assemblies, suspension system, frame and tires, and the overall gross vehicle weight

rating. The manufacturer's statement must be based on the design weight rating of the component parts, including tires, and upon the professional judgment of the manufacturer, in the exercise of due care, that the components and their installation are in accordance with accepted industry practice and in compliance with the Federal Motor Vehicle Safety Standard found in Title 49 of the Code of Federal Regulations.

(4) In the case that a vehicle is missing a valid manufacturer's gross vehicle weight rating plate, sticker, or plaque, or cannot obtain a manufacture's statement, DMV shall assign a GVWR for that vehicle based on the federal bridge formula, or acceptable alternative.

(c) As used in this chapter, "manufacturer" shall include any maker of new, incomplete vehicles and such maker's authorized sales and service representatives; any maker or final assembler of vehicle bodies, components or specialized equipment; and any installer of vehicle bodies, major components or specialized equipment which alters the vehicle's gross vehicle weight rating, or which substantially changes its use, and which conforms to the requirements of the National Traffic and Motor Vehicle Safety Act [repealed; see now 49 U.S.C. § 30101, et seq.] and of the Federal Motor Vehicle Safety Standard found in Title 49 of the Code of Federal Regulations.

(d) Any vehicle which has a gross weight in excess of 26,000 pounds, except as provided in §§ 2152 and 4502(c)(2) of this title, shall not be registered at a weight in excess of the manufacturer's gross vehicle weight for such vehicle or the Federal Bridge Formula in the absence of a manufacturer's gross vehicle weight rating. For those vehicles registered pursuant to § 2152 of this title, the actual gross weight of the vehicle, or each vehicle in combination, shall not exceed the manufacturer's gross vehicle weight rating. For those vehicles registered for extra weight capacity pursuant to the exception of § 4502(c)(2) of this title, the following shall apply:

(1) Vehicles registering for such extra weight capacity shall pay a fee of $100 per vehicle at the time of registration;

(2) No vehicle with a manufacturer's gross vehicle weight rating of less than 65,000 shall be registered at a weight in excess of the manufacturer's gross vehicle weight rating for such vehicle;

(3) No vehicle being registered for the first time shall be registered at a weight in excess of the manufacturer's gross vehicle weight rating for such vehicle;

(4) No vehicle with a model year 20 or more years prior to the date of registration shall be registered at a weight in excess of the manufacturer's gross vehicle weight rating for such vehicle; and

(5) Commencing June 15, 2026, no vehicle shall be registered at a weight in excess of the manufacturer's gross vehicle weight rating for such vehicle.

(e) If registered pursuant to § 2152 of this title, any vehicle which has a gross weight rating in excess of 26,000 pounds shall not be operated within this State unless such vehicle is properly registered pursuant to this section and either:

(1) Has permanently affixed to it an unaltered and legible plate, sticker or plaque which states the gross vehicle weight rating; or

(2) Has within the vehicle the manufacturer's gross vehicle weight rating documentation required by subsection (b) of this section.

(f) Any vehicle altered so as to change its gross vehicle weight rating or substantially change its use shall not be registered or operated within this State unless the vehicle's new gross weight rating is documented in accordance with subsection (b) of this section.

(g) If the gross vehicle weight rating for a vehicle registered pursuant to this section is documented in accordance with paragraph (b)(2) or (3) of this section, the Division of Motor Vehicles shall maintain such documentation of the manufacturer's gross vehicle weight rating as part of such vehicle's title file.

(67 Del. Laws, c. 400, § 1; 68 Del. Laws, c. 366, § 2; 69 Del. Laws, c. 3, § 1; 69 Del. Laws, c. 4, § 1; 70 Del. Laws, c. 339, §§ 1-3; 71 Del. Laws, c. 128, §§ 1, 2; 75 Del. Laws, c. 190, §§ 1, 2; 77 Del. Laws, c. 189, § 1; 77 Del. Laws, c. 244, § 1; 77 Del. Laws, c. 316, § 1; 83 Del. Laws, c. 308, § 1.)

§ 2106. Registration of vehicle and owner; records.

The Department shall file each application received and, when satisfied as to the genuineness and regularity thereof and that the applicant is entitled thereto, shall register the vehicle therein described and the owner thereof in suitable books or in data processing computers under:

(1) A distinctive registration number assigned to the vehicle hereinafter referred to as the registration number, which may consist of a numerical figure or figures or of a letter or letters with a numerical figure or figures;

(2) The name of the owner;

(3) The vehicle identification number and, in the discretion of the Division, in any other method it determines.

(36 Del. Laws, c. 10, § 9; Code 1935, § 5547; 43 Del. Laws, c. 244, § 4; 21 Del. C. 1953, § 2106; 58 Del. Laws, c. 59.)

§ 2107. Registration card; issuance; information thereon.

(a) The Department upon registering a vehicle shall issue a registration card and deliver it to the owner.

(b) The registration card shall contain the date issued, the name and address of the owner, the registration number assigned to the vehicle, such description of the vehicle as may be determined by the Secretary, the period for which the vehicle is registered, a form for endorsement of notice to the Department upon transfer of the vehicle and a space in which the signature of the owner shall be placed to validate the card.

(c) This section shall be exempt from the provisions of § 2116 of this title.

(36 Del. Laws, c. 10, § 10; Code 1935, § 5548; 43 Del. Laws, c. 244, § 5; 21 Del. C. 1953, § 2107; 57 Del. Laws, c. 670, § 8A; 58 Del. Laws, c. 239, § 52; 65 Del. Laws, c. 113, §§ 1, 2.)

§ 2108. Possession of registration card.

The registration card issued for a vehicle required to be registered under this title shall at all times, while the vehicle is being operated upon a highway within this State, be in the possession of the operator thereof or carried in the vehicle and subject to inspection by any peace officer. However, an operator shall be allowed 24 hours to produce the registration card before a conviction can be obtained under this provision, such registration having been legally issued at a time prior to such operator's arrest.

(36 Del. Laws, c. 10, § 11; Code 1935, § 5549; 21 Del. C. 1953, § 2108; 62 Del. Laws, c. 190, § 6; 70 Del. Laws, c. 186, § 1.)

§ 2109. Period of registration; effective date.

(a) Any vehicle described in § 2151 of this title may be registered for 24 months, 12 months or 6 months and the effective date of the registration shall be the date the vehicle is titled. Any used vehicle not more than 7 model years old may be registered from 6 to 72 months based on a model year and mileage formula established by the Division of Motor Vehicles. The Division of Motor Vehicles may require vehicles to be registered for less than 24 months as may be necessary to ensure a balanced monthly distribution of vehicle inspections and registrations; all fees shall be prorated. The registration of a vehicle shall expire at midnight on the last day of the period for which it is registered, and the vehicle shall not thereafter be operated upon the highways of this State until it has been reregistered according to law. This section shall not apply to the vehicles registered under the International Registration Plan or to vehicles registered under temporary or limited permits or certificates as otherwise provided by this title.

(b) The owner of any semitrailer or trailer who wishes to match that vehicle's license plate expiration with the towing vehicle's license plate expiration may register such semitrailer or trailer for a period of from 1 to 12 months. In addition to the registration fee, which shall be prorated for the number of months registered, there shall be a service fee of $3.00. This subsection shall not apply to those vehicles which are under a fleet account as specified in § 2143(c) of this title.

(c) Notwithstanding subsections (a) and (b) of this section, any newly-manufactured current model year motor vehicle or trailer with a gross registered weight of 10,000 pounds or less not previously registered or titled in any state or country may be initially registered by the owner for 7 years or less. Newly-manufactured previous model year motor vehicles or trailers having the above criteria may initially be registered for 6 years or less by a prorated formula established by the Division of Motor Vehicles. The effective date of registration shall be the date the vehicle is titled. The registration fee shall be the number of years selected multiplied by the annual registration fee. Thereafter, the registration shall be renewed pursuant to § 2110 of this title.

(d) In calculating the prorated fees or combined annual fees payable pursuant to this section, the fees shall be calculated using the rates in effect or scheduled to be in effect during the period of the prorated or extended registration.

(36 Del. Laws, c. 10, § 14; Code 1935, § 5552; 45 Del. Laws, c. 287, § 1; 21 Del. C. 1953, § 2109; 57 Del. Laws, c. 271, § 1; 58 Del. Laws, c. 365, §§ 1, 2; 60 Del. Laws, c. 382, §§ 1, 2; 65 Del. Laws, c. 330, § 1; 66 Del. Laws, c. 91, § 1; 67 Del. Laws, c. 411, §§ 1, 2; 68 Del. Laws, c. 123, § 1; 68 Del. Laws, c. 156, § 56(e); 70 Del. Laws, c. 88, § 1; 72 Del. Laws, c. 18, §§ 1, 2; 81 Del. Laws, c. 184, § 1.)

§ 2110. Renewal of registration; new card and plate; cancellation of renewal by owner prior to effective date.

(a) Prior to the expiration of the period for which a vehicle is registered pursuant to § 2109 of this title, the registration may be renewed to extend from the date of expiration for an additional period of 6 months or 1 year or 2 years, and the effective date of the renewed registration shall be based on the calendar day the vehicle was titled. Vehicles no more than 7 model years old may be renewed for up to 72 months based on a prorated model year formula established by the Division of Motor Vehicles.

Any time prior to the expiration of the period for which a vehicle is registered with a commercial, trailer or farm truck license plate, the registration thereof may be renewed to extend from the date of expiration for an additional period of 3 months, 6 months, 1 year or 2 years.

(b) Upon renewing the registration of any vehicle or upon reregistering any vehicle, the Department shall furnish a new registration plate or plates showing the new registration period or the expiration date thereof and shall issue a new registration card or appropriately endorse the new registration period on the original card.

(c) A renewal registration of a vehicle for an additional period to take effect at the expiration of the registration thereof may be canceled on application to the Secretary at any time before the renewal registration is to take effect, and thereupon the Secretary shall refund to the owner the registration fee so paid for such renewal registration upon the receipt for cancellation by the Secretary for any such renewal registration card or registration plates, or both, issued pursuant to such renewal and otherwise cancel any endorsement of such renewal entered on the original card.

(d) Notwithstanding the provisions of subsections (a), (b) and (c) of this section, the registration of any trailer with a gross registered weight of 4,000 pounds or less and for which the annual safety inspection is waived may be renewed for 3 years, at the option of the owner. If this option is selected, the registration fee shall be 3 times the annual registration fee.

(e) In calculating the prorated fees or combined annual fees payable pursuant to this section, the fees shall be calculated using the rates in effect or scheduled to be in effect during the period of the prorated or extended registration.

(36 Del. Laws, c. 10, § 14; Code 1935, § 5552; 45 Del. Laws, c. 287, § 1; 21 Del. C. 1953, § 2110; 57 Del. Laws, c. 271, § 2; 57 Del. Laws, c. 670, § 8A; 58 Del. Laws, c. 365, § 3; 66 Del. Laws, c. 91, § 2; 67 Del. Laws, c. 411, §§ 3, 4; 68 Del. Laws, c. 123, § 2; 68 Del. Laws, c. 156, § 56(f); 70 Del. Laws, c. 88, § 1; 72 Del. Laws, c. 18, § 3; 81 Del. Laws, c. 184, § 2.)

§ 2111. Duplicate registration cards.

In the event that any registration card issued under this title is lost, mutilated or becomes illegible, the person who is entitled thereto shall make immediate application for and obtain a duplicate or substitute therefor upon furnishing information of such fact satisfactory to the Department and upon payment of the required fees.

(36 Del. Laws, c. 10, § 19; Code 1935, § 5557; 21 Del. C. 1953, § 2111.)

§ 2112. Registration by nonresidents.

(a) A nonresident owner, except as otherwise provided in this section, owning any foreign vehicle which has been duly registered for the current registration year in the state, country or other place of which the owner is a resident and which at all times, when operated in this State, has displayed upon it the number plate or plates issued for any such vehicle in the place of residence of such owner may operate or permit the operation of such vehicle within this State without registering such vehicle or paying any fees to this State.

(b) Motor vehicles owned and controlled by nonresidents of this State, who are residents or citizens of foreign nations, and the drivers and operators thereof shall be accorded the free use of the highways of this State without restriction by way of license or registration and without the imposition of any tax or fee. This subsection shall not apply to vehicles owned or controlled by residents or citizens of foreign nations and drivers and operators thereof when such foreign nations do not extend similar privileges to the residents of the United States.

(c) A nonresident owner, operator or custodian of any motor vehicle, vehicle or trailer using such vehicle for transportation of persons or property for compensation within this State or for the transportation of merchandise within this State shall register each such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this State.

(d) The requirements of subsection (c) of this section may be waived by the Department of Transportation for vehicles registered in those jurisdictions which reciprocate with vehicles registered in this State.

(e) The Secretary shall enforce this title and shall have the power to suspend the operating privilege of all, a class or a part of any class of motor vehicles or trailers or semitrailers registered in another jurisdiction when, in the Secretary's judgment, any such jurisdiction prohibits the free operation therein of a class or part of any class of motor vehicles or trailers or semitrailers belonging to residents of this State and which have been properly registered in accordance with the laws of this State. The Secretary shall also have power to suspend for violation of any of the provisions of this title, or on other reasonable grounds, the operating privilege of any motor vehicle or trailer or semitrailer belonging to a nonresident. In suspending any such operating privilege, the Secretary shall notify the official or body performing the registration duty in the jurisdiction in which the nonresident resides of such action. If any such motor vehicle or trailer or semitrailer whose operating privilege has been suspended shall thereafter be driven in this State, such driving shall constitute a violation of § 2115(1) of this title, and the driver of any such vehicle shall be subject to the penalty prescribed in § 2116. The Secretary shall also have the power to impound the vehicle in violation until the fees imposed under § 402 of this title have been paid to the Department. Any impoundment fees or towing fees incurred as a result of a violation of this section shall be at the registered owner's expense.

(f) (1) Except as provided by paragraph (f)(2) of this section, a motor vehicle lessor may include separately stated mandatory charges in a rental agreement, including, but not limited to, airport access fees, airport concession fees and all applicable taxes.

(2) A motor vehicle lessor may not include a vehicle licensing recovery fee as a separately-stated mandatory charge in a rental agreement.

(3) [Repealed.]

(4) As used in this subsection:

a. "Motor vehicle" means that term as defined in § 101 of this title.

b. "Motor vehicle lessor" means a person whose primary business is renting motor vehicles to consumers under rental agreements for periods of 90 days or less.

c. "Vehicle licensing recovery fee" means a charge that may be included in a vehicle rental transaction originating in this State to recover costs incurred by a motor vehicle lessor to license, title, register, and plate rental vehicles.

(34 Del. Laws, c. 15; 36 Del. Laws, c. 10, § 18; Code 1935, § 5556; 42 Del. Laws, c. 168, § 4; 21 Del. C. 1953, § 2112; 60 Del. Laws, c. 597, § 1; 64 Del. Laws, c. 339, § 3; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 40; 79 Del. Laws, c. 167, § 1; 84 Del. Laws, c. 222, § 1.)

§ 2113. Special farm vehicle registration.

Farmers may register vehicles for farm use in the following manner:

(1) Farm truck, semitrailer, and trailer license plates ("FT" tags):

a. Farmers may qualify for the reduced registration fee for "FT" license tags if they derive at least $1,000 of their annual income from the operation of their farm and they own or rent at least 10 acres which is actively used in the farming operation from which they derive that income.

b. Any vehicle, semitrailer or trailer upon which an "FT" license tag is affixed must be used exclusively in the operation of a farm or for personal use other than nonfarming commercial use.

c. Farmers shall not hire or rent the farm truck, semitrailer, or trailer, or permit a farm truck, semitrailer, or trailer to be used for hauling merchandise, farm products, or other items whatsoever under rent, hire, or for pay.

d. [Repealed.]

(2) Farm vehicle license plates ("FV" tags) exempt from inspection:

a. Except as hereinafter provided, after October 7, 2014, no person shall operate any farm vehicle within the State unless such vehicle has been registered in accordance with this chapter. Such registration shall not permit the vehicle to be operated on any highway except as hereinafter specifically provided. This registration is for identification only and does not constitute being "registered" in this State, for purposes of § 2118 of this title, or any other requirement of this chapter.

b. Farmers may qualify for an inspection waiver for a farm motor vehicle, farm vehicle, or farm trailer if they derive at least $1,000 of their annual income from the operation of their farm and they own or rent at least 10 acres which are actively used in the farming operation from which they derive that income.

c. Any vehicle or trailer upon which a "FV" tag is affixed must be used exclusively in the operation of a farm, or for personal use other than nonfarming commercial use.

d. No farm motor vehicle, farm vehicle, or farm trailer may be used for hire or for any use except in the exclusive operation of a farm owned or rented by the owner of such vehicle or trailer, or in aid of and assistance to another farmer for harvest purposes.

e. Farmers shall not hire or rent any farm motor vehicle, farm vehicle, or farm trailer, or permit a farm motor vehicle, farm vehicle, or farm trailer to be used for hauling merchandise, farm products, or other items whatsoever under rent, hire, or for pay.

f. Farmers shall not use any vehicle or trailer upon which an "FV" tag is affixed for any use except in the operation of a farm owned or rented by the titled owner of such vehicle or trailer or in aid of and assistance to another farmer for harvest purposes, or for personal use other than nonfarming commercial use.

g. No farm motor vehicle, farm vehicle, or farm trailer to which an "FV" tag is affixed may be operated or towed upon the public highways or roads unless:

1. Those highways and roads are within a 20-mile radius of a farm owned or managed by the owner of the vehicle or trailer;

2. The vehicle or trailer is operated or towed by a person who is properly licensed by the Division of Motor Vehicles;

3. The vehicle or trailer is properly equipped with a stop light, turn signals and brakes which are in a safe operating condition.

(Code 1935, § 5640B; 47 Del. Laws, c. 255, § 2; 21 Del. C. 1953, § 2113; 60 Del. Laws, c. 500, §§ 1, 2; 63 Del. Laws, c. 289, § 1; 68 Del. Laws, c. 300, § 1; 69 Del. Laws, c. 21, § 1; 70 Del. Laws, c. 2, § 1; 73 Del. Laws, c. 173, § 1; 74 Del. Laws, c. 383, § 1; 77 Del. Laws, c. 244, § 2; 79 Del. Laws, c. 104, § 1; 79 Del. Laws, c. 210, § 1.)

§ 2113A. Low-speed vehicles.

(a) Definition. —

Low-speed vehicle" means a 4-wheeled motor vehicle, other than a truck, whose speed attainable in 1 mile is more than 20 miles per hour but no more than 25 miles per hour on a paved level surface. The low-speed vehicle shall be limited to a gross vehicle weight rating (GVWR) of 3,000 pounds or less.

(b) *Operation of low-speed vehicles.* — Low-speed vehicles shall only be operated on roads where the posted speed limit is not more than 35 miles per hour. A low-speed vehicle may cross a highway at an intersection where the highway has a posted speed limit of more than 35 miles per hour. Low-speed vehicles shall not be operated on dual highways, as defined in § 135 of Title 17 and located in the unincorporated portions of the State, except as needed to cross them. Low-speed vehicles may be operated on such dual highways within incorporated cities and towns if the respective municipal government enacts an ordinance permitting such movement, subject to the other limitations of this section. All low-speed vehicles shall meet the requirements of 49 C.F.R. § 571.500.

(c) *Driver's license requirement.* — All persons operating a low-speed vehicle on the highways of this State shall hold a valid driver's license.

(d) *Safety inspections.* — Low-speed vehicles shall be exempt from Delaware's safety inspection. Division of Motor Vehicles personnel will verify the vehicle identification number on those vehicles titled in another jurisdiction, which are being titled in Delaware for the first time. A fee of $15 shall be charged for Division of Motor Vehicles technicians to perform offsite vehicle identification number verification. Upon registration and renewal of a low-speed vehicle's registration, the owner shall certify, under penalty of perjury, that all lights, brakes, tires, seat belts and other vehicle equipment are in good working condition.

(e) *Insurance.* — Low-speed vehicles shall be required to maintain insurance as required by § 2118 of this title. Delaware automobile insurance companies may provide automobile insurance on these vehicles at their option. These automobile insurance companies shall not be mandated to provide insurance on low-speed vehicles by regulation or law.

(f) *Title and registration.* — (1) Low-speed vehicles shall be titled as specified in Chapters 23 and 25 of this title. The manufacturer's certificate of origin and Delaware title shall clearly identify the vehicle as a low-speed vehicle. The Division shall not issue vehicle identification numbers to homemade low-speed vehicles or retrofitted golf carts unless these vehicles meet all of the requirements of the Federal Motor Vehicle Safety Standard, 49 C.F.R. § 571.500. Normal title and document fees shall be charged to register a low-speed vehicle in Delaware.

(2) Registration fees shall be the same as a normal passenger vehicle as defined in § 2151(2) of this title. Registration periods shall comply with §§ 2109 and 2110 of this title. A regular license plate shall be displayed on the rear of the vehicle.

(g) *Dealer requirements.* — Any person engaged in the retail sale of low-speed vehicles must be licensed by the Division of Motor Vehicles as a licensed motor vehicle dealer, must comply with all of the requirements of Chapter 63 of this title, and must meet all Division of Motor Vehicles rules and regulations.

(h) Whoever violates this section shall for the first offense be fined not less than $50 nor more than $100. For each subsequent like offense, the person shall be fined not less than $100 nor more than $200, or imprisoned not less than 10 days nor more than 30 days or both.

(76 Del. Laws, c. 10, § 1; 84 Del. Laws, c. 403, § 1.)

§ 2114. Suspension of registration upon notice of theft.

Whenever the owner of any motor vehicle, trailer or semitrailer, which has been stolen or embezzled, files an affidavit of the fact thereof with the Department, the Department shall forthwith suspend the registration of such vehicle and shall not transfer the title of or reregister the vehicle until it has been notified that the owner has recovered such vehicle. The notice shall be effective for the current registration period, but, if during that time the vehicle is not recovered, a new affidavit to like effect may be filed with the Department, and the notice shall be effective for a further period of 12 months. Thereafter like notices may be given effective from year to year. Every owner who has filed an affidavit of theft or embezzlement shall immediately notify the Department of the recovery of such vehicle, and failure so to do within 30 days after such recovery shall be punished as provided in § 2116 of this title.

(36 Del. Laws, c. 10, § 20; Code 1935, § 5558; 43 Del. Laws, c. 244, § 11; 21 Del. C. 1953, § 2114.)

§ 2115. Violations of registration provisions.

It is unlawful to do any of the following:

(1) Operate or, being the owner of any motor vehicle, trailer, or semitrailer, knowingly permit the operation upon a highway of any motor vehicle, trailer, or semitrailer which is not registered or which does not have attached thereto and displayed thereon the number plate or plates assigned thereto by the Department and unexpired registration plate or plates, subject to the exemptions allowed in this title, or under temporary or limited permits as otherwise provided by this title.

(2) Display or cause or permit to be displayed or have in possession any registration card, number plate, or registration plate, knowing the same to be fictitious or to have been canceled, revoked, suspended, or altered.

(3) Lend to, or knowingly permit the use by, one not entitled thereto any registration card, number plate, or registration plate issued to the person so lending or permitting the use thereof.

(4) Fail or refuse to surrender to the Department upon demand any registration card, number plate, or registration plate which has been suspended, canceled, or revoked as provided in this title.

(5) Use a false or fictitious name or address in any application for the registration or inspection of any vehicle, or for any renewal or duplicate thereof, or for any certificate or transfer of title, or knowingly make a false statement, knowingly conceal a material fact, or otherwise commit a fraud in any such application.

(6) Drive or move or, being the owner, cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person or which is equipped in any manner in violation of this title, but the provisions of this title with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

(7) Own or operate any qualified motor vehicle as defined under the International Registration Plan, as authorized in Chapter 4 of this title, not properly displaying an apportioned plate with required registration credentials, or operate a qualified motor vehicle without having in that person's possession a trip permit registration as authorized in § 2103(6) of this title. Any person who violates this paragraph shall, for the first offense, be fined not less than $115 nor more than $345, and for each subsequent offense not less than $345 nor more than $575. In addition, such person shall also be fined in an amount which is equal to the cost of registering the vehicle at its gross weight at the time of the offense or at the maximum legal limit, whichever is less, which fine shall be suspended if, within 5 days of the offense, the court is presented with a valid registration card for the gross weight at the time of the offense or the maximum legal limit for such vehicle.

(8) Operate or tow any farm vehicle upon the highways or roads of this State unless properly licensed by the Department, or being the owner of any farm vehicle knowingly permit the operation or towing of any farm vehicle upon the highways or roads of this State unless operated or towed by a person who is properly licensed by the Department, whether or not the farm vehicle is exempt from inspection pursuant to § 2113 of this title.

(9) Possess, operate any motor vehicle with, purchase, install, manufacture, sell, offer to sell, or otherwise distribute a number plate flipping device. A "number plate flipping device" means a manual, electric, or mechanical device designed or adapted to be installed on a motor vehicle that does either of the following:

a. Switches between 2 or more number plates for the purpose of allowing a motor vehicle operator to change the number plate displayed on the operator's vehicle.

b. Hides a number plate from view by turning the number plate so that the number plate registration number is not visible.

(10) Do any act forbidden or fail to perform any act required under this chapter.

(36 Del. Laws, c. 10, § 25; 40 Del. Laws, c. 38, § 10; Code 1935, § 5563; 43 Del. Laws, c. 244, § 14; 21 Del. C. 1953, § 2115; 49 Del. Laws, c. 220, § 21; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 202, § 2; 73 Del. Laws, c. 173, § 2; 85 Del. Laws, c. 157, § 1.)

§ 2116. Penalties.

(a) Whoever violates this chapter shall, for the first offense, be fined not less than $10 nor more than $100 or be imprisoned not less than 30 days nor more than 90 days, or both. For each subsequent like offense, the person shall be fined not less than $50 nor more than $200 or imprisoned not less than 90 days nor more than 6 months, or both, in addition to which any person, being the operator or owner of any vehicle which requires a registration fee which is calculated upon the gross weight of the vehicle and any load thereon shall be fined at a rate double that which is set forth in this subsection and be imprisoned as provided herein, or both. In addition, such person shall also be fined in an amount which is equal to the cost of registering the vehicle at its gross weight at the time of the offense or at the maximum legal limit, whichever is less; which fine shall be suspended, if within 5 days of the offense the court is presented with a valid registration card for the gross weight at the time of the offense for the maximum legal limit for such vehicle.

(b) (1) Notwithstanding the provisions of subsection (a) of this section, whoever violates § 2115(1) through (5) or (9) of this title shall, for the first offense, be fined not less than $50 nor more than $200, be imprisoned not less than 30 days nor more than 90 days, or be penalized by both fine and imprisonment. For each subsequent like offense, such person shall be fined not less than $100 nor more than $300, be imprisoned not less than 90 days nor more than 6 months, or be penalized by both fine and imprisonment.

(2) Any owner or operator of a vehicle which requires a registration fee which is calculated upon the gross weight of the vehicle, and any load thereon, and who violates § 2115(1)-(5) of this title, shall be fined at a rate double that which is set forth in this subsection, or be imprisoned as provided herein, or be both fined and imprisoned. In addition, such person shall also be fined an amount which is equal to the costs of registering the vehicle either at its gross weight at the time of the offense, or at the maximum legal limit, whichever is less. Such fine shall be suspended if, within 5 days of the offense, the court is presented with a valid registration card for the actual gross weight of the vehicle at the time of the offense.

(c) This section shall not apply to violations for which a specific punishment is set forth elsewhere in this chapter.

(d) For any violation of the registration provisions of § 2102 or § 2115 of this title and in absence of any traffic offenses relating to driver impairment, the violator's copy of the traffic summons shall act as that violator's authority to drive the vehicle involved by the most direct route from the place of arrest to either the violator's residence or the violator's current place of abode.

(36 Del. Laws, c. 10, § 32; 37 Del. Laws, c. 10, §§ 10, 11; Code 1935, § 5570; 21 Del. C. 1953, § 2116; 59 Del. Laws, c. 332, §§ 1, 2; 64 Del. Laws, c. 207, § 2; 69 Del. Laws, c. 307, §§ 1, 3, 4; 85 Del. Laws, c. 157, § 2.)

§ 2117. Refunds of fees paid for certain unused registrations.

Upon the surrender to the Department of the number plates or plate issued for a vehicle registered under this title, and the furnishing of proof satisfactory to the Secretary and the State Treasurer that (1) the owner of the vehicle entered the armed forces of the United States after such vehicle was registered or (2) that the owner of such vehicle is 65 years of age or older and that the owner voluntarily surrendered such owner's operator's license following the attainment of such age and the registration or reregistration of such vehicle, and that the registration of such vehicle is in full effect, there shall be refunded to such owner, from the General Fund of this State, from funds not otherwise appropriated, a sum equal to as many twelfths of the fee paid for the registration of the vehicle as there are full calendar months in the registration year following the date of the receipt of the number plates or plate, less the sum of $1.00.

(21 Del. C. 1953, § 2117; 57 Del. Laws, c. 632; 70 Del. Laws, c. 186, § 1.)

§ 2118. Requirement of insurance for all motor vehicles required to be registered in this State; penalty [For application of this section, see 82 Del. Laws, c. 160, § 5].

(a) No owner of a motor vehicle required to be registered in this State, other than a self-insurer pursuant to § 2904 of this title, shall operate or authorize any other person to operate such vehicle unless the owner has insurance on such motor vehicle providing the following minimum insurance coverage:

(1) Indemnity from legal liability for bodily injury, death or property damage arising out of ownership, maintenance or use of the vehicle to the limit, exclusive of interest and costs, of at least the limits prescribed by the Financial Responsibility Law of this State.

(2) a. Compensation to injured persons for reasonable and necessary expenses incurred within 2 years from the date of the accident for:

1. Medical, hospital, dental, surgical, medicine, x-ray, ambulance, prosthetic services, professional nursing and funeral services. Compensation for funeral services, including all customary charges and the cost of a burial plot for 1 person, shall not exceed

the sum of $5,000. Compensation may include expenses for any nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing.

2. Net amount of lost earnings. Lost earnings shall include net lost earnings of a self-employed person.

3. Where a qualified medical practitioner shall, within 2 years from the date of an accident, verify in writing that surgical or dental procedures will be necessary and are then medically ascertainable but impractical or impossible to perform during that 2-year period, the cost of such dental or surgical procedures, including expenses for related medical treatment, and the net amount of lost earnings lost in connection with such dental or surgical procedures shall be payable. Such lost earnings shall be limited to the period of time that is reasonably necessary to recover from such surgical or dental procedures but not to exceed 90 days. The payment of these costs shall be either at the time they are ascertained or at the time they are actually incurred, at the insurer's option.

4. Extra expenses for personal services which would have been performed by the injured person had they not been injured.

5. "Injured person" for the purposes of this section shall include the personal representative of an estate; provided, however, that if a death occurs, the "net amount of lost earnings" shall include only that sum attributable to the period prior to the death of the person so injured.

b. The minimum insurance coverage which will satisfy the requirements of subparagraph a. of this paragraph (a)(2)a. of this section is a minimum limit for the total of all payments which must be made pursuant to that subparagraph of $15,000 for any 1 person and $30,000 for all persons injured in any 1 accident.

c. The coverage required by this paragraph shall be applicable to each person occupying such motor vehicle and to any other person injured in an accident involving such motor vehicle, other than an occupant of another motor vehicle.

d. The coverage required by this paragraph shall also be applicable to the named insureds and members of their households for accidents which occur through being injured by an accident with any motor vehicle other than a Delaware insured motor vehicle while a pedestrian or while occupying any registered motor vehicle other than a Delaware registered insured motor vehicle, in any state of the United States, its territories or possessions or Canada.

e. The coverage required in this paragraph shall apply to pedestrians only if they are injured by an accident with any motor vehicle within the State except as to named insureds or members of their households to the extent they must be covered pursuant to paragraph (a)(2)d. of this section.

f. The owner of a vehicle may elect to have the coverage described in this paragraph written subject to certain deductibles, waiting periods, sublimits, percentage reductions, excess provisions and similar reductions offered by insurers in accordance with filings made by such insurers with the Department of Insurance; applicable to expenses incurred as a result of injury to the owner of a vehicle or members of the owner's household; provided that the owner of a motorcycle may elect to exclude from such coverage expenses incurred as a result of injury to any person riding such vehicle while not on a highway and in any case of injury when no other vehicle was involved by actual collision or contact. This election must be made in writing and signed by the owner of the vehicle; insurers issuing such policies may not require such reductions. For all policies having a deductible pursuant to this paragraph the insured shall receive in writing as a separate document a full explanation of all deductible options available, and the insured shall sign such written explanation acknowledging receipt of a copy of same. In addition the insured shall sign a separate statement acknowledging the specific deductible the insured is selecting and the related cost for the policies with such deductible. An insured person may not plead and introduce into evidence in an action for damages against a tortfeasor the amount of the deductible; however, insurers shall recover any deductible for their insureds or their household members pursuant to subsection (g) of this section. Any notices or documents required under this section may be delivered in compliance with the provisions of § 107 of Title 18.

g. The coverage required by this paragraph shall be considered excess over any similar insurance for passengers, other than Delaware residents, when the accident occurs outside the State.

h. Insurers shall notify injured persons covered under this section that the coverage is for 2 years from the date of the accident, and that it is only extended for compensation related to surgical or dental procedures that are related to the accident and that were impossible or impractical to perform within the 2-year period. Such surgical or dental procedures must be verified in writing, within 2 years of the accident, by a qualified medical practitioner.

i. 1. Expenses under paragraph (a)(2)a. of this section shall be submitted to the insurer as promptly as practical, in no event more than 2 years after they are received by the insured.

2. Payments of expenses under paragraph (a)(2)a. of this section shall be made as soon as practical after they are received during the period of 2 years from the accident. Expenses which are incurred within the 2 years but which have been impractical to present to an insurer within the 2 years shall be paid if presented within 90 days after the end of the 2-year period.

(3) Compensation for damage to property arising as a result of an accident involving the motor vehicle, other than damage to a motor vehicle, aircraft, watercraft, self-propelled mobile equipment and any property in or upon any of the aforementioned, with the minimum limits of $10,000 for any 1 accident.

(4) Compensation for damage to the insured motor vehicle, including loss of use of the motor vehicle, not to exceed the actual cash value of the vehicle at the time of the loss and $10 per day, with a maximum payment of $300, for loss of use of such vehicle.

The owner of the motor vehicle may elect to exclude, in whole or in part, the coverage described in this paragraph by the use of certain deductibles and exclusions in accordance with filings made by the insurer with the Department of Insurance.

(b) No owner of a motor vehicle being operated in this State shall operate in this State, or authorize any other person to operate such vehicle in this State, unless the owner has insurance on such motor vehicle equal to the minimum insurance required by the state or jurisdiction where said vehicle is registered. If the state or jurisdiction of registration requires no minimum insurance coverage, then such owner must have insurance on such motor vehicle equal to the minimum insurance coverage required for motor vehicles registered in this State. However, an owner shall not be convicted under this subsection if, prior to conviction, the owner shall produce to the court in which the offense is to be tried the insurance identification card or in lieu thereof other sufficient proof of insurance showing such insurance to be in full force and effect at all pertinent times when the motor vehicle was being operated in this State. The Justice of the Peace Court may permit an operator charged under this subsection to provide proof of insurance to the Court by mail or facsimile transmission in lieu of a personal appearance. Proof of insurance shall be as prescribed by the Court and shall be sent to the Court directly from the operator's insurer or the insurer's agent or broker. It shall be the responsibility of the operator to ensure that proof of insurance is received and accepted by the Court. When proof of insurance is sent by mail or fax, the Court may also accept a guilty plea by mail or fax for any accompanying charge for which a voluntary assessment is permitted under § 709(e) of this title. A guilty plea so accepted shall have the same force and effect as if the operator had made the plea in open court. The Justice of the Peace Court shall enact court rules to implement the handling of such cases by mail or facsimile transmission. Where proof of insurance is provided by facsimile, the operator's insurer or the insurer's agent or broker must confirm the information by mail and the Justice of the Peace Court must confirm by telephone that the facsimile was sent by the operator's insurer or the insurer's agent or broker.

(c) Only insurance policies validly issued by companies authorized to write in this State all the kinds of insurance embodied in the required coverages shall satisfy the requirements of this section.

(d) Nothing in this section shall be construed to prohibit the issuance of policies providing coverage more extensive than the minimum coverages required by this section or to require the segregation of such minimum coverages from other coverages in the same policy.

(e) Policies purporting to satisfy the requirements of this section shall contain a provision which states that, notwithstanding any of the other terms and conditions of the policy, the coverage afforded shall be at least as extensive as the minimum coverage required by this section.

(f) The coverage described in paragraphs (a)(1)-(4) of this section may be subject to conditions and exclusions customary to the field of liability, casualty and property insurance and not inconsistent with the requirements of this section, except there shall be no exclusion to any person who sustains bodily injury or death to the extent that benefits therefore are in whole or in part either payable or required to be provided under any workers' compensation law.

(g) Insurers providing benefits described in paragraphs (a)(1)-(4) of this section shall be subrogated to the rights, including claims under any workers' compensation law, of the person for whom benefits are provided, to the extent of the benefits so provided.

(1) Such subrogated rights shall be limited to the maximum amounts of the tortfeasor's liability insurance coverage available for the injured party, after the injured party's claim has been settled or otherwise resolved, except that the insurer providing benefits shall be indemnified by any workers' compensation insurer obligated to make such payments to the injured party.

(2) Any settlement made with an injured party by a liability insurer shall not be challenged or disputed by any insurer having subrogated rights.

(3) Disputes among insurers as to liability or amounts paid pursuant to paragraphs (a)(1)-(4) of this section shall be arbitrated by the Wilmington Auto Accident Reparation Arbitration Committee or its successors. Any disputes arising between an insurer or insurers and a self-insurer or self-insurers shall be submitted to arbitration which shall be conducted by the Commissioner in the same manner as the arbitration of claims provided for in subsection (j) of this section.

(4) No insurer or self-insurer shall join or be joined in an action by an injured party against a tortfeasor for the recovery of damages by the injured party and/or the recovery of benefits paid by the insurer or self-insurer.

(5) Nothing contained herein shall prohibit a liability insurer from paying the subrogated claim of another insurer prior to the settlement or resolution of the injured party's claim. However, should the amount of such settlement or resolution, in addition to the amount of any subrogated claim, exceed the maximum amount for the tortfeasor's liability insurance coverage available for the injured party, then any insurer who has been paid its subrogated claim shall reimburse the tortfeasor's liability insurer that portion of the claim exceeding the maximum amount of the tortfeasor's liability insurance coverage available for the injured party.

(6) Unless specifically excepted by this subsection, this subsection shall also apply to self-insurers.

(h) Any person eligible for benefits described in paragraph (a)(2) or (3) of this section, other than an insurer in an action brought pursuant to subsection (g) of this section, is precluded from pleading or introducing into evidence in an action for damages against a tortfeasor those damages for which compensation is available under paragraph (a)(2) or (3) of this section without regard to any elective reductions in such coverage and whether or not such benefits are actually recoverable.

(i) Nothing in this section shall be construed to require an insurer to insure any particular risk. Nothing herein shall limit the insurer's obligation pursuant to the Delaware Automobile Plan.

(j) Every insurance policy issued under this section shall require the insurer to submit to arbitration, in the manner set forth hereinafter, any claims for losses or damages within the coverages required under paragraph (a)(2) of this section and for damages to a motor vehicle, including the insured motor vehicle, including loss of use of such vehicle, upon request of the party claiming to have suffered a loss or

damages within the above-described coverages of paragraph (a)(2) of this section or to such a motor vehicle. Such request shall be in writing and mailed to the Insurance Commissioner.

(1) All arbitration shall be administered by the Insurance Commissioner or the Insurance Commissioner's nominee.

(2) The Insurance Commissioner or the Insurance Commissioner's nominee shall establish a panel of arbitrators consisting of attorneys authorized to practice law in the State and insurance adjusters licensed to act as such in the State.

(3) The Insurance Commissioner, or the Insurance Commissioner's nominee, shall select 3 individuals from the panel of arbitrators, at least 1 of whom shall be an attorney authorized to practice law in the State, to hear each request for arbitration.

(4) The Insurance Commissioner, or the Insurance Commissioner's nominee, shall promulgate all rules and regulations necessary to implement this arbitration program.

(5) The right to require such arbitration shall be purely optional and neither party shall be held to have waived any of its rights by any act relating to arbitration and the losing party shall have a right to appeal de novo to the Superior Court if notice of such appeal is filed with that Court in the manner set forth by its rules within 30 days of the date of the decision being rendered.

(6) The Insurance Commissioner shall establish a schedule of costs of arbitration; provided, however, the arbitrator's fee shall not exceed $25 per arbitrator for any 1 arbitration.

(7) The cost of arbitration shall be payable to the State Department of Insurance, and shall be maintained in a special fund identified as the "Arbitration Fund" which shall be administered by the Insurance Commissioner. These funds under no circumstances shall revert to the General Fund. All costs of arbitration including administrative expenses of the Insurance Department and the arbitrator's fee shall be payable from this Fund.

(8) The applicant may be reimbursed the cost of filing arbitration as a part of the award rendered by the arbitration panel. If an insurer should pay an applicant damages in advance of a hearing, they shall include with those damages the cost to the applicant of filing the arbitration.

(9) This subsection shall also apply to self-insurers.

(k) Every insurance company authorized to transact the business of motor vehicle liability insurance in this State shall file with the Insurance Commissioner as a condition of its continued transaction of such business within this State a form approved by the Insurance Commissioner stating that its motor vehicle liability policies, on Delaware registered vehicles wherever issued, shall be deemed to provide the insurance required by this section. A nonadmitted insurer may file such a form.

(*l*) A motor vehicle registration shall not be issued or renewed for any vehicle not covered by a vehicle insurance policy meeting the requirements of this title. All insurers shall send to the Division of Motor Vehicles notice, in written or electronic form per the direction of the Division, of any cancellations or terminations of private passenger automobile insurance under § 3904(a)(1) of Title 18 for any private passenger automobile policies which are final and occur within the first 6 months after such policies are issued. The Insurance Commissioner may further change the timeframe for notification by regulation. All insurers shall send notice to the named insured when a motor vehicle insurance policy is canceled pursuant to the provisions of § 3905 or § 3920 of Title 18.

(m) A motor vehicle owner shall, upon request of the Division of Motor Vehicles, offer proof of insurance in full force and effect as a condition of registration or continued registration of a motor vehicle. The Division of Motor Vehicles, upon proof from its records or other sufficient evidence that the required insurance has not been provided or maintained or has terminated or otherwise lapsed at any time, shall immediately suspend the registration of the uninsured vehicle. The registration shall remain suspended until:

(1) The required insurance is obtained or replaced and the vehicle owner submits evidence of insurance on a form prescribed by the Division of Motor Vehicles and certified by the insurer or its agent; and

(2) An uninsured motorist penalty fee is paid to the Division of Motor Vehicles.

(n) (1) Except as provided in subsection (p) of this section, within 5 days of the notice of suspension from the Division of Motor Vehicles, the owner will surrender to the Division of Motor Vehicles the vehicle's certificate of registration and the registration plate.

(2) The Division of Motor Vehicles will promulgate rules and/or regulations to cover those circumstances in which there is an allegation of lost or stolen tags.

(3) Each insurer shall report to the Division of Motor Vehicles, within 30 days on a form prescribed by the Division of Motor Vehicles, the name of any person or persons involved in an accident or filing a claim who is alleged to have been operating a Delaware registered motor vehicle without the insurance required under this chapter. At a minimum, the insurer shall provide the name, address and description of the vehicle alleged to be uninsured. Each insurer shall take reasonable care when reporting potential violations of this section, but in no case shall an insurer, provider or any of its employees or agents incur any liabilities for erroneous reports of a violation.

(4) In addition to any other penalty provided for in the Delaware Motor Vehicle Law, if the required insurance for a vehicle terminates or otherwise lapses during its registration year, the Division of Motor Vehicles shall assess the owner of the vehicle with a penalty of $100 for each vehicle without the required insurance for a period of up to 30 days. When a penalty fee is assessed, beginning on the thirty-first day of the penalty period, the penalty fee shall increase by a rate of $5.00 for each subsequent day until the insurance is replaced, tags are surrendered to the Division of Motor Vehicles, or the registration expires, whichever occurs first. The Division of Motor Vehicles shall also charge a registration reinstatement fee of $50. When the Division of Motor Vehicles assesses a vehicle

owner with a penalty under this subsection, the Division shall not reinstate a registration suspended under this section until the penalty is paid, and the owner has also paid a registration reinstatement fee of $50.

(o) "Insurance identification card" shall mean a card issued by or on behalf of an insurance company or bonding company duly authorized to transact business in this State which states in such form as the Insurance Commissioner may prescribe or approve that such company has issued a vehicle insurance policy meeting the requirements of this title. If the insured and insurance company both consent, the insurance identification card may be produced in electronic format. Acceptable electronic formats include display of electronic images on a cellular phone or any other type of portable electronic device. The Insurance Commissioner shall require all insurance companies transacting business within this State to provide with each vehicle insurance policy an insurance identification card describing the vehicle covered. The insurance identification card shall be valid for a period not to exceed 6 months. Notwithstanding this limitation, an insurance identification card may be issued for a period of 12 months if premium has been paid for the 12-month period. If an owner shall have filed a financial security deposit, or shall have qualified as a self-insurer, the term "insurance identification card" shall mean a card issued by the Office of the Insurance Commissioner which evidences that such deposit has been filed or that such owner has so qualified.

(p) (1) The insurance identification card issued for a vehicle required to be registered under this title shall at all times, when the vehicle is being operated upon a highway within this State, be in the possession of the operator thereof or carried in the vehicle and shall be produced upon the request of a police officer or any other party involved in an accident with the insured. If the operator of a motor vehicle is unable to produce an insurance identification card at the time of a traffic stop or an accident the operator shall be issued a summons to appear in court. If the operator is convicted under this subsection and has not provided proof of insurance in effect as of the date of conviction, the court shall, in addition to any other penalties imposed, notify the Division of Motor Vehicles of the lack of insurance. The Division of Motor Vehicles shall promptly suspend the vehicle's registration pursuant to the provisions of subsection (m) of this section.

a. Presentation of proof of insurance in electronic format shall not constitute consent for law enforcement or other state officials to access other contents of the cellular phone or other portable electronic device, and shall not expand or restrict authority to conduct a search or investigation.

b. Law-enforcement officers and other state officials shall not be liable for any damage to a cellular phone or portable electronic device resulting from its use to present satisfactory proof of motor vehicle liability insurance coverage.

c. A police officer may require the operator to electronically forward the proof of insurance to a specified location provided by the officer. The electronic insurance information would then be viewed in a setting which is safe for the officer to verify that all the information is valid and accurate.

(2) An operator shall not be convicted under this subsection if, prior to conviction, the operator shall produce to the court in which the offense is to be tried the insurance identification card or in lieu thereof other sufficient proof, including but not limited to an automobile, garage keeper's or other commercial or personal insurance policy, showing that there was insurance in full force and effect at all pertinent times covering or which would cover the said motor vehicle or the operation of the said motor vehicle by the operator charged under this subsection.

(3) Subject to paragraph (p)(2) of this section above, the Justice of the Peace Court may permit an operator charged under this subsection to provide proof of insurance to the Court by mail or facsimile transmission or other Court approved method in lieu of a personal appearance. Proof of insurance shall be as prescribed by the Court and shall be sent to the Court directly from the operator's insurer or the insurer's agent or broker. It shall be the responsibility of the operator to ensure that proof of insurance is received and accepted by the Court. When proof of insurance is accepted by the court by any means other than personal appearance, the Court may also accept a guilty plea in absentia for any accompanying charge for which a voluntary assessment is permitted under § 709(e) of this title. A guilty plea so accepted shall have the same force and effect as if the operator had made the plea in open court. The Justice of the Peace Court shall enact court rules to implement the handling of such cases by means other than personal appearance of the operator.

(4) Where the individual is charged with violating this section, and at the time of the alleged offense, the individual was operating a vehicle owned or leased by the individual's employer in the course and scope of the individual's employment, the individual shall not be convicted of violating this section unless the individual knew or should have known that the employer's vehicle failed to meet the requirement of this section.

(q) (1) The Division of Motor Vehicles shall annually select for verification on a random sample basis not less than 10% of vehicle registrations subject to the insurance required by this section. This verification will be made through the insurers as reflected in the Division's records.

(2) Any vehicle owner identified by the Division as a possible uninsured shall submit proof of insurance within 30 days of the Division's request for such proof, to the Division of Motor Vehicles on a form prescribed by the Division and certified by an insurer or agent.

(3) The failure of a vehicle owner to submit the required proof under this section within a 30-day period shall be prima facie evidence that the vehicle is uninsured and the owner shall be subject to the penalties as prescribed in subsections (*l*) and (m) of this section.

(4) With respect to any vehicle which has:

a. Had its registration suspended by the Division of Motor Vehicles pursuant to subsection (m) of this section,

b. Had transfer of custody of its license plate ordered by the Justice of the Peace Court pursuant to subsection (p) of this section, or

c. Failed to produce proof of insurance in a timely fashion pursuant to this subsection (q) of this section,

an officer of the Delaware State Police or member of the Department of Insurance's Fraud Prevention Bureau ("the Fraud Bureau") may confiscate the registration plate of that vehicle at any time absent affirmative proof that the vehicle is currently insured. Prior to any confiscation pursuant to this subsection, the registered owner of a vehicle shall receive notice at least 7 days prior to confiscation by regular and certified mail that such confiscation is to occur, and shall be provided a means to prove that the vehicle has current insurance prior to the indicated confiscation date. The Division of Motor Vehicles and the Justice of the Peace Court shall provide information to the Fraud Bureau and Delaware State Police sufficient to allow those organizations to enforce this subsection. Registration plates confiscated pursuant to this subsection shall be turned over to the Division of Motor Vehicles, which shall follow procedures established pursuant to and consistent with subsection (m) of this section for return of said plates. The Fraud Bureau shall provide its members with sufficient training to ensure safe enforcement of this subsection.

(r) In the event of a suspension of a driver's license pursuant to this section, the Department may issue an occupational license during a period of suspension upon application by the applicant upon a form prescribed by the Department and sworn to by the applicant; provided, that the applicant sets forth in said application that the suspension of such license has created an extreme hardship and that no prior occupational license has been issued within the preceding 12 months; provided, however, that no such occupational license shall be issued until the applicant demonstrates proof of liability insurance on all motor vehicles owned by such applicant or spouse. If the suspension of the driver's license resulted from the arrest and conviction of a person stemming from an incident in which property damage or personal injury occurred, an occupational license shall not be issued, the other provisions of this subsection to the contrary notwithstanding.

(s) (1) Whoever violates any subsection of this section shall be fined for the first offense not less than $1,500 nor more than $2,000 and shall have that person's driving license and/or privileges suspended for 6 months. For each subsequent offense occurring within 3 years of a former offense, that person shall be fined not less than $3,000 nor more than $4,000 and shall have that person's driver's license and/or driving privilege suspended for 6 months. The minimum fine levied for a violation of subsection (a), (b), or (p) of this section may be suspended, in whole or in part, by the Court if evidence is presented that the defendant has secured insurance between the date of charge and the date of sentencing.

(2) Failure of the owner or operator to produce an insurance identification card for insurance which is in full force and effect at the time of the offense shall be presumptive evidence that such person is operating such person's vehicle without having insurance required by this title.

(3) Notwithstanding the penalties specified above, anyone convicted of driving without minimum insurance as required in this section shall have such person's privileges of driving suspended in this State until such time as such person has furnished proof of insurance to the Division of Motor Vehicles.

(t) (1) The Division of Motor Vehicles shall periodically select for verification of the required insurance all vehicles owned, individually or jointly, by a person who has been previously convicted of violating the provisions of this subchapter.

(2) The Division of Motor Vehicles may determine the accuracy of information relating to the proof of required insurance satisfying the provisions of this section.

(u) (1) The Division of Motor Vehicles may require evidence that any motor vehicle registered in a person's name, individually or jointly, is covered by the insurance required by this chapter, at a conference, hearing or interview:

a. As a result of point accumulation on the owner's motor vehicle driving record pursuant to the rules and regulations of the Division of Motor Vehicles; or

b. To show cause why the person's license should not be suspended or revoked pursuant to the laws of this State or the rules and regulations of the Division of Motor Vehicles.

(2) The Division of Motor Vehicles may require evidence that any vehicle registered in a person's name, individually or jointly, is covered by the insurance required by this chapter, at the time of reinstatement of driving privileges.

(3) The evidence of insurance shall be on a form prescribed by the Division of Motor Vehicles and certified by an insurer or its agent.

(4) Failure to submit the required proof under this section shall be prima facie evidence that any vehicle registered in that person's name, either individually or jointly, is uninsured and the owner shall be subject to the penalties as prescribed in subsections (*l*) and (m) of this section.

(v) (1) If a person has been issued an equipment inspection notice pursuant to § 2144 of this title, the person shall send within 30 days to the Division of Motor Vehicles the evidence of insurance or security required by this chapter on a form prescribed by the Division and certified by an insurer or agent.

(2) A failure to submit the evidence required by paragraph (v)(1) of this section shall result in the suspension of the registration of the vehicle cited and the assessment of the uninsured motorist penalty fee under this section.

(w) The Division of Motor Vehicle shall conduct a study or cause such study to be conducted to assess the feasibility and costs of establishing a direct computer link between the Division of Motor Vehicle's registration files and the insurance companies' data bases for the purposes of allowing the Division to conduct "real time" status reports of uninsured motorists. The Division of Motor Vehicles shall also conduct a study or cause such study to be conducted to analyze the ramifications of implementing an uninsured motorist program in the State similar to that of Virginia's Uninsured Motorist Program.

(x) Notwithstanding any contrary provisions of the Code, there shall be established a special fund of the State to be known as the D.M.V.T. Fund. The Secretary of Finance shall, commencing upon July 18, 1995, and commencing at the beginning of each fiscal year thereafter, cause to be deposited into the D.M.V.T. Fund amounts received as payments of fines and costs assessed by the Justice of the Peace Courts and/or the Court of Common Pleas under this section, until the amount deposited in said fiscal year shall equal $150,000.

(y) The purpose of the D.M.V.T. Fund is to provide for the administrative costs associated with this Act. Any balance in the D.M.V.T. Fund as of the last day of the fiscal year in excess of $15,000 shall be deposited to the General Fund. The Secretary of Finance shall make deposits to the D.M.V.T. Fund as required under this section commencing after August 1, 1995.

(z) The Director of the Division of Motor Vehicles may adopt such rules and regulations, not inconsistent with this title, as are necessary to enforce this section.

(21 Del. C. 1953, § 2118; 58 Del. Laws, c. 98, § 1; 58 Del. Laws, c. 353, § 1; 58 Del. Laws, c. 443; 59 Del. Laws, c. 179, §§ 1-3; 59 Del. Laws, c. 574, §§ 1, 3; 60 Del. Laws, c. 337, §§ 1, 2; 60 Del. Laws, c. 433, § 2; 61 Del. Laws, c. 66, § 1; 61 Del. Laws, c. 292, §§ 1-3; 61 Del. Laws, c. 320, § 1; 61 Del. Laws, c. 417, §§ 1, 2; 62 Del. Laws, c. 280, § 1; 63 Del. Laws, c. 149, § 1; 63 Del. Laws, c. 405, § 1; 64 Del. Laws, c. 198, §§ 1, 2; 64 Del. Laws, c. 356, § 1; 65 Del. Laws, c. 177, § 1; 65 Del. Laws, c. 324, § 1; 65 Del. Laws, c. 503, § 4; 67 Del. Laws, c. 177, §§ 1, 2; 68 Del. Laws, c. 331, §§ 1-4; 68 Del. Laws, c. 336, § 1; 69 Del. Laws, c. 116, § 3; 69 Del. Laws, c. 155, §§ 1, 2; 69 Del. Laws, c. 197, § 1; 69 Del. Laws, c. 413, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 247, §§ 1-3; 72 Del. Laws, c. 20, § 1; 72 Del. Laws, c. 58, §§ 1, 2; 72 Del. Laws, c. 219, § 1; 72 Del. Laws, c. 380, §§ 1, 2; 74 Del. Laws, c. 110, § 139; 74 Del. Laws, c. 400, § 1; 75 Del. Laws, c. 59, § 1; 76 Del. Laws, c. 128, § 1; 77 Del. Laws, c. 419, § 1; 78 Del. Laws, c. 247, § 2; 79 Del. Laws, c. 269, § 1; 82 Del. Laws, c. 16, § 1; 82 Del. Laws, c. 160, § 4; 83 Del. Laws, c. 90, § 1.)

§ 2118A. Unlawful possession or manufacture of proof of insurance, penalties.

(a) It shall be unlawful for any person to possess, manufacture, sell, distribute or circulate a fictitious insurance identification card or any fictitious proof of insurance. A fictitious insurance identification card shall be any document in written or electronic format not manufactured in compliance with § 2118(o) of this title. Fictitious proof of insurance shall be any document in written or electronic format not produced in compliance with § 2118(o) of this title.

(b) It shall also be unlawful for any person to possess, manufacture, sell, distribute or circulate a blank insurance identification card. However, the following shall be exempt from this subsection: Office of the Insurance Commissioner, insurance companies or bonding companies or their employees or agents or employees of such agents in the discharge of their employment duties.

(c) Any person convicted of a violation of subsection (a) or (b) of this section shall be fined for the first offense not less than $500, nor more than $1500, or imprisoned not less than 30 days, nor more than 60 days, or both. For each subsequent violation, the person shall be fined not less than $1000, nor more than $2000, or be imprisoned not less than 60 days, nor more than 6 months, or both.

(68 Del. Laws, c. 406, § 1; 79 Del. Laws, c. 269, § 2.)

§ 2118B. Processing and payment of insurance benefits.

(a) The purpose of this section is to ensure reasonably prompt processing and payment of sums owed by insurers to their policyholders and other persons covered by their policies pursuant to § 2118 of this title, and to prevent the financial hardship and damage to personal credit ratings that can result from the unjustifiable delays of such payments.

(b) When an insurer is notified in writing by the claimant that the claimant desires to file an initial claim for benefits pursuant to § 2118(a)(2) of this title, the insurer shall, no later than 10 days following the insurer's receipt of said notification, provide that claimant with a form for filing such a claim. For purposes of this subsection an insurer shall be deemed to have provided a claimant with a form for filing a claim when the insurer deposits such a form in an envelope addressed to such claimant with the United States Postal Service and with postage affixed for first class (or better) delivery. If an insurer fails to comply with the provisions of this subsection, the insurer shall pay the claimant a sum equal to 1 percent of the amount due as of the date on which the claim was required to be provided for each day beyond the prescribed period for compliance, not to exceed $5,000.

(c) When an insurer receives a written request for payment of a claim for benefits pursuant to § 2118(a)(2) of this title, the insurer shall promptly process the claim and shall, no later than 30 days following the insurer's receipt of said written request for first-party insurance benefits and documentation that the treatment or expense is compensable pursuant to § 2118(a) of this title, make payment of the amount of claimed benefits that are due to the claimant or, if said claim is wholly or partly denied, provide the claimant with a written explanation of the reasons for such denial. If an insurer fails to comply with the provisions of this subsection, then the amount of unpaid benefits due from the insurer to the claimant shall be increased at the monthly rate of:

(1) One and one-half percent from the thirty-first day through the sixtieth day; and

(2) Two percent from the sixty-first day through the one hundred and twentieth day; and

(3) Two and one-half percent after the one hundred and twenty-first day.

(d) If an insurer fails to comply with subsection (b) or (c) of this section, the claimant may recover the amount due through a civil action in any court of competent jurisdiction or through a Delaware Insurance Commissioner's Arbitration Proceeding, consistent with § 2118(j)(1)-(9) of this title, at the option of the claimant. Any judgment entered for a claimant in a civil action or arbitration proceeding

brought under this section shall include, in addition to the amount due and any additional amount provided for by subsections (b) and (c) of this section, an award for the costs of the action and the prosecution of the action, including reasonable attorney's fees; provided, however, that the costs of the action and the prosecution of the action, including reasonable attorney's fees shall only be awarded if it is found that the insurer acted in bad faith. The burden of proving that the insurer acted in bad faith shall be on the claimant. Any sums other than the original claim paid under this subsection shall not reduce the amount of coverage available under the insurance policy that is the basis for the claim.

(e) If an action pursuant to subsection (d) of this section is not filed within 90 days of the date of denial or the date when benefits are due as provided for in subsection (c) of this section, the penalties prescribed in that subsection shall begin to run from the date of the filing of said action.

(f) The remedies provided by this section are in addition to all other remedies available to the claimant under state and federal statutory or common law.

(69 Del. Laws, c. 116, § 2; 69 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2119. Requirement of compliance for all commercial registrations by corporations and other legal entities.

(a) No vehicle shall be registered or reregistered as a "commercial" vehicle under this chapter until the Division of Motor Vehicles has verified a legal entity's good standing with the Delaware Secretary of State and compliance with Title 30, including proof of a valid occupational or business license.

(b) The Secretary of the Department of Transportation in conjunction with the Secretary of the Department of Finance shall promulgate such requirements of proof as they shall deem necessary for the administration and implementation of subsection (a) of this section.

(60 Del. Laws, c. 291, § 1; 74 Del. Laws, c. 110, § 41; 79 Del. Laws, c. 399, § 1.)

§ 2120. Waiver of registration and inspection of special mobile equipment.

The requirements for registration and inspection of special mobile equipment are waived.

(64 Del. Laws, c. 259, § 2.)

§ 2120A. Registration of unique vehicles; fees; restrictions.

(a) The Division of Motor Vehicles may title and register a unique vehicle for operation on the roads of the State which does not meet the Division's standards for inspection or emissions performance only when it is modified to meet all Federal Motor Vehicle Safety Standards (FMVSS) safety and equipment requirements and Department of Natural Resources and Environmental Control's (DNREC's) emissions inspection requirements under 7 DE Admin. Code 1126 or 1131. which are in effect at the time of the initial application for titling or registering of the vehicle. A unique vehicle may be titled and registered with restrictions as determined by the Division to be in the best interest of highway safety.

(b) The annual registration fee shall be the same fee as assessed to a vehicle or motor vehicle in a similar class and according to the fees in this chapter.

(c) A unique vehicle shall be subject to an initial inspection in accordance with regulations as adopted by the Division of Motor Vehicles.

(d) A unique vehicle may not be registered unless such vehicle is insured pursuant to §§ 2118 and 2902 of this title.

(e) A unique unregistered vehicle title may be issued for proof of ownership only if the unique vehicle does not meet the Division of Motor Vehicles' inspection requirements, FMVSS safety and equipment requirements, or DNREC's emission standards. A unique unregistered vehicle title does not permit the operation of the unique unregistered motor vehicle on the roads of the State or any other state in any capacity other than as specified in subsection (f) of this section.

(f) A unique unregistered vehicle titled pursuant to subsection (e) of this section shall be used only for participation in club activities, exhibits, tours, parades, and similar uses (a "permitted use"). A unique vehicle participating in a permitted use must be insured as required by §§ 2118 and 2902 of this title. A unique vehicle may not be used for general transportation and may not be operated on the roads of this State at any time other than when traveling to or from a permitted use or actively participating in the permitted use.

(g) The Division of Motor Vehicles may not assign a vehicle identification number (VIN) to a unique vehicle that was assigned a VIN by the vehicle manufacturer unless it meets the requirements as described in this title. A dealership or manufacturer may not assign a VIN to a unique vehicle unless the dealership or manufacturer are approved by National Highway Traffic Safety Administration to assign VIN numbers, in accordance with 49 C.F.R. Part 565.

(h) The owner of a unique vehicle modified to meet all requirements outlined in this section and Chapter 43 of this title must apply to the Division of Motor Vehicles for a unique blue and gold identification plate which shall be displayed on the front of such vehicle in addition to the standard vehicle registration plate. The Division of Motor Vehicles has the authority to issue any additional regulations, rules, policies or procedures necessary to implement this unique identification plate requirement.

(i) The 1-time fee for the Unique vehicle identification plate described in subsection (h) of this section shall be $50. This fee shall be in addition to any vehicle document fee, title fee, or 1-time registration fee. Unique vehicle status shall be forfeited in the event of a transfer of ownership and the transferor shall surrender the special plate to the Division of Motor Vehicles. The purchaser of any previously titled or registered unique vehicle must reapply for a unique vehicle status at the time of any transfer. At the time of any post transfer titling or

registration application, the unique vehicle must meet the FMVSS, DNREC and all other requirements at the time of the new titling and/or registration application as if the unique vehicle was being titled and or registered for the first time.

(62 Del. Laws, c. 150, § 2; 84 Del. Laws, c. 304, § 2.)

§ 2120B. Unique vehicle safety requirements.

The Division of Motor Vehicles may promulgate regulations, rules, policies, or procedures necessary to implement the requirements of § 2120A of this title. The Division of Motor Vehicles may promulgate additional regulations, rules, policies, and procedures which the Division determines are necessary to ensure that the titling, registration, and operation of a unique vehicle on the roads of the State do not pose a safety risk to the motoring public.

(84 Del. Laws, c. 304, § 2.)

Subchapter II

Plates

§ 2121. Number and registration plates; provision for the issuance of special license plates to the owners of motor vehicles who operate amateur radio stations; special vanity plates.

(a) The Department shall furnish 1 number plate for each vehicle registered. The Department shall also furnish registration plates as hereinafter provided. Upon the termination of the lawful use of any such plates they shall be returned to the Department.

(b) Each number plate shall have displayed thereon the registration number assigned to the vehicle, the name of this State, which may be abbreviated and in the case of motor farm trucks used exclusively by farmers in the operation of their farms and which have been registered for the reduced fee as provided by law, such plates for such farm motor trucks shall also display in large type the letter "F," meaning for farm motor trucks only. In addition to the reduced registration fee to be paid for the registration of such motor farm trucks, the owner thereof shall also pay to the Department the cost of such special number plates for such trucks. In case of vehicles registered for a gross rate of more than 5,000 pounds, the number plate may also show the gross weight for which the vehicle is registered. Each number plate for each vehicle shall also show, in the manner determined by the Department and as hereinafter provided, the period of expiration thereof for which the vehicle has been registered and the required registration fee paid. Each number plate and the identifying letters and numerals thereon, except the registration period or expiration thereof, shall be of sufficient size to be plainly readable at a distance of 100 feet during daylight.

Unless otherwise specified in this title, motor vehicles with a registered gross weight of 5,000 pounds or less may be assigned any type of number plate and motor vehicles with a registered gross weight of greater than 5,000 pounds but less than 10,000 pounds may be assigned any type of number plate except an "RV" plate. Motor vehicles, except for recreational vehicles, with a registered weight rating above 10,000 pounds will be assigned commercial or farm truck license plates. The number plate for a "motorcycle" or "moped" as each are defined by § 101 of this title, shall display thereon the letters "MC" for motorcycles and the letters "MP" for mopeds. The number plate for a "recreational vehicle" or "recreational trailer" as each are defined by § 101 of this title shall display thereon the letters "RV" for recreational motor vehicles and the letters "RT" for recreational trailers. The title registration number for mobile homes shall begin with the letters "MH" and park trailers with the letters "PT." Each number plate and special plate may have displayed thereon, in addition to all other numbers or letters required by this subsection, the words "The First State."

(c) The number plates shall be of such design, size, material and color as the Department may determine and shall be so constructed that validation plates, to be furnished by the Department as provided in this section, may be conveniently attached or affixed thereto and, when necessary, detached and removed therefrom.

(d) The Department shall furnish for each vehicle registered and upon the payment of the required fees a validation plate to be attached or affixed to the number plate as provided by subsection (c) of this section. Such validation plates shall be of such design, size, material and color and shall bear such legend or inscription as the Department may determine, showing the period or expiration date thereof.

(e) There may also be attached to any number plate an additional removable plate of a size and design approved by the Department, which additional plate may show such other data as the Department may approve. No number plate shall have attached thereto any advertising matter, any fictitious numbers, signs, or symbols or any legend of any character not approved by the Department.

(f) The Department shall issue for every passenger motor vehicle, rented without a driver, the number of plates of the same type as issued for private passenger vehicles.

(g) Upon written application, the Department shall furnish to any owner of a motor vehicle who is a resident of the State and who holds a valid, unrevoked, and unexpired official amateur radio station license issued by the Federal Communications Commission, a special license plate for a motor vehicle owned by such individual and on which the required registration fee has been paid. The special plate shall bear the official amateur radio station call letters as assigned by the Federal Communications Commission to said individual. The special plate shall supersede the regular numbered plate assigned to such motor vehicle during the time said individual holds a valid, unrevoked and unexpired official amateur radio station license issued by the Federal Communications Commission and while such motor vehicle is owned by such individual; provided that, at all times, the necessary registration fee has been paid for such motor vehicle. Upon making application for such special license plate the owner shall pay, in addition to the regular registration fee, the sum of $10 for such plate. Application shall be made on such form as shall be prescribed by the Department.

The special license plate shall have imprinted thereon only the call letters of the licensee, the words, “Delaware,” “The First State” and the expiration date of the license plate.

(h) This title notwithstanding, the Department, upon written application, shall furnish to any owner of a motor vehicle otherwise entitled to a license plate, who is a resident of this State, a special vanity license plate for each motor vehicle owned by such individual for which the required registration fee has been paid, which plate shall have displayed thereon:

(1) Any single letter or combination of letters or combination of letters and numerals, not to exceed 7 in number. If the combination includes numerals, the numerals shall be displayed to the right of all letters on the plate. A hyphen shall be permitted and shall be counted as 1 letter. In its discretion, the Department may refuse any combination of letters, or letters and numerals. The Department may refuse 7 character combinations that do not allow adequate spacing between letters and/or numbers;

(2) The word “Delaware”;

(3) The words “The First State”;

(4) The expiration date of the license plates; and

(5) Gold letters on a blue background, except for license plates provided for in § 2123 of this title, in which case they shall be blue letters on a gold background.

Upon making application for such special vanity license plates, the owner shall pay $40 annually for each plate in addition to the regular registration fee. Application shall be made on forms as prescribed by the Department. The Department shall issue such plates in the order in which the applications are received for any letter or combination thereof. Such license plates shall be the personal property of the owner so long as the owner shall comply with this section. No reasonable facsimile of any license plate as provided for in this chapter shall be displayed on the front of any motor vehicle registered in this State. The provisions of subsection (b) of this section relating to the display of the letters “P/C” for combination vehicles shall not be applicable to this subsection.

(i) This title notwithstanding, the Department, upon written application, shall furnish to any owner of a motorcycle, otherwise entitled to a Delaware license plate, a special vanity license plate, provided the required registration fee has been paid for such motorcycle pursuant to § 2151(1) of this title. Such special plate shall have displayed thereon:

(1) Any single letter or combination of letters or combinations of letters and numerals, not to exceed 5 in number. If the combination includes numerals, the numerals shall be displayed to the right of all letters on the plate. A hyphen shall be permitted and shall be counted as 1 letter. In its discretion, the Department may refuse any combination of letters, or letters and numerals;

(2) The word “Delaware”;

(3) The letters M/C;

(4) The expiration date of the license plate; and

(5) Gold letters on a blue background.

Upon making application for such special vanity license plate, the owner shall pay $40 annually for each plate in addition to the regular registration fee. Application shall be made on forms as prescribed by the Department. The Department shall issue such plates in the order in which the applications are received for any letter or combination thereof. Such license plate shall be the personal property of the owner so long as the owner shall comply with this section. No reasonable facsimile of any license plate as provided for in this chapter shall be displayed on the front of any motorcycle registered in this State.

(j) The number plates for recreational vehicles shall display thereon the letters “RV.” A $10 fee shall be assessed to change the certificate of title, registration and license plate for any vehicle already registered under another type of plate if the owner desires to change to a recreational vehicle tag.

(k) Effective March 27, 1996, individual special vanity license plates shall not be recalled when the Department issues other categories of special group license plates with conflicting letters and numbers.

(36 Del. Laws, c. 10, § 12; 37 Del. Laws, c. 10, § 5; Code 1935, § 5550; 43 Del. Laws, c. 244, § 6; 46 Del. Laws, c. 122, §§ 1, 2; 47 Del. Laws, c. 255, §§ 1, 4; 21 Del. C. 1953, § 2121; 49 Del. Laws, c. 14, § 2; 49 Del. Laws, c. 78; 53 Del. Laws, c. 349; 56 Del. Laws, c. 283, §§ 1, 2; 58 Del. Laws, c. 125; 58 Del. Laws, c. 384, § 5; 59 Del. Laws, c. 57, § 2; 60 Del. Laws, c. 180, § 1; 61 Del. Laws, c. 342, § 1; 63 Del. Laws, c. 212, § 1; 63 Del. Laws, c. 335, § 1; 65 Del. Laws, c. 78, §§ 1-3; 67 Del. Laws, c. 260, § 1; 68 Del. Laws, c. 156, § 61(a)-(c); 69 Del. Laws, c. 217, § 2; 69 Del. Laws, c. 454, § 3; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 264, § 1; 70 Del. Laws, c. 326, §§ 1-3; 71 Del. Laws, c. 20, § 1; 74 Del. Laws, c. 166, § 1; 80 Del. Laws, c. 136, § 1; 80 Del. Laws, c. 168, § 1; 81 Del. Laws, c. 140, § 1; 82 Del. Laws, c. 93, § 1; 83 Del. Laws, c. 505, § 1; 84 Del. Laws, c. 332, § 1; 85 Del. Laws, c. 40, § 1; 85 Del. Laws, c. 161, § 1.)

§ 2121A. Special license plates for members of Delaware firefighters, auxiliary, and volunteer ambulance or rescue companies within the Delaware Firefighter’s Association.

(a) (1) The owner of any vehicle described in paragraph (a)(2) of this section may apply to the Department for the assignment to that vehicle of a special Delaware firefighter number; provided however, the owner of the vehicle has official documentation which indicates such person is a bona fide member of or holds membership with a Delaware-based fire company, auxiliary of a fire company, or a volunteer ambulance or volunteer rescue company belonging to any county firefighter’s association or the Delaware State Firefighter’s Association of the State of Delaware.

(2) This section applies only to:

a. A private passenger vehicle;

b. A truck with a $^{3}/_{4}$-ton or smaller manufacturer's rated capacity; or

c. A van with a $^{3}/_{4}$-ton or smaller manufacturer's rated capacity.

(b) No fee in addition to the annual registration fee required by this title is required for registration under this section; however, the original application under this section shall be subject to a $10 administration fee.

(c) The applicant must submit acceptable proof, as required by the Division, that such applicant is a member in good standing or is otherwise eligible for the issuance of such special plate.

(d) [Repealed.]

(e) The Department shall reserve sufficient license plates including appropriate letters and numbers consecutively beginning with the number 1 as are required for this section.

(f) The Department, upon receipt of any official correspondence from the organization advising that the individual to which a special plate has been issued is no longer affiliated with such organization said special plate shall be forfeited and/or revoked immediately.

(68 Del. Laws, c. 349, § 1; 70 Del. Laws, c. 9, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2122. Unauthorized use of or addition to plates.

(a) No person shall use or exhibit in a manner or at a time not authorized by this chapter, or by the rules and regulations of the Department with respect thereto, any number of registration plates or accessory plates, or display or use any unauthorized design, symbol, or legend on or attached to any such plates.

(b) (1) Any police officer is authorized to make a stop for purposes of enforcing this section, upon reasonable and articulable suspicion that a violation of subsection (a) of this section has occurred.

(2) A violation of subsection (a) of this section is a moving violation, subject to all of the following:

a. Jurisdiction of a Justice of the Peace Court under § 703 of this title.

b. Penalties under § 2116(a) of this title.

(c) A violation of subsection (a) of this section is also grounds for failing an inspection under subchapter III of this chapter.

(36 Del. Laws, c. 10, § 12; 37 Del. Laws, c. 16, §§ 1, 2; Code 1935, § 5550; 43 Del. Laws, c. 244, § 6; 21 Del. C. 1953, § 2122; 83 Del. Laws, c. 437, § 1.)

§ 2123. Number plates for elective or constitutional officers of the State and for state and federal judges.

(a) Upon written application, the Department shall furnish, without charge, to any state elective or constitutional officer, including members of both branches of the General Assembly, to the members of the judiciary (including the Judges of the United States District Court for the District of Delaware and United States Court of Appeals for the Third Circuit, resident in Delaware) and to the Representatives and Senators of the State in the Congress of the United States, a set of special plates for each motor vehicle owned by such person and on which the required registration fee has been paid, but not to exceed 2 sets of plates for each individual, which plates shall supersede, during such person's term of office and while such motor vehicle is owned by such person, the regular number plates assigned to such motor vehicle if at all times the necessary registration fee or fees have been paid for such motor vehicle.

(b) Each special plate furnished pursuant to this section shall have displayed thereon:

(1) Initials of the individual, except that the plates furnished to the Governor, Lieutenant Governor and Secretary of State may display the numerals 1, 2 and 3, respectively, in place of their initials;

(2) Designation of the person's office;

(3) Word "Delaware";

(4) Words "The First State";

(5) "Coat of arms" of the State;

(6) Expiration date of the license plate; and

(7) Blue letters on a gold background.

(c) It shall be lawful to display the state "coat of arms" on special plates furnished pursuant to this section, notwithstanding § 2306 of Title 29, and the written consent of the Secretary of State for such use shall not be required.

(36 Del. Laws, c. 10, § 12; Code 1935, § 5550; 43 Del. Laws, c. 244, § 6; 21 Del. C. 1953, § 2123; 59 Del. Laws, c. 277, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 64, § 1.)

§ 2124. Number plates for manufacturers, dealers, and transporters; transit plates for transporters and owners of special construction equipment.

(a) A manufacturer or dealer owning any vehicle of a type otherwise required to be registered under this title may operate or move the same upon the highways when such vehicle is used:

(1) In the motor vehicle business of such manufacturer or dealer; or

(2) For the personal pleasure of such manufacturer or dealer or the members of such person's family, when operated by such manufacturer or dealer or an immediate member of such person's family; or, when such manufacturer or dealer is a corporation, for the personal pleasure of not more than 3 officers thereof who are actively engaged in its business, or the members of their families, or for the personal pleasure of the regular employees of such manufacturer, dealer or corporation when operated by such employee; or

(3) For testing such vehicles in the possession of such manufacturer or dealer; or

(4) For demonstrating vehicles in the possession of such manufacturer or dealer.

Such vehicles may be operated by a prospective purchaser, when licensed as an operator or permittee, without registering each such vehicle, upon condition that any such vehicle display thereon, in the manner prescribed by this chapter for regular number plates, a special plate or plates issued to such owner as provided by this section.

(b) The Division of Motor Vehicles shall issue special plates, designated as "in transit" plates or "licensed transporter" plates, to transporters and owners of special construction equipment. All such vehicles moved or operated under this section must comply with Chapter 45 of this title.

(1) In transit plates start with the prefix "CT," signifying a construction tag under § 2154 of this title. In transit plates may be used to operate or move like vehicles or equipment upon the highways solely for the purpose of delivering or moving such vehicles or equipment to or from the location of any type of construction.

(2) Licensed transporter plates start with the prefix "LT." Licensed transporter plates may only be issued to approved Delaware licensed transporters who have met all licensing requirements under Chapter 33 of this title. A transporter plate may be used to operate or move an unregistered motor vehicle that is otherwise eligible for registration for operation on the roads of the State or for the delivery of a mobile home. A transporter plate may be used solely for the purpose of delivering such a vehicle or mobile home to or from a location for a purpose authorized by this title. A transporter plate may not be used on any motor vehicle or mobile home that is registered in any state. A transporter plate may not be used on any OHV. A transporter plate may not be used on any mobile equipment or motorized apparatus that is not eligible to be registered within the State. Transporter plates may not be used by anyone other than the approved Delaware licensed transporter, including a licensed Delaware motor vehicle dealer who must use dealer license plates issued to the motor vehicle dealer for moving motor vehicles in the dealer's inventory. Transporter plates may not be used for purposes under paragraph (a)(2), (a)(3), (a)(4), or subsection (i) of this section.

(c) This section shall not apply to work or service vehicles owned by a manufacturer or dealer.

(d) Every manufacturer, transporter or dealer shall keep a written record of the vehicles upon which such special plates are used and the time during which each set of plates is used on a particular vehicle, which record shall be open to inspection by any police officer or any officer or employee of the Department.

(e) No manufacturer or transporter of or dealer in motor vehicles, trailers or semitrailers shall cause or permit any such vehicle owned by such person to be operated or moved upon a public highway without the same being registered in accordance with this title and without there being displayed thereon a number plate or plates and a registration plate or plates, as provided by this title, except as otherwise authorized by this section.

(f) Any manufacturer or retail dealer as defined in Chapter 63 of this title may make application to the Department upon the appropriate form for a certificate and for 1 or more pairs of special plates or single special plates as are appropriate to various types of vehicles of the types subject to registration hereunder. The applicant shall also submit such proof of such applicant's status as a bona fide manufacturer or retail dealer as may be required by the Department. Dealer license plates will be limited to retail dealerships based on the number of vehicles sold per year. Retail dealers selling 5 to 10 vehicles per year may obtain no more than 1 dealer plate; retail dealers selling 11-25 vehicles per year may obtain no more than 2 dealer plates; retail dealers selling 26-49 vehicles per year may obtain no more than 4 dealer plates; retail dealers selling 50-99 vehicles per year may obtain no more than 20 dealer plates; retail dealers selling 100 or more vehicles per year may obtain any number of dealer plates at the retail dealer's discretion. Wholesale dealers selling 5 to 10 vehicles per year may obtain no more than 1 dealer plate; wholesale dealers selling 11-25 vehicles per year may obtain no more than 2 dealer plates; wholesale dealers selling 26-49 vehicles per year may obtain no more than 4 dealer plates; wholesale dealers selling 50 or more vehicles per year may obtain no more than 20 dealer plates.

(g) Delaware licensed transporters that transport fewer than 10 vehicles or mobile homes per year may obtain no more than 3 transporter plates. Delaware licensed transporters that transfer 10 or more vehicles or mobile homes per year may obtain a maximum of 5 transporter plates.

(h) The Department, upon approving any such application, shall issue to the applicant a certificate containing the applicant's name and address and other appropriate information.

(i) The Department, upon approving any such application, shall also issue special plates of a design, size, material and color determined by the Department. Each plate or pair of plates so issued, however, shall contain a number or symbol distinguishing the same from other plates issued under this chapter.

(j) Notwithstanding this section, the Department upon approving an application filed by a licensed automotive recycler may issue 1 or more special plates as provided for in subsection (a) of this section.

(k) Dealer plates may be transferred from 1 dealer to another by completing a seller's affidavit to transfer a dealer tag or tags and submitting it with the appropriate fee. The seller's affidavit shall include the seller's and buyer's names, the plate number and the date of the transfer. A dealer may not acquire more plates than they are otherwise permitted by subsection (f) of this section.

(*l*) All special plates issued hereunder shall expire at midnight on December 31 of each year and may be extended for the ensuing year by the person to whom such plates were issued upon application to the Department and payment of the fees provided by this title.

(36 Del. Laws, c. 10, § 16; Code 1935, § 5554; 43 Del. Laws, c. 244, § 10; 21 Del. C. 1953, § 2124; 53 Del. Laws, c. 132; 58 Del. Laws, c. 364; 65 Del. Laws, c. 76, §§ 1, 2; 65 Del. Laws, c. 318, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 580, § 1; 74 Del. Laws, c. 41, § 1; 79 Del. Laws, c. 44, § 1; 84 Del. Laws, c. 302, § 2.)

§ 2125. Ownership of plates.

Number and registration plates shall be the property of the State and shall be furnished by the Department for each registered motor vehicle without additional cost to the owner.

(36 Del. Laws, c. 10, § 26; Code 1935, § 5564; 45 Del. Laws, c. 287, § 2; 21 Del. C. 1953, § 2125.)

§ 2126. Display of number plates; penalty.

(a) The number plate assigned to a motor vehicle shall at all times be attached to the rear of the motor vehicle, except truck tractors attached to trailers or semitrailers, whether coupled or uncoupled, shall display the number plate on the front of the vehicle in such a manner as to be easily identified. Such number plates shall meet the requirements of subsection (b) of this section. Special license plates may be displayed on the front or rear of the vehicle. The regular numbered plate assigned to the vehicle or a duplicate special license plate furnished under § 2121(h) of this title must be displayed on the vehicle rear when the special plate is displayed on the front of the vehicle.

(b) Every number plate shall at all times be securely fastened to the vehicle to which it is assigned so as to prevent the plate from swinging and at a height not less than 12 inches from the ground, measuring from the bottom of such plate, in a place and position to be clearly visible, and shall be maintained free from foreign materials and in a condition to be clearly legible.

(c) (1) No number plate, or any portion thereof, shall be covered with any tinted material, nor shall any other material be placed on or around a number plate which would conceal and/or obscure any information contained thereon, including the registration expiration sticker. Plate frames that do not conceal and/or obscure any information contained on the plate, including the registration expiration sticker, are not prohibited by this section.

(2) Operation and/or use of a plate frame containing or including scrolling, strobe, and/or blinking lights around a license plate for any purpose, including but not limited to advertisement, to convey a message or communication is prohibited, except during a special organized event such as a parade or car show.

(d) Whoever violates subsection (a) or (b) of this section shall be fined not less than $25 nor more than $50. Whoever violates subsection (c) of this section shall be fined not less than $100 nor more than $200.

(e) It shall be unlawful to sell, offer to sell, transfer, possess or use any kind of device, product, plate cover, or object, including any image altering device or spray, for the purpose of hindering, inhibiting, impeding, impairing, or preventing the photographing, recording or imaging of a license plate in connection with the enforcement of this motor vehicle code or any local or municipal traffic laws. Any person convicted of a violation of this subsection shall, for the first offense, be fined not less than $50 nor more than $1,000. For each subsequent violation occurring within 3 years of the date of the original violation, the person shall be fined not less than $200 nor more than $2,000.

(f) It shall be unlawful to sell any license plate cover or frame which would violate subsection (c) of this section if placed on a Delaware license plate unless the seller posts a sign in close proximity to the product which states clearly and conspicuously to the public that it is illegal to place the license plate cover or frame on Delaware license plates. Any person convicted of a violation of this section shall be fined not less than $50 and not more than $100 and shall pay restitution to the purchaser of the license plate cover or frame in the amount of 10 times the purchase price.

(36 Del. Laws, c. 10, §§ 13, 32; 37 Del. Laws, c. 10, § 11; Code 1935, §§ 5551, 5570; 43 Del. Laws, c. 244, § 7; 46 Del. Laws, c. 122, § 3; 21 Del. C. 1953, § 2126; 58 Del. Laws, c. 561; 65 Del. Laws, c. 503, § 5; 70 Del. Laws, c. 264, § 2; 70 Del. Laws, c. 320, §§ 1, 2; 74 Del. Laws, c. 15, §§ 1, 2; 74 Del. Laws, c. 321, § 1; 76 Del. Laws, c. 339, § 1; 77 Del. Laws, c. 184, § 1.)

§ 2127. Duplicate plates.

Whenever number or registration plates are lost, destroyed or so effaced as to no longer comply with the requirements of law, new plates shall be furnished by the Department upon receipt of satisfactory information and payment of the required fee.

(36 Del. Laws, c. 10, §§ 19, 26; Code 1935, §§ 5557, 5564; 43 Del. Laws, c. 244, § 15; 45 Del. Laws, c. 287, § 2; 21 Del. C. 1953, § 2127.)

§ 2128. Status of plates upon transfer of title; conditions permitting reissuance of registration number.

(a) Upon the transfer of a vehicle or upon the expiration of registration for any other cause, the number plates assigned to a vehicle shall remain attached thereto. However, the transferor may have such registration plates and number plates transferred and assigned to another vehicle upon proper application in writing to the Department and upon payment to the Department of a fee of $20 in addition to all other fees required by law.

(b) If a vehicle registration has been expired for 1 year or more, the registration number may be reissued by the Division of Motor Vehicles.

(c) If a vehicle which was registered in Delaware is titled and registered in another jurisdiction, the Delaware title and registration is immediately canceled and the registration number may immediately be reissued by the Division of Motor Vehicles.

(d) If a registered vehicle has been junked, salvaged or destroyed to an extent that it will not be registered again for highway use and if the Delaware certificate of title has been surrendered to the Division, the registration number may be reissued by the Division of Motor Vehicles.

(e) If a registration number has been removed from a vehicle pursuant to subsection (a) of this section, and if the registration has expired, the registration number may be reissued by the Division of Motor Vehicles.

(36 Del. Laws, c. 10, § 12; Code 1935, § 5550; 47 Del. Laws, c. 255, § 1; 48 Del. Laws, c. 115, § 1; 21 Del. C. 1953, § 2128; 52 Del. Laws, c. 41; 52 Del. Laws, c. 169; 63 Del. Laws, c. 338, § 1; 66 Del. Laws, c. 83, § 1; 80 Del. Laws, c. 77, § 17.)

§ 2129. Issuance of temporary registration plates with temporary permits; issuance to dealers and certified automotive repair technicians for reissuance.

(a) The Department may issue a temporary registration plate designed by the Department to an owner to whom it grants a temporary registration permit pursuant to § 2103 of this title. The dates of issuance and expiration and the make and serial number of the vehicle for which issued shall be stamped or marked with indelible ink in letters at least ¾ of an inch high upon any temporary plate so issued and a record of such information, together with the name of the owner, shall be retained by the Department. Motorcycle temporary plates may be stamped or marked in letters less than ¾ of an inch high.

(b) The Department may also issue temporary registration plates to a dealer in motor vehicles, either new or used, who submits such proof as the Department requires of such status as a bona fide dealer, for reissuance to purchasers of unregistered motor vehicles. Such plates may be issued to a qualified dealer upon application for not less than 5 of such plates and payment of a fee of $20 for each plate.

(c) The Department may also issue temporary registration plates to an automotive repair technician who is certified under 7 DE Admin. Code 1131 and submits such proof as the Department requires of such status as a bona fide certified repair technician, for reissuance to customer's unregistered motor vehicles for the purpose of verifying repairs.

(21 Del. C. 1953, § 2129; 50 Del. Laws, c. 260, § 1; 53 Del. Laws, c. 221, § 2; 67 Del. Laws, c. 265, § 1; 68 Del. Laws, c. 156, § 58(a); 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 9, § 1; 80 Del. Laws, c. 77, § 13; 80 Del. Laws, c. 94, § 1.)

§ 2130. Issuance of temporary plates by dealers and certified automotive repair technicians; information to be placed on plates; records to be maintained.

(a) A dealer may issue a temporary registration plate for a fee of not more than $20 for each plate to a purchaser of an unregistered motor vehicle who makes proper application to the Department for registration thereof upon an appropriate form and delivers such application, together with the required fee, to the dealer for transmission to the Department.

(b) A dealer who issues a temporary registration plate shall mark or stamp thereon with indelible ink in letters at least $^3/_4$ of an inch high the dates of issuance and expiration and the make and serial number of the vehicle for which issued and shall immediately transmit to the Department upon forms prescribed and furnished by the Department the aforesaid information and the name of the purchaser. Motorcycle temporary plates may be stamped or marked in letters less than $^3/_4$ of an inch high.

(c) Every dealer who receives temporary plates from the Department shall maintain at such dealer's place of business a record of all such plates issued to such dealer and of all such plates issued by such dealer, with the dates of receipt and issuance, the name of the purchaser to whom issued, the make and serial number of the vehicle for which issued and such other information as the Department may require. Each such record shall be kept for a period of at least 3 years from the date of entry and shall be available for inspection by representatives of the Department or police officers during regular business hours.

(d) A certified repair technician may issue a temporary registration plate for a fee of not more than $10 for each plate to a customer's unregistered motor vehicle.

(e) Liability insurance in the form of a shopkeeper's or garage-keeper's policy shall be in effect prior to the issuance of a temporary registration plate.

(f) A certified repair technician who issues a temporary registration plate shall mark or stamp thereon with indelible ink in letters at least $^3/_4$ of an inch high the dates of issuance and expiration and the make and serial number of the vehicle for which issued and shall immediately transmit to the Department upon forms prescribed and furnished by the Department the aforesaid information and the name of the business name that employs the certified repair technician. Motorcycle temporary plates may be stamped or marked in letters less than $^3/_4$ of an inch high.

(g) Every certified repair technician who receives temporary plates from the Department shall maintain at such certified repair technician's place of business a record of all such plates issued to such certified repair technician and of all such plates issued by such certified repair technician, with the dates of receipt and issuance, the name of the customer to whom issued, the make and serial number

of the vehicle for which issued and such other information as the Department may require. Each such record shall be kept for a period of at least 3 years from the date of entry and shall be available for inspection by representatives of the Department or police officers during regular business hours.

(21 Del. C. 1953, § 2130; 50 Del. Laws, c. 260, § 1; 53 Del. Laws, c. 326; 67 Del. Laws, c. 265, § 2; 68 Del. Laws, c. 156, § 58(b); 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 9, § 2; 80 Del. Laws, c. 77, § 15; 80 Del. Laws, c. 94, § 1.)

§ 2131. Effect and duration of temporary registration plates; destruction upon expiration; use of temporary tag system.

(a) (1) A temporary registration plate properly issued to an owner or purchaser of a vehicle in accordance with § 2129 or § 2130 of this title shall be valid and shall entitle said owner or purchaser to operate the vehicle for which issued upon the public highways for a period of 90 days from the date of issuance or until the issuance of a permanent registration plate or until the cancellation or rescission of the contract of purchase, whichever occurs first.

(2) A temporary registration plate properly issued by a certified repair technician to a customer's expired vehicle for the purpose of verifying repairs in accordance with § 2129 or § 2130 of this title shall be valid and shall entitle said certified repair technician to operate the vehicle for which issued upon the public highways for a period of not more than 60 days from the date of issuance.

(b) Upon the expiration of a temporary registration plate the holder thereof shall immediately destroy the same.

(c) A temporary registration plate properly issued to an owner or purchaser of a vehicle under § 2129 or § 2130 of this title must use a temporary tag system, approved by the Department of Motor Vehicles, unless the Division of Motor Vehicles has determined that a motor vehicle dealer or other authorized temporary tag issuer is not permitted to use the temporary tag system, and must purchase plates from the Division of Motor Vehicles pursuant to § 2129(b) of this title.

(21 Del. C. 1953, § 2131; 50 Del. Laws, c. 260, § 1; 58 Del. Laws, c. 372; 68 Del. Laws, c. 156, § 58(c); 80 Del. Laws, c. 94, § 1; 84 Del. Laws, c. 79, § 1.)

§ 2132. Regulations by Secretary of Transportation; power to suspend right to issue temporary plates.

The Secretary of Transportation shall have the power to make rules and regulations, not inconsistent with §§ 2129, 2130 and 2131 of this title, to carry out the provisions thereof relative to temporary registration plates, and the said Secretary shall have the specific power, after hearing, to suspend the right to issue temporary plates of any dealer who fails to comply with the requirements of said sections or of any regulation consistent therewith.

(21 Del. C. 1953, § 2132; 50 Del. Laws, c. 260, § 1; 57 Del. Laws, c. 670, §§ 8A, 8B; 74 Del. Laws, c. 110, § 42.)

§ 2133. Penalties; jurisdiction of justices of the peace.

(a) Any person who:

(1) Knowingly inserts any false information upon the face of a temporary registration plate; or

(2) Issues any temporary registration plate to a person or for a vehicle other than those permitted under this title; or

(3) Operates any vehicle bearing a temporary registration plate which is invalid or expired shall be guilty of an unclassified misdemeanor, and shall for the first offense be fined not less than $25 nor more than $100. For each subsequent like offense, the person shall be fined not less than $50 nor more than $200, or imprisoned not less than 10 nor more than 30 days, or both.

(b) Justices of the peace shall have jurisdiction of offenses under this section.

(21 Del. C. 1953, § 2133; 50 Del. Laws, c. 260, § 1; 65 Del. Laws, c. 503, § 6; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 60, § 3.)

§ 2134. Special license plates for persons with disabilities which limit or impair the ability to walk; parking; penalties.

(a) The owner of a vehicle registered in Delaware and described in subsection (b) of this section may apply to the Department for the issuing to the vehicle a special license plate for persons with disabilities which limit or impair the ability to walk if a licensed physician, a physician assistant who is supervised by a licensed physician, or an advanced practice nurse who is employed by or who has a collaborative agreement with a licensed physician, certifies that the applicant or a household member has 1 or more of the following disabilities that are permanent with no prognosis for improvement:

(1) Cannot walk 200 feet without stopping to rest;

(2) Cannot walk safely without the use of or assistance from a brace, cane, crutch, another person, prosthetic device, wheelchair or other assistive device;

(3) Is restricted by lung disease to such an extent that the applicant's or household member's forced (respiratory) expiratory volume for 1 second, when measured by spirometry, is less than 1 liter or the arterial oxygen tension is less than 60 mm/hg on room air at rest;

(4) Uses portable oxygen;

(5) Has a cardiac condition to the extent that the applicant's or household member's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or

(6) Is severely limited in that person's own ability to walk due to an arthritic, neurological or orthopedic condition.

(b) This section applies only to passenger cars, station wagons, pickup trucks, motorcycles, panel van trucks and other motor vehicles that are reasonably used by persons with disabilities which limit or impair the ability to walk and that have a gross registered weight which does not exceed 14,000 lbs.

(c) A special license plate may be issued under this section only if the applicant submits proof satisfactory to the Department that the applicant or a household member has a disability that is permanent with no prognosis for improvement as described in paragraphs (a)(1)-(6) of this section. Satisfactory proof prior to issuance must include the signature of a licensed physician, a physician assistant who is supervised by a licensed physician, or an advanced practice nurse who is employed by or who has a collaborative agreement with a licensed physician, on a Department special disabled license plate or placard applicant form on which the physician, a physician assistant who is supervised by a licensed physician, or an advanced practice nurse who is employed by or who has a collaborative agreement with a licensed physician, certifies the applicant's or household member's permanent disability. Renewal of the registration for the vehicle to which the special license plate is assigned shall require the applicant to submit a written certification that the applicant continues to require the special license plate for the reason or reasons it was initially issued; a new certification is not required. The issuance of a special license plate does not preclude the issuance of 1 removable windshield placard pursuant to § 2135 of this title.

(d) The fee for the issuance or reissuance of a special license plate may not exceed the fee charged for the issuance or reissuance of a standard license plate for the same class of vehicle.

(e) A special license plate issued pursuant to this section must display the internationally recognized wheelchair symbol of access in the same size as the numbers and/or letters on the plate.

(f) (1) A person for whom a special license plate is issued under this section or under a similar statute of any other state or country may park in parking spaces or zones as follows:

a. Restricted for use by persons with disabilities which limit or impair the ability to walk.

b. For an unlimited period in an unmetered parking space or zone restricted as to the length of parking time permitted.

c. In a metered parking space for no less than 1 hour.

d. If a parking space is assigned to a specific person with a disability as that person's residential or business parking space, that person may use the space without any time restriction.

(2) A person who is driving a vehicle with a special license plate issued under this section or under a similar statute of any other state or country may not park in any of the following places:

a. In a space or zone where stopping, standing, or parking is prohibited to all vehicles.

b. In a space or zone which is reserved for other special types of vehicles.

c. In a space or zone assigned to another person for the other person's residential or business use.

d. Where a local ordinance prohibits parking during heavy traffic periods in morning, afternoon, or evening rush hours.

e. Where parking clearly would present a traffic hazard.

(3) The person for whom a special license plate is issued under this section or under a similar statute of any other state or country must be the driver of or a passenger in the vehicle bearing the special plate whenever the vehicle parks in a parking space or zone restricted for use only by vehicles with a special license plate or placard for persons with disabilities which limit or impair the ability to walk.

(g) (1) A person who intentionally presents false information to a licensed physician, a physician assistant who is supervised by a licensed physician, or an advanced practice nurse who is employed by or who has a collaborative agreement with a licensed physician, or to the Department in an attempt to obtain a special license plate under this section shall be guilty of an unclassified misdemeanor. For the first offense, the person shall receive a mandatory fine of $100. For each subsequent like offense, the person shall receive a mandatory fine of $200 or be imprisoned for not less than 10 nor more than 30 days, or both. Any other violation of this section is a violation. Justices of the peace have jurisdiction over violations of this section.

(2) A summons may be attached to an unattended vehicle found in violation of any of the provisions of this section by any police officer or State Police Academy cadet authorized to issue a summons for a violation of this section. It is prima facie evidence that the person in whose name the unattended vehicle is registered is responsible for the violation.

(h) The Department may adopt rules and regulations that are reasonable or necessary for the implementation of this section.

(21 Del. C. 1953, § 2134; 55 Del. Laws, c. 398, § 1; 61 Del. Laws, c. 345, § 1; 63 Del. Laws, c. 341, § 1; 63 Del. Laws, c. 441; 65 Del. Laws, c. 503, § 7; 67 Del. Laws, c. 125, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 96, § 1; 73 Del. Laws, c. 397, § 1; 76 Del. Laws, c. 210, § 1; 77 Del. Laws, c. 60, § 4; 77 Del. Laws, c. 113, §§ 1-3; 83 Del. Laws, c. 160, § 2.)

§ 2135. Parking permits for persons with disabilities which limit or impair the ability to walk; parking; penalties.

(a) A person or a member of the person's household who has a disability that is permanent with no prognosis for improvement as described in § 2134(a)(1)-(6) of this title or who has a physical disability which is not permanent but which substantially limits or impairs the person's or household member's ability to walk for no less than 5 weeks and which is so severe that the person or household member

would endure a hardship or be subject to a risk of injury without a temporary parking permit for persons with disabilities, or a person who is age 80 or older, whether or not that person has a disability, or an organization that regularly in its course of business transports persons with disabilities may apply to the Department for a permanent or temporary parking permit, whichever is appropriate, on a form provided by the Department. The form must state:

(1) That a permanent permit for a person with a disability, or for a person 80 or older, expires after 8 years, or for an organization that regularly in its course of business transports persons with disabilities expires after 3 years and a temporary permit for a person with a disability may not exceed 180 days;

(2) That an individual licensed under Chapter 17 or 19 of Title 24 must certify a disability and indicate whether the applicant or household member needs a permanent parking permit or a temporary parking permit;

(3) That an applicant 80 or older need only submit proof of age that is satisfactory to the Department; and

(4) The possible penalties for intentionally and falsely representing that an applicant or household member is qualified to obtain a permanent or temporary parking permit.

An applicant or a household member who is eligible for a special license plate pursuant to § 2134 of this title may also apply for 1 permanent parking permit under this section. A parking permit is issued in the form of a removable placard capable of hanging from or being attached to the front windshield rearview mirror of a vehicle.

(b) A permanent or temporary parking permit may be issued under this section only if the applicant submits proof satisfactory to the Department that the applicant or household member has a disability that is permanent with no prognosis for improvement as described in § 2134(a)(1)-(6) of this title, or that the applicant or household member has a physical disability which is not permanent but which substantially limits or impairs the applicant's or household member's ability to walk for no less than 5 weeks and which is so severe that the applicant or household member would endure a hardship or be subject to a risk of injury without a temporary parking permit for persons with disabilities, or that the applicant or household member is 80 or older, or that the applicant is an organization that regularly in its course of business transports persons with disabilities. Satisfactory proof of a disability must include the signature of an individual licensed under Chapter 17 or 19 of Title 24 on a Department special license plate or placard application form indicating the applicant's or household member's disability.

(c) The Department may not charge a fee for issuing or reissuing a parking placard. However, the Department shall charge a fee to offset the actual replacement cost of replacing a lost or damaged placard.

(d) (1) A permanent permit issued under this section for a person who has a disability stated in § 2134(a) of this title, or for a person 80 or older, expires 8 years from the date of issue, or to an organization that regularly in its course of business transports persons with disabilities expires 3 years from the date of issue. However, another permanent permit may be issued upon reapplication.

(2) A temporary permit issued under this section for an applicant who has a physical disability which is not permanent but which substantially limits or impairs the person's ability to walk for no less than 180 days and that is so severe that the person would endure a hardship or be subject to a risk of injury without a temporary parking permit for persons with disabilities expires at the discretion of the Department, but may not exceed 180 days from the date of issue. However, another temporary permit may be issued upon reapplication.

(3) There is no limit to the number of times that a person may reapply for a permanent or temporary parking permit issued under this section. However, for each reapplication for a temporary parking permit, the applicant must comply with the requirements for an initial application as set forth in subsection (a) of this section. A new certification is not required for applicants or applicants' household members who have a permanent disability as described in § 2134(a)(1)-(6) of this title; however, the applicant shall submit a written certification that the applicant continues to require the parking permit for the reason or reasons it was initially issued.

(e) A parking permit for a person with a disability which limits or impairs the ability to walk, or for a person 80 or over, or for an organization pursuant to subsection (i) of this section must be in the form of a removable windshield placard of a size and design determined by the Department. A permanent parking placard must be blue; a temporary parking placard must be red; an organization parking placard must be green. The information on the placard must be large enough to be read clearly from outside a motor vehicle when the placard is hanging from the vehicle's front windshield rearview mirror, or if there is no front windshield rearview mirror, the placard must be displayed on the dashboard and be able to be read by a person outside of the vehicle. Both sides of the placard must contain the following:the words "State of Delaware Division of Motor Vehicles" and "Remove placard when vehicle is in motion," the internationally recognized wheelchair symbol of access, an identification number, and the expiration date. The expiration date must appear in letters or numerals at least 1 inch tall. Only 1 placard may be issued initially to an applicant; however, upon written request, the Department shall issue 1 additional placard to an applicant who does not also have a special license plate issued pursuant to § 2134 of this title.

(f) (1) A person or organization for whom a parking placard is issued under this section or under a similar statute of any other state or country may park in parking spaces or zones as follows:

a. Restricted to use only by persons with disabilities.

b. For an unlimited period in an unmetered parking space or zone restricted as to the length of parking time permitted.

c. In a metered parking space for no less than 1 hour.

d. If a parking space is assigned to a specific person with a disability as that person's residential or business parking space, that person may use the space without any time restriction.

(2) A person who is driving a vehicle with a parking placard issued under this section or under a similar statute of any other state or country may not park in any of the following places:

a. In a space or zone where stopping, standing, or parking is prohibited to all vehicles.

b. In a space or zone which is reserved for other special types of vehicles.

c. In a space or zone assigned to another person for the other person's residential or business use.

d. Where a local ordinance prohibits parking during heavy traffic periods in morning, afternoon, or evening rush hours.

e. Where parking clearly would present a traffic hazard.

(3) a. The person for whom a red or blue parking placard is issued under this section or under a similar statute of any other state or country must be the driver of or a passenger in the vehicle displaying the parking placard whenever the vehicle parks in a parking space or zone restricted for use only by vehicles with a special license plate or parking placard for persons with disabilities.

b. Individuals who become residents of Delaware, who have a valid placard issued by another state, who desire a permanent or temporary placard issued by the Department, shall apply within 180 days of taking up residence in the State and submit the documents required as outlined in subsection (b) of this title.

(g) A placard issued under this section is for the exclusive and personal use of the person or organization for whom it is issued and may not be used by any other person or organization.

(h) A parking placard must be returned to the Department:

(1) When the person or organization for whom it was issued reapplies for a placard;

(2) When the placard expires;

(3) When the person or organization for whom it was issued no longer needs it, is no longer disabled, or no longer regularly in its course of business transports persons with disabilities;

(4) Upon the death of the person for whom it was issued.

(i) Notwithstanding any provisions of this Code to the contrary, the Department may, without the certification of an individual licensed under Chapter 17 or 19 of Title 24, issue a green parking placard upon application by an organization that regularly in its course of business transports persons with disabilities which limit or impair the ability to walk if the organization presents proof satisfactory to the Department that the organization regularly in its course of business transports persons with disabilities. A green parking placard may be used only when at least 1 person who is entitled to obtain a permanent or temporary parking placard pursuant to subsection (a) of this section is being transported and only when an employee or volunteer staff person of the organization is the driver of the vehicle.

(j) (1) A person or organization who intentionally presents false information to an individual licensed under Chapter 17 or 19 of Title 24, or to the Department in an attempt to obtain a parking placard under this section shall be guilty of an unclassified misdemeanor. For the first offense, the person or organization shall receive a mandatory fine of $100. For each subsequent like offense, the person or organization shall receive a mandatory fine of $200 or be imprisoned for not less than 10 nor more than 30 days, or both. Any other violation of this section is a violation. Justices of the peace have jurisdiction over violations of this section.

(2) A summons may be attached to an unattended vehicle found in violation of any of the provisions of this section by any police officer or State Police Academy cadet authorized to issue a summons for a violation of this section. It is prima facie evidence that the person or organization in whose name the unattended vehicle is registered is responsible for the violation.

(k) The Department may adopt rules and regulations that are reasonable or necessary for the implementation of this section.

(63 Del. Laws, c. 441, § 2; 64 Del. Laws, c. 88, § 1; 65 Del. Laws, c. 102, §§ 1-3; 65 Del. Laws, c. 503, § 8; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 397, § 2; 76 Del. Laws, c. 210, § 2; 77 Del. Laws, c. 60, § 5; 77 Del. Laws, c. 113, § 4; 83 Del. Laws, c. 160, § 2; 84 Del. Laws, c. 314, § 1.)

§ 2136. Sale and manufacture of registration plates.

(a) No person shall sell or offer for sale any vehicle registration plate which is similar in design, shape, size and colors to any vehicle license plate considered valid for registration purposes.

(b) No person shall manufacture vehicle registration plates which are similar in design, shape, size and colors to any vehicle license plate considered valid for registration purposes, unless authorized in writing by the Director of the Division of Motor Vehicles.

(c) This section shall not apply to registration plates issued prior to 1941 which are collectors' items.

(d) A violation of this section shall be an unclassified misdemeanor. Justice of the Peace Courts shall have jurisdiction over violations of this section.

(60 Del. Laws, c. 604, § 1; 63 Del. Laws, c. 441, § 2; 77 Del. Laws, c. 60, § 6.)

§ 2137. Special license plates for former prisoners of war.

(a) (1) The owner of any vehicle described in paragraph (a)(2) of this section may apply to the Department for the assignment to that vehicle of a special prisoner-of-war registration number.

(2) This section applies only to:

a. A private passenger vehicle; or

b. A truck with a $^{3}/_{4}$-ton or less manufacturer's rated capacity.

(b) Special registration may be issued under this section only if:

(1) The applicant states that the applicant is a former prisoner of war in any war, the Korean conflict, the Viet Nam conflict, Operation Desert Storm or other military conflict on foreign soil in which United States armed forces were formally engaged in battle; and

(2) The United States Department of Defense certifies that the applicant was a former prisoner of war in any war, the Korean conflict, the Viet Nam conflict, Operation Desert Storm or other military conflict on foreign soil in which United States armed forces were formally engaged in battle.

(3) Upon receipt by the Department of information that the individual to whom the special plate has been issued is deceased, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of paragraph (a)(2) of this section as a valid registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration.

(c) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section; provided, however, that an original application under this section shall be subject to a $10 administrative fee.

(d) [Repealed.]

(e) The Department shall reserve sufficient special license plates including the letters "POW" and numbered consecutively beginning with the numeral 1 as are necessary to implement this section.

(64 Del. Laws, c. 206, § 1; 70 Del. Laws, c. 9, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 204, § 5; 80 Del. Laws, c. 49, § 1.)

§ 2138. Special license plates for veterans with disabilities.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Department for the assignment to that vehicle of a special disabled veteran number.

(b) This section applies only to:

(1) A private passenger vehicle; or

(2) A truck with a $^{3}/_{4}$-ton or smaller manufacturer's rated capacity.

(c) Special registration may be issued under this section only if:

(1) The applicant states that:

a. The applicant is a veteran with a disability of any war, the Korean conflict, the Viet Nam conflict, Operation Desert Storm or other military conflict on foreign soil in which United States armed forces were formally engaged in battle; or

b. It has been determined by the United States Department of Veterans Affairs that the applicant meets the qualifications of being a veteran with a service-connected disability; and

(2) a. The United States Department of Defense certifies that the applicant sustained a disabling injury in any war, the Korean conflict, the Viet Nam conflict, Operation Desert Storm or other military conflict on foreign soil in which United States armed forces were formally engaged in battle; or

b. The United States Department of Veterans Affairs certifies that the applicant meets the qualifications of being a veteran with a service-connected disability.

(3) Upon receipt by the Department of information that the individual to whom the special plate has been issued is deceased, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of subsection (b) of this section as a valid registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration.

(d) (1) Any applicant who applies for the assignment of a special plate under this section who also submits proof satisfactory to the Department that the applicant or a household member has a disability that would permit issuance of a special license plate under § 2134 of this title may be issued a special plate for veterans with disabilities that will be considered in all respects as a special license plate for persons with disabilities issued under § 2134 of this title.

(2) A special license plate issued pursuant to this subsection must, in addition to the special disabled veteran number, display the internationally recognized wheelchair symbol of access on the plate.

(3) The Department may adopt rules and regulations that are reasonable or necessary for the implementation of this subsection.

(e) No fee in addition to the annual registration fee required by this title is required for registration under this section; however, the original application under this section shall be subject to a $10 administrative fee.

(f) The Department shall reserve sufficient license plates including the letters "DAV" and numbered consecutively beginning with the numeral "1" as are required for this section.

(64 Del. Laws, c. 262, § 1; 70 Del. Laws, c. 9, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 204, § 5; 78 Del. Laws, c. 107, §§ 1-3; 80 Del. Laws, c. 49, § 1.)

§ 2139. Special license plates for veterans formerly missing-in-action.

(a) (1) The owner of any vehicle described in paragraph (a)(2) of this section may apply to the Department for the assignment to that vehicle of a special missing-in-action registration number.

(2) This section applies only to:

a. A private passenger vehicle; or

b. A truck with a $^{3}/_{4}$-ton or less manufacturer's rated capacity.

(b) Special registration may be issued under this section only if:

(1) The applicant states that the applicant is a veteran formerly missing-in-action in any war, the Korean conflict, the Vietnam conflict, Operation Desert Storm or other military conflict on foreign soil in which United States armed forces were formally engaged in battle; and

(2) The United States Department of Defense certifies that the applicant was a veteran formerly missing-in-action in any war, the Korean conflict, the Vietnam conflict, Operation Desert Storm or other military conflict on foreign soil in which United States armed forces were formally engaged in battle.

(3) Upon receipt by the Department of information that the individual to whom the special plate has been issued is deceased, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of paragraph (a)(2) of this section as a valid registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration.

(c) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section; provided, however, that an original application under this section shall be subject to a $10 administrative fee.

(d) The Department shall reserve sufficient special license plates including the letters "MIA" and numbered consecutively beginning with the numeral "1" as are necessary to implement this section.

(65 Del. Laws, c. 277, § 1; 70 Del. Laws, c. 9, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 204, § 5; 80 Del. Laws, c. 49, § 1.)

§ 2139A. Special license plates for members of the Delaware National Guard and Reserves.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Department for the assignment to that vehicle of a special Delaware National Guard or Reserves number; provided, however, the owner of the vehicle must possess official documentation which indicates the owner is a bona fide member of the Delaware National Guard or Reserves.

(b) This section shall apply only to:

(1) A private passenger vehicle; or

(2) A truck with no more than a $^{3}/_{4}$-ton manufacturer's rated capacity.

(c) Other than the annual registration fee required by this title, no fee shall be required for registration under this section; however, the original application shall be subject to a $10 administrative fee.

(d) The Department shall reserve sufficient special license plates, including appropriate letters and numbered consecutively, beginning with the numeral "1", as are required under this section.

(e) Upon receipt of any official correspondence from the Delaware National Guard or Reserves advising that the individual to whom a special plate has been issued is no longer affiliated with the National Guard or Reserves such special plate shall be forfeited and/or revoked immediately.

(f) Upon receipt by the Department of information that the individual to whom the special plate has been issued is deceased, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of subsection (b) of this section as a valid registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration.

(68 Del. Laws, c. 2, § 1; 70 Del. Laws, c. 9, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 49, § 1.)

§ 2139B. Special license plates for recipients of the Purple Heart.

(a) (1) The owner of any vehicle described in paragraph (a)(2) of this section may apply to the Department for assignment to that vehicle of a special Purple Heart registration number; provided however, that the owner of the vehicle must possess official documentation which indicates that such owner is the recipient of the Purple Heart medal.

(2) This section applies only to:

a. A private passenger vehicle; or

b. A truck with a $^{3}/_{4}$-ton or less manufacturer's rated capacity.

(b) Special registration may be issued by the Department under this section if the United States Department of Defense certifies that the applicant is a veteran of World War I, World War II, the Korean Conflict, Vietnam Conflict, Operation Desert Storm or other military conflict on foreign soil in which United States armed forces were formally engaged in battle.

(c) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section; provided however, that an original application under this section shall be subject to a $10 administrative fee.

(d) The Department shall reserve sufficient special license plates including the letters "PH" and numbered consecutively beginning with the numeral "1" as are necessary to implement this section.

(e) Upon receipt by the Department of information that the individual to whom the special plate has been issued has died, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of paragraph (a)(2) of this section as a valid

registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration. In the event the surviving spouse remarries, the plate must be returned to the Department within 90 days. If no spouse exists at the time the Department receives information regarding the death of the individual to whom the special plate was issued, the Department shall write to the representative of that person's estate, requesting that such plate be returned to the Department within 90 days.

(69 Del. Laws, c. 22, § 1; 70 Del. Laws, c. 9, § 1; 80 Del. Laws, c. 49, § 1.)

§ 2139C. Special license plates for members of Ducks Unlimited.

(a) The owner of any vehicle described in this subsection may apply to the Department for the assignment to that vehicle of a special Ducks Unlimited registration.

This section applies only to:

a. A private passenger vehicle; or

b. A truck with a $^{3}/_{4}$-ton or smaller manufacturer's rated capacity.

(b) Special registration may be issued under this section only if:

(1) The applicant states that the applicant is a member of the Delaware Chapter of Ducks Unlimited; and

(2) The Delaware Chapter of Ducks Unlimited certifies that the applicant is an active member of that organization.

(c) No fee in addition to the annual registration fee required by this title is required for registration under this section; however, the original application under this section shall be subject to a $10 administrative fee, which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of administering this section and to fund Division of Motor Vehicle projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(d) The Department shall reserve sufficient license plates including the letters "D.U." and numbered consecutively beginning with the numeral "1" as are required for this section.

(e) Upon notification from the Delaware Chapter of Ducks Unlimited that an individual is no longer an active member of that organization, the Department shall notify the license plate holder to surrender the license plate to the Department within 30 days.

(69 Del. Laws, c. 33, § 1; 70 Del. Laws, c. 9, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 43.)

§ 2139D. Special license plates for recipients of medals or commendations for valor.

(a) (1) The owner of any vehicle described in paragraph (a)(2) of this section may apply to the Department for assignment to that vehicle of a special valor registration number; provided, however, that the owner of the vehicle must possess official documentation which indicates that such owner is the recipient of a medal or commendation for valor while serving in the United States Armed Forces, including, but not limited to, the Congressional Medal of Honor, the Silver Star, the Bronze Star, the Flying Cross, the Navy Cross, or a Letter of Commendation if awarded for valor under combat conditions.

(2) This section applies only to:

a. A private passenger vehicle; or

b. A truck with a ¾-ton or less manufacturer's rated capacity.

(b) Special registration may be issued by the Department under this section if the United States Department of Defense certifies that the applicant is a veteran of World War I, World War II, the Korean Conflict, the Vietnam Conflict, Operation Desert Storm or other military conflict on foreign soil in which United States armed forces were formally engaged in battle.

(c) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section; provided, however, that an original application under this section shall be subject to a $10 administrative fee which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of administering this section and to fund Department projects notwithstanding Chapters 13 and 14 of Title 2 to the contrary.

(d) The Department shall reserve sufficient special license plates including the letter "V" and numbered consecutively beginning with the numeral "1" as are necessary to implement this section. In addition, any special license plate issued pursuant to this section shall include an insignia of the specific medal or commendation awarded to the applicant.

(e) Upon receipt by the Department of information that the individual to whom the special plate has been issued has died, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of paragraph (a)(2) of this section as a valid registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration. If no spouse exists, the Department shall write to the representative of that person's estate, requesting that such plate be returned to the Department within 90 days.

(70 Del. Laws, c. 24, § 1; 80 Del. Laws, c. 49, § 1.)

§ 2139E. Special license plates for retired military personnel of the United States Armed Forces.

(a) (1) The owner of any vehicle described in subsection (b) of this section may apply to the Department for assignment to that vehicle of a special retired military registration number; provided, however, that the owner of the vehicle must possess official documentation which indicates that the owner has retired from the United States armed forces.

(2) Special registration may be issued by the Department under this section if the United States Department of Defense certifies that the applicant has been honorably discharged from the United States armed forces after having served an aggregate minimum of 20 years in 1 or more of the branches of the United States armed services.

(b) This section applies only to:

(1) A private passenger vehicle; or

(2) A truck with a $^{3}/_{4}$-ton or less manufacturer's rated capacity.

(c) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section; provided, however, that an original application under this section shall be subject to a $10 administrative fee which shall be deposited into a special fund and used by the Division of Motor Vehicles with the purpose of administering this section and to fund Department projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(d) The Department shall reserve sufficient special license plates numbered consecutively beginning with the numeral "1" as are necessary to implement this section. In addition, any special license plate issued pursuant to this section shall include the insignia of the seal of the branch of the armed services from which the applicant retired directly above the word "retired."

(e) Upon receipt by the Department of information that the individual to whom the special plate has been issued has died, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of subsection (b) of this section as a valid registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration. If no spouse exists, the Department shall write to the representative of that person's estate, requesting that such plate be returned to the Department within 90 days.

(70 Del. Laws, c. 200, § 1; 80 Del. Laws, c. 49, § 1.)

§ 2139F. Special animal welfare license plates.

(a) The owner of any vehicle described in paragraph (b) of this subsection may apply to the Department for the assignment to that vehicle of a special animal welfare registration.

(b) This section applies only to:

(1) A private passenger vehicle.

(2) A truck or trailer with a manufacturer's gross vehicle weight rating (GVWR) of 26,000 pounds or less.

(c) Upon the initial application for a plate to be issued pursuant to this section, a 1-time fee of $50, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title. This additional fee is required for members of nonprofit organizations even if members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee to be set by the Division which shall cover the cost of the plate.

(d) The 1-time administrative fee collected pursuant to subsection (c) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administering this section. Proceeds remaining after the Division of Motor Vehicles have covered the costs of promoting and administering this section shall be applied pursuant to subsection (f) of this section.

(e) All registration plates issued pursuant to this section shall be of the colors and design as determined by the Department of Health and Social Services. The numbers and/or letters assigned will be the same as the current license plate assigned to the vehicle. The license plate may also include words, a slogan or an emblem indicating support for, or interest in, animal welfare. The Department of Health and Social Services may at its discretion drop the wording "The First State" and substitute in place thereof an animal welfare slogan. The Division of Motor Vehicles shall have the power to refuse any design which it believes would cause a public safety enforcement problem.

(f) The funds derived by the State from that portion of the 1-time fee of $50 that is not defined as an administrative fee pursuant to subsection (d) of this section shall be deposited in the State Treasury and credited to the Spay/Neuter Fund in the Department of Health and Social Services.

(g) [Repealed.]

(h) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(70 Del. Laws, c. 276, § 2; 70 Del. Laws, c. 476, §§ 1, 2; 78 Del. Laws, c. 235, § 1; 79 Del. Laws, c. 78, § 148; 79 Del. Laws, c. 377, § 3; 81 Del. Laws, c. 380, § 1; 82 Del. Laws, c. 133, § 1; 84 Del. Laws, c. 477, § 2.)

§ 2139G. Special license plates for Korean War veterans.

(a) (1) The owner of any vehicle described in paragraph (a)(2) of this section may apply to the Department for assignment to that vehicle of a special Korean War veteran registration number; provided however, that the owner of the vehicle must possess official documentation which indicates that such owner is a Korean War veteran.

(2) This section applies only to:

a. A private passenger vehicle; or

b. A truck with a $^{3}/_{4}$-ton or less manufacturer's rated capacity.

(b) Special registration may be issued by the Department under this section if the United States Department of Defense certifies that the applicant is a veteran of the Korean War.

(c) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section; provided however, that an original application under this section be subject to a $10 administrative fee, which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of administering this section and to fund Department projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(d) Only 1 such plate shall be issued to an applicant.

(e) The Department shall reserve sufficient special license plates including the letters "KW" and numbered consecutively beginning with the numeral "1" as are necessary to implement this section.

(f) Upon receipt by the Department of information that the individual to whom the special plate has been issued has died, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of paragraph (a)(2) of this section as a valid registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration. If no spouse exists, the Department shall write to the representative of that person's estate, requesting that such plate be returned to the Department within 90 days.

(g) At least 50 members of the organization must apply for the special plate authorized by this section.

(70 Del. Laws, c. 322, § 1; 80 Del. Laws, c. 49, § 1.)

§ 2139H. Farmland preservation plates.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles for a special "Farmland Preservation" registration plate.

(b) This section applies to:

(1) A private passenger vehicle; or

(2) A truck or trailer with a manufacturer's gross vehicle weight rating (GVWR) of 26,000 pounds or less.

(c) Upon the initial application for a plate to be issued pursuant to this section, a 1-time fee of $50, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title. This additional fee is required for all persons applying for a special plate pursuant to this section, including members of nonprofit organizations, even if members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee to be set by the Division, which shall cover the cost of the plate.

(d) The 1-time administrative fee collected pursuant to subsection (c) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administering this section. Proceeds remaining after the Division of Motor Vehicles has covered the costs of promoting and administering this section shall be applied pursuant to subsection (e) of this section.

(e) The funds derived by the State from that portion of the 1-time fee of $50 that is not defined as an administrative fee pursuant to subsection (d) of this section shall be deposited by the Division of Motor Vehicles with the State Treasurer and shall be specifically set aside and deposited with the Delaware Agricultural Lands Preservation Foundation for its deposit in the Delaware Farmland Preservation Fund.

(f) All registration plates issued pursuant to this section shall be of the colors and design as determined by the Farmland Preservation Contest Committee. The numbers and/or letters assigned will be the same as the current license plate assigned to the vehicle. The committee may, at its discretion, drop the wording "The First State" and substitute in place thereof the wording "Preserve Our Farms". The Division of Motor Vehicles shall have the power to refuse any design which it believes would cause a public safety enforcement problem.

(g) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(74 Del. Laws, c. 47, § 2; 81 Del. Laws, c. 380, § 2.)

§ 2139I. Special license plates for holders of Gold Star lapel buttons.

(a) (1) The owner of any vehicle described in subsection (b) of this section may apply to the Department for assignment to that vehicle of a special Gold Star family registration number; provided, however, that the owner of the vehicle qualifies under paragraph (a)(2) of this section.

(2) Special registration may be issued by the Department under this section if the applicant provides sufficient official documentation of being awarded a Gold Star lapel button by the United States Department of Defense in recognition of a close relative's death while serving in the military.

(b) This section applies only to:

(1) A private passenger vehicle; or

(2) A truck with a $^{3}/_{4}$-ton or less manufacturer's rated capacity.

(c) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section.

(d) The Department shall reserve sufficient special license plates including the letters “GS” and numbered consecutively beginning with the numeral “1” as are necessary to implement this section. In addition, any special license plate issued pursuant to this section shall include a gold star and the phrase “Gold Star Family”.

(e) Upon receipt by the Department of information that the individual to whom the special plate has been issued has died, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of subsection (b) of this section as a valid registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration. If no spouse exists, the Department shall write to the representative of that person’s estate, requesting that such plate be returned to the Department within 90 days.

(76 Del. Laws, c. 204, § 1; 80 Del. Laws, c. 7, § 1; 80 Del. Laws, c. 49, § 1.)

§ 2139J. Special license plates for veterans of Operation Iraqi Freedom.

(a) (1) The owner of any vehicle described in paragraph (a)(2) of this section may apply to the Department for assignment to that vehicle of a special Operation Iraqi Freedom veterans registration number; provided however, that the owner of the vehicle must possess official documentation which indicates that such owner is a veteran of Operation Iraqi Freedom.

(2) This section applies only to:

a. A private passenger vehicle; or

b. A truck with a $^{3}/_{4}$-ton or less manufacturer’s rated capacity.

(b) Special registration may be issued by the Department under this section if the United States Department of Defense certifies that the applicant is a veteran of Operation Iraqi Freedom.

(c) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section; provided however, that an original application under this section be subject to a $10 administrative fee, which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of administering this section and to fund Department projects notwithstanding the provisions of Chapter 13 and 14 of Title 2 to the contrary.

(d) Only 1 such plate shall be issued to an applicant.

(e) The Department shall reserve sufficient special license plates including the letters “OIF” and numbered consecutively beginning with the numeral “1” as are necessary to implement this action.

(f) Upon receipt by the Department of information that the individual to whom the special plate has been issued has died, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of paragraph (a)(2) of this section as a valid registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration. If no spouse exists, the Department shall write to the representative of that person’s estate, requesting that such plate be returned to the Department within 90 days.

(76 Del. Laws, c. 204, § 2; 80 Del. Laws, c. 49, § 1.)

§ 2139K. Special license plates for Vietnam War veterans.

(a) (1) The owner of any vehicle described in paragraph (a)(2) of this section may apply to the Department for assignment to that vehicle of a special Vietnam War veteran registration number; provided however, that the owner of the vehicle must possess official documentation which indicates that such owner is a Vietnam War veteran.

(2) This section applies only to:

a. A private passenger vehicle; or

b. A truck with a $^{3}/_{4}$-ton or less manufacturer’s rated capacity.

(b) Special registration may be issued by the Department under this section if the United States Department of Defense certifies that the applicant is a veteran of the Vietnam War.

(c) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section, provided however, that an original application under this section be subject to a $10 administrative fee, which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of administering this section and to fund Department projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(d) Only 1 such plate shall be issued to an applicant.

(e) Upon receipt by the Department of information that the individual to whom the special plate has been issued is deceased, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of subsection (b) of this section as a valid registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration.

(f) The Department shall reserve sufficient special license plates including the letters “VV” and numbered consecutively beginning with the numeral “1” as are necessary to implement this section.

(g) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(76 Del. Laws, c. 204, § 3; 80 Del. Laws, c. 49, § 1.)

§ 2139L. "Limited edition" special centennial license plates [Expired Dec. 31, 2009; issued plates indefinitely valid per 76 Del. Laws, c. 274, § 2].

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles for a special centennial registration plate from October 1, 2008, through December 31, 2009.

(b) This section applies only to:

(1) A private passenger vehicle; or

(2) A truck or trailer that is not either required to be or voluntarily registered with the International Registration Plan; or

(3) A recreational vehicle.

(c) Upon the initial application for a plate to be issued pursuant to this section, a 1-time fee of $100, which includes an administration fee of $15, is required in addition to the annual registration fee required by this title. This additional fee is required for all persons applying for this centennial plate. A replacement plate may be obtained upon payment of a $15 fee to the Division.

(d) The 1-time administrative fee collected pursuant to subsection (c) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administrative costs.

(e) All registration plates issued pursuant to this section shall be the colors and design as determined by the Division of Motor Vehicles. The number and/or letters assigned will be the same as the current license plate assigned to the vehicle. The Division of Motor Vehicles may, at its discretion, drop the wording "The First State" and substitute in place thereof wording honoring the centennial.

(f) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(76 Del. Laws, c. 274, § 1.)

§ 2139M. Law Enforcement Memorial license plate.

(a) (1) The owner of any vehicle described in paragraph (a)(2) of this section may apply to the Department for assignment to that vehicle of a special Law Enforcement Memorial registration number; provided, however, that the owner of the vehicle must possess documentation:

a. That indicates that such person is a "police officer" as defined in § 8401 of Title 11;

b. That indicates that such person is an immediate family member of a "police officer" as defined in § 8401 of Title 11 who was killed in the line of duty; or

c. From the Delaware Police Chiefs' Council that it is appropriate for such person to receive a special Law Enforcement Memorial registration number.

(2) This section applies only to:

a. A private passenger vehicle; or

b. A truck or van with a $^{3}/_{4}$-ton or smaller manufacturer's rated capacity.

(b) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section; provided, however, that an original application under this section shall be subject to a $35 administrative fee, which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purposes of administering this section and to fund Department projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(c) All registration plates issued pursuant to this section shall be of the colors and design as determined by the Law Enforcement Memorial License Plate Committee created pursuant to subsection (d) of this section. The license plate may also include words, a slogan or an emblem supporting the Law Enforcement Memorial. The Committee may at its discretion drop the wording "The First State" and substitute in lieu thereof "Law Enforcement Memorial". The Division of Motor Vehicles shall have the power to refuse any design which it believes would cause a public safety enforcement problem.

(d) For purposes of this section, the "Law Enforcement Memorial License Plate Committee" shall consist of the following:

(1) The Director of the Division of Motor Vehicles or designee;

(2) The Chairperson of the Delaware Police Chiefs' Foundation or designee;

(3) The Colonel of the Delaware State Police or designee; and

(4) The Chairperson of the Delaware Police Chiefs' Council or designee.

(e) The Department shall reserve sufficient special license plates including the letters "LEM" and numbered consecutively beginning with the numeral "1" as are necessary to implement this section.

(f) The Delaware Police Chiefs' Council shall have the authority to assign the license plate numbers at its discretion.

(g) Upon receipt by the Department of information that the individual to whom the special plate has been issued is no longer affiliated with such organization or has died, whichever is applicable, the Department shall write to such person or the representative of that person's estate, requesting that such plate be returned to the Department within 90 days.

(h) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(78 Del. Laws, c. 153, § 1; 83 Del. Laws, c. 83, § 2.)

§ 2139N. Special license plates for veterans of Operation Enduring Freedom.

(a) (1) The owner of any vehicle described in paragraph (a)(2) of this section may apply to the Department for assignment to that vehicle of a special Operation Enduring Freedom veterans registration number; provided however, that the owner of the vehicle must possess official documentation which indicates that such owner is a veteran of Operation Enduring Freedom.

(2) This section applies only to:

a. A private passenger vehicle; or

b. A truck with a $^{3}/_{4}$-ton or less manufacturer's rated capacity.

(b) Special registration may be issued by the Department under this section if the United States Department of Defense certifies that the applicant is a veteran of Operation Enduring Freedom.

(c) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section; provided however, that an original application under this section be subject to a $15 administrative fee, which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of administering this section and to fund Department projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(d) Only 1 such plate shall be issued to an applicant.

(e) Upon receipt by the Department of information that the individual to whom the special plate has been issued is deceased, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of paragraph (a)(2) of this section as a valid registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration.

(f) The Department shall reserve sufficient special license plates including the letters "OEF" and numbered consecutively beginning with the numeral "1" as are necessary to implement this section.

(78 Del. Laws, c. 231, § 1; 80 Del. Laws, c. 49, § 1.)

§ 2139O. Marine Education, Research and Rehabilitation Institute, Inc. special license plates.

(a) The owner of a motor vehicle which is a private passenger vehicle or a truck or trailer with a manufacturer's gross vehicle weight rating (GVWR) of 26,000 pounds or less may apply to the Division of Motor Vehicles for a special Marine Education, Research and Rehabilitation Institute, Inc. license plate.

(b) Upon the initial application for a license plate to be issued pursuant to this section, a 1-time fee of $50, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title. This additional fee is required for members of nonprofit organizations even if members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee to be set by the Division which shall cover the cost of the plate.

(c) The 1-time administrative fee collected pursuant to subsection (b) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of administering this section and to fund division projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(d) All license plates issued pursuant to this section shall be of the colors and design requested by the Marine Education, Research and Rehabilitation Institute, Inc. The numbers and/or letters assigned will be the same as the current license plate assigned to the vehicle. No special numbers or letters will be authorized for these plates. The Division of Motor Vehicles shall have the power to refuse any design which it believes would cause a public safety enforcement problem.

(e) The funds derived by the State from that portion of the 1-time fee of $50 that is not defined as an administrative fee pursuant to subsection (c) of this section shall be deposited by the Division of Motor Vehicles with the State Treasurer and shall be specifically set aside for use by the Marine Education, Research and Rehabilitation Institute, Inc.

(f) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(78 Del. Laws, c. 240, § 1; 78 Del. Laws, c. 385, § 1; 81 Del. Laws, c. 380, § 3; 83 Del. Laws, c. 37, § 23.)

§ 2139P. Special license plates for Civil Air Patrol Delaware Wing.

(a) The owner of any vehicle described in paragraph (a)(2) of this section may apply to the Department for assignment to that vehicle of a special Civil Air Patrol registration number; provided however, that the owner of the vehicle must possess official documentation from the Civil Air Patrol Delaware Wing and signed by the Delaware Wing commander that indicates that such owner is a member in good standing of the Civil Air Patrol and assigns the registration number to be issued by the Department.

(2) This section applies to:

a. A private passenger vehicle, or

b. A truck with a $^{3}/_{4}$-ton or less manufacturer's rated capacity.

(b) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section; provided however, that an original application under this section be subject to a $35 administrative fee, which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of administering this section and to fund Department projects notwithstanding the provisions of Chapter 13 and 14 of Title 2 to the contrary.

(c) Only 1 such plate shall be issued to an applicant.

(d) The Department shall reserve sufficient special license plates including the letters “CAP” and numbered consecutively beginning with the numeral “1” as are necessary to implement this section.

(e) Upon receipt by the Department of information provided by the Civil Air Patrol Delaware Wing that a registrant is no longer a Civil Air Patrol member in good standing, the Department shall write to the registrant requesting that such plate be returned to the Department within 30 days.

(f) At least 25 members of the organization must apply for the special plate authorized by this section.

(78 Del. Laws, c. 255, § 1.)

§ 2139Q. Stop child abuse plates.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles for a special “Stop Child Abuse” registration plate, provided that at least 100 such applications are received by the Division.

(b) This section applies to:

(1) A private passenger vehicle; or

(2) A truck with a $^{3}/_{4}$-ton or smaller manufacturer’s rated capacity.

(c) Upon the initial application for a plate to be issued pursuant to this section, a fee of $50, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title. This additional fee is required for all persons applying for a special plate pursuant to this section, including members of nonprofit organizations, even if members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee to be set by the Division, which shall cover the cost of the plate.

(d) The 1-time administrative fee collected pursuant to subsection (c) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administering this section. Proceeds remaining after the Division of Motor Vehicles have covered the costs of promoting and administering this section shall be applied pursuant to subsection (f) of this section.

(e) After making the initial application for a plate to be issued pursuant to this section, the owner shall pay a $40 surcharge annually for each plate in addition to the regular registration fee.

(f) The funds derived by the State from that portion of the initial fee of $50 that is not defined as an administrative fee pursuant to subsections (c) and (d) of this section and the $40 surcharge under subsection (e) of this section shall be deposited by the Division of Motor Vehicles with the State Treasurer and shall be forwarded to the Delaware Community Foundation who, in turn, shall deposit them in the Protecting Delaware’s Children Fund.

(g) All registration plates issued pursuant to this section shall be of the colors and design as determined by the Child Protection Accountability Commission. The numbers and/or letters assigned will be the same as the current license plate assigned to the vehicle. The Division of Motor Vehicles shall have the power to refuse any design which it believes would cause a public safety enforcement problem.

(h) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(79 Del. Laws, c. 264, § 1.)

§ 2139R. Special license plates honoring Delaware veterans [For application of this section, see 85 Del. Laws, c. 137, § 12].

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles for assignment to that vehicle a special plate “Honoring Our Veterans”.

(b) This section applies only to:

(1) A private passenger vehicle; or

(2) A truck with a $^{3}/_{4}$-ton or less manufacturer’s rated capacity.

(c) Upon the initial application for a plate to be issued pursuant to this section, a 1-time fee of $20, which includes an administrative fee of $10, is required in addition to the annual registration fee required by this title. This additional fee is required for all persons applying for a special plate pursuant to this section, including members of nonprofit organizations, even if members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee to be set by the Division, which shall cover the cost of the plate.

(d) The funds derived by this State from that portion of the 1-time fee of $20 that is not defined as an administrative fee pursuant to subsection (c) of this section shall be deposited by the Division of Motor Vehicles with the State Treasurer and shall be specifically set aside and deposited with the Department of Veterans Affairs for its deposit in the Veterans Trust Fund.

(e) All registration plates issued pursuant to this section shall be of the colors and design as determined by the Delaware Commission of Veterans Affairs. The license plate may also include words, a slogan or an emblem honoring Delaware veterans. The Commission

may at its discretion drop the wording “The First State” and substitute in lieu thereof “Honoring Our Veterans”. The Division of Motor Vehicles shall have the power to refuse any design which it believes would cause a public safety enforcement problem.

(f) The Department shall reserve sufficient special license plates including the letters “HV” and numbered consecutively beginning with the numeral “1” as are necessary to implement this section.

(g) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(79 Del. Laws, c. 328, § 1; 85 Del. Laws, c. 137, § 4.)

§ 2139S. Special license plates for members of the Cancer Support Community.

(a) The owner of any vehicle described in this subsection may apply to the Department for the assignment to that vehicle of a special Cancer Support Community registration, provided that at least 100 such member applications are received by the Department. This section applies only to:

(1) A private passenger vehicle; or

(2) A truck with a $^{3}/_{4}$-ton or smaller manufacturer’s rated capacity.

(b) Special registration may be issued under this section only if:

(1) The individual applicant states that the applicant is a member of the Cancer Support Community; and

(2) The Cancer Support Community certifies that the individual applicant is an active member of that organization.

(c) No fee in addition to the annual registration fee required by this title is required for registration under this section; however, the original application under this section shall be subject to a $10 administrative fee, which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of administering this section and to fund Division of Motor Vehicle projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(d) The Department shall reserve license plates including the letters “C.S.C.” and numbered consecutively beginning with the numeral “1” as are required for this section.

(e) Upon notification from the Delaware Chapter of the Cancer Support Community that an individual is no longer an active member of that organization, the Department shall notify the license plate holder to surrender the license plate to the Department within 30 days.

(79 Del. Laws, c. 417, § 1.)

§ 2139T. Special license plates for active members and retired active members of the International Association of Firefighters (IAFF) living in Delaware.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Department for assignment to that vehicle of a special professional firefighter registration number; provided, however, that the owner of the vehicle must possess and present official membership card/ID documentation which indicates that the owner is an active or retired active member of the International Association of Firefighters.

(b) This section applies only to:

(1) A private passenger vehicle; or

(2) A truck with a ¾-ton or less manufacturer’s rated capacity; or

(3) A van with a ¾-ton or less manufacturer’s rated capacity.

(c) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section; provided, however, that an original application under this section shall be subject to a $10 administrative fee which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administering this section and to fund Department projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(d) The Department shall reserve sufficient license plates and the letters “PF” and number consecutively beginning with the numeral “1” as are necessary to implement this section.

(e) Upon receipt by the Department of information that the individual to whom the special plate has been issued has died, the Department shall write to the representative of that person’s estate, requesting that such plate be returned to the Department within 90 days.

(80 Del. Laws, c. 223, § 1.)

§ 2139U. Special license plates for professional paramedics and retired professional paramedics.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Department for assignment to that vehicle of a special professional paramedic registration number; provided, however, that the owner of the vehicle must possess and present official documentation from the applicant’s county emergency medical services chief or from the state Office of Emergency Medical Services which indicates that the owner is a professional paramedic or a retired professional paramedic.

(b) This section applies only to:

(1) A private passenger vehicle; or

(2) A truck with a $^{3}/_{4}$–ton or less manufacturer’s rated capacity; or

(3) A van with a $^3/_4$–ton or less manufacturer's rated capacity.

(c) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section; provided, however, that an original application under this section shall be subject to a $10 administrative fee which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administering this section and to fund Department projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(d) A minimum of 100 applicants for this plate shall be required prior to issuance of the plate.

(e) Only 1 such plate shall be issued to an applicant.

(f) The Department shall reserve sufficient special license plates including the letters "NR" and numbered consecutively beginning with the numeral "1" as are necessary to implement this section.

(g) Upon receipt by the Department of information that the individual to whom the special plate has been issued has died, the Department shall write to the representative of that person's estate, requesting that such plate be returned to the Department within 90 days.

(80 Del. Laws, c. 226, § 1; 81 Del. Laws, c. 157, § 1.)

§ 2139V. Special license plates for recipients of the Bronze Star without valor.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Department for assignment to that vehicle of a special registration number, provided that the owner of the vehicle must possess official documentation which indicates that such owner is the recipient of a Bronze Star without valor (without the "V" device) while serving in the United States Armed Forces.

(b) This section applies only to:

(1) A private passenger vehicle; or

(2) A truck with a $^3/_4$-ton or less manufacturer's rated capacity; or

(3) A van with a $^3/_4$-ton or less manufacturer's rated capacity.

(c) No fee in addition to the annual registration fee required by this title is required for registration under this section; however, the original application under this section shall be subject to a $10 administrative fee, which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administering this section and to fund Department projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(d) Only 1 such plate shall be issued to an applicant.

(e) The Department shall reserve sufficient license plates with the letter "M" and numbered consecutively beginning with the numeral "1" as are required for this section.

(f) Upon receipt by the Department of information that the individual to whom the special plate has been issued has died, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of subsection (b) of this section as a valid registration plate. No fee in addition to the annual registration fee required by this title is required for registration. If no spouse exists, the Department shall write to the representative of that person's estate, requesting that such plate be returned to the Department within 90 days.

(80 Del. Laws, c. 262, § 1.)

§ 2139W. Special license plates for the Delaware Equine Council.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles for a special Delaware Equine Council registration plate.

(b) This section applies only to:

(1) A private passenger vehicle; or

(2) A truck or trailer with a manufacturer's gross vehicle weight rating (GVWR) of 26,000 pounds or less; or

(3) A van with a ¾-ton or less manufacturer's rated capacity.

(c) Upon the initial application for a license plate to be issued pursuant to this section, a 1-time fee of $50, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title. This additional fee is required for members of nonprofit organizations even if members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee to be set by the Division which shall cover the cost of the plate.

(d) The 1-time administrative fee collected pursuant to subsection (c) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of administering this section and to fund division projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(e) The funds derived by the State from that portion of the 1-time fee of $50 that is not defined as an administrative fee pursuant to subsection (c) of this section shall be deposited by the Division of Motor Vehicles with the State Treasurer and shall be specifically set aside for use by the Delaware Equine Council.

(f) All registration plates issued pursuant to this section shall be of the colors and design as determined by the Board of Directors of the Delaware Equine Council. The numbers and/or letters assigned will be the same as the current license plate assigned to the vehicle. No special numbers or letters will be authorized for these plates. The Board of Directors of the Delaware Equine Council may, at its

discretion, drop the wording “The First State” and substitute in place thereof “Delaware Equine Council.” The Division of Motor Vehicles shall have the power to refuse any design which it believes would cause a public safety enforcement problem.

(g) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(80 Del. Laws, c. 351, § 1; 81 Del. Laws, c. 380, § 4.)

§ 2139X. Special license plates for veterans of Operation Desert Storm.

(a) (1) The owner of any vehicle described in paragraph (a)(2) of this section may apply to the Department for assignment to that vehicle of a special Operation Desert Storm veterans registration number; provided however, that the owner of the vehicle must possess official documentation which indicates that such owner is a veteran of Operation Desert Storm.

(2) This section applies only to:

a. A private passenger vehicle;

b. A truck with a $^{3}/_{4}$-ton or less manufacturer’s rated capacity; or

c. A van with a $^{3}/_{4}$-ton or less manufacturer’s rated capacity.

(b) Special registration may be issued by the Department under this section if the United States Department of Defense certifies that the applicant is a veteran of Operation Desert Storm.

(c) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section; provided however, that an original application under this section be subject to a $10 administrative fee, which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of administering this section and to fund Department projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(d) Only 1 such plate shall be issued to an applicant.

(e) The Department shall reserve sufficient special license plates including the letters “ODS” and numbered consecutively beginning with the numeral “1” as are necessary to implement this section.

(f) Upon receipt by the Department of information that the individual to whom the special plate has been issued is deceased, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of paragraph (a)(2) of this section as a valid registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration. If no spouse exists at the time the Department receives information regarding the death of the individual to whom the special plate was issued, the Department shall write to the representative of that person’s estate, requesting that such plate be returned to the Department within 90 days.

(81 Del. Laws, c. 4, § 1.)

§ 2139Y. Special license plates for members of the National Wild Turkey Federation.

(a) The owner of any vehicle described in this subsection may apply to the Department for the assignment to that vehicle of a special National Wild Turkey Federation registration. This section applies only to:

(1) A private passenger vehicle; or

(2) A truck with a $^{3}/_{4}$-ton or smaller manufacturer’s rated capacity.

(b) Special registration may be issued under this section only if:

(1) The applicant states that the applicant is a member of the Delaware Chapter of the National Wild Turkey Federation; and

(2) The Delaware Chapter of the National Wild Turkey Federation certifies that the applicant is an active member of that organization.

(c) No fee in addition to the annual registration fee required by this title is required for registration under this section; however, the original application under this section shall be subject to a $10 administrative fee, which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purposes of administering this section and to fund Division of Motor Vehicle projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(d) The Department shall reserve sufficient license plates including the letters “WT” and numbered consecutively beginning with the numeral “1” as are required for this section.

(e) Upon notification from the Delaware Chapter of the National Wild Turkey Federation that an individual is no longer an active member of that organization, the Department shall notify the license plate holder to surrender the license plate to the Department within 30 days.

(81 Del. Laws, c. 160, § 1.)

§ 2139Z. Special license plates for Keep Delaware Beautiful.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Department for the assignment to that vehicle of a special Keep Delaware Beautiful registration.

(b) This section applies only to:

(1) A private passenger vehicle; or

(2) A truck or trailer with a manufacturer’s gross vehicle weight rating (GVWR) of 26,000 pounds or less.

(c) Upon the initial application for a plate to be issued pursuant to this section, a 1-time fee of $50, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title. This additional fee is required for members of nonprofit organizations even if members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee to be set by the Division which shall cover the cost of the plate.

(d) The 1-time administrative fee collected pursuant to subsection (c) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administering this section. Proceeds remaining after the Division of Motor Vehicles have covered the costs of promoting and administering this section shall be applied pursuant to subsection (f) of this section.

(e) All registration plates issued pursuant to this section shall be of the colors and design as determined by a committee of at least 3 persons including representation of both the Division of Motor Vehicles and Keep Delaware Beautiful. The size, composition, and operation of the committee shall be determined by, and at the discretion of, the Director of the Division of Motor Vehicles. The numbers and/or letters assigned will be the same as the current license plate assigned to the vehicle. The license plate may also include words, a slogan or an emblem indicating support for, or interest in, the mission of Keep Delaware Beautiful. The committee may, at its discretion, drop the wording "The First State" and substitute in place thereof a slogan related to Keep Delaware Beautiful or its mission. The Division of Motor Vehicles shall have the power to refuse any design which it believes would be inappropriate or cause a public safety enforcement problem.

(f) The funds derived by the State from that portion of the 1-time fee of $50 that is not defined as an administrative fee pursuant to subsections (c) and (d) of this section shall be deposited by the Division of Motor Vehicles with the State Treasurer and shall be forwarded to a special fund account to be known as the Keep Delaware Beautiful License Fund to be used to support its mission to beautify the State and reduce litter.

(g) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(81 Del. Laws, c. 203, § 1; 81 Del. Laws, c. 380, § 5.)

§ 2139AA. Special license plates for members of the Dover Air Force Base Chiefs Group.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Department for assignment to that vehicle of a special Dover Air Force Base Chiefs Group registration.

(b) This section applies only to:

(1) A private passenger vehicle; or

(2) A truck with a ¾-ton or less manufacturer's rated capacity; or

(3) A van with a ¾-ton or less manufacturer's rated capacity.

(c) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section; provided, however, that an original application under this section shall be subject to a $10 administrative fee which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of administering this section and to fund Department projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(d) A minimum of 25 applicants for this plate shall be required prior to issuance of the plate.

(e) Only 1 such plate shall be issued to an applicant.

(f) The Department shall reserve sufficient special license plates including the letters "DCG" and numbered consecutively beginning with the numeral "1" as are required for this section.

(g) Upon notification from the Dover Air Force Base Chiefs Group that an individual is no longer an active member of that organization, the Department shall notify the license plate holder to surrender the license plate to the Department in 30 days.

(81 Del. Laws, c. 230, § 1.)

§ 2139BB. Special license plates for military veterans

(a) (1) The owner of any vehicle described in paragraph (a)(2) of this section may apply to the Department for assignment to that vehicle of a special military veterans registration number; provided however, that the owner of the vehicle must possess official documentation which indicates that such owner is an honorably discharged veteran of the United States military.

(2) This section applies only to:

a. A private passenger vehicle; or

b. A truck with a ¾-ton or less manufacturer's rated capacity.

(b) Special registration may be issued by the Department under this section if the United States Department of Defense certifies that the applicant is an honorably discharged veteran of the United States military.

(c) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section; provided however, that an original application under this section be subject to a $15 administrative fee, which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of administering this section and to fund Department projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(d) Only 1 such plate shall be issued to an applicant.

(e) Upon receipt by the Department of information that the individual to whom the special plate has been issued is deceased, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of paragraph (a)(2) of this section as a valid registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration.

(f) The Department shall reserve sufficient special license plates including the letters "MV" and numbered consecutively beginning with the numeral "1" as are necessary to implement this section.

(81 Del. Laws, c. 381, § 1.)

§ 2139CC. Special license plates veterans of World War II.

(a) (1) The owner of any vehicle described in paragraph (a)(2) of this section may apply to the Department for assignment to that vehicle of a special World War II veteran registration number; provided, however, that the owner of the vehicle must possess and present official documentation which indicates that the owner is a World War II veteran.

(2) This section applies only to the following:

a. A private passenger vehicle; or

b. A truck with a ¾-ton or less manufacturer's rated capacity.

(b) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section; provided, however, that an original application under this section shall be subject to a $10 administrative fee which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administering this section and to fund Department projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(c) Only 1 such plate shall be issued to an applicant.

(d) The Department shall reserve sufficient special license plates including the phrase "WWII" and numbered consecutively beginning with the numeral "1" as are necessary to implement this section.

(e) Upon receipt by the Department of information that the individual to whom the special plate has been issued has died, the Department shall write to the representative of that person's estate. Upon receipt by the Department of information that the individual to whom the special plate has been issued has died, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of paragraph (a)(2) of this section as a valid registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration. If no spouse exists, the Department shall write to the representative of that person's estate, requesting that such plate be returned to the Department within 90 days.

(82 Del. Laws, c. 223, § 1.)

§ 2139DD. Special license plate to support pollinators.

(a) The owner of a vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles ("Division") for a special "Support Pollinators" plate. The Division shall issue the plate if it receives at least 50 such applications.

(b) This section applies only to:

(1) A private passenger vehicle.

(2) Subject to paragraph (b)(2)b. of this section, a motor vehicle, including a truck or trailer, with a manufacturer's gross vehicle weight rating ("GVWR") of 26,000 pounds or less.

a. The motor vehicle described in this paragraph (b)(2) may be owned by an individual or an artificial entity, including a corporation, company, association, firm, partnership, society, or joint-stock company.

b. A truck that qualifies to register for the International Registration Plan ("IRP"), individually, or as part of a combination of vehicles, as defined in § 101 of this title, may not be issued a special plate under this section.

(c) (1) On the initial application for a plate to be issued under this section, a 1-time fee of $50, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title.

(2) The initial application fee under paragraph (c)(1) of this section is required for a person applying for a plate under this section, including a member of a nonprofit organization, even if the member is exempt from registration fees under § 2159 of this title.

(3) A replacement plate may be obtained on payment of a fee to be set by the Division, which must cover the cost of the plate.

(d) The Division shall deposit the 1-time administrative fee collected under subsection (c) of this section into a special fund and use the fund to promote the sale of the plate and for administering this section. Proceeds remaining after the Division has covered the costs of promoting the sale of the plate and administering this section must be applied under subsection (e) of this section.

(e) The Division shall deposit with the Department the funds derived by the State from the portion of the 1-time fee of $50 that is not defined as an administrative fee under subsections (c) and (d) of this section. The Department shall set aside the deposited funds. The Department shall use the set aside deposited funds for pollinator-related work, such as native species and milkweed plantings.

(f) (1) A plate issued under this section must be of the colors and design as determined by the Division and the Department's Environmental Studies Office.

(2) The numbers or letters assigned by the Division must be the same as the plate assigned to an owner's vehicle at the time of the application for the plate.

(3) The Department's Environmental Studies Office may drop the wording "The First State" and substitute "Support Pollinators, Plant Native Species".

(4) The Division may refuse any design which the Division believes would cause a public safety enforcement problem.

(g) The Division may adopt regulations to administer this section.

(83 Del. Laws, c. 23, § 1.)

§ 2139EE. Special license plates for retired state legislators.

(a) (1) The owner of any vehicle described in paragraph (a)(2) of this section may apply to the Department for assignment to that vehicle of a retired state legislator registration number; provided, however, that the owner of the vehicle must possess and present official documentation which indicates that the owner is a retired state legislator.

(2) This section applies only to the following:

a. A private passenger vehicle; or

b. A truck with a $^{3}/_{4}$-ton or less manufacturer's rated capacity.

(3) For purposes of this section, "retired state legislator" means an individual who served as a senator or representative in the Delaware General Assembly for at least 10 years.

(b) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section; provided, however, that an original application under this section shall be subject to a $10 administrative fee which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administering this section and to fund Department projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(c) Only 1 such plate shall be issued to an applicant.

(d) The Department shall reserve sufficient special license plates including the phrase "retired state legislator" with the prefix "RSL" and numbered consecutively beginning with the numeral "1" as are necessary to implement this section.

(e) Upon receipt by the Department of information that the individual to whom the special plate has been issued has died, the Department shall write to the representative of that person's estate requesting that such plate be returned to the Department within 90 days.

(84 Del. Laws, c. 135, § 1.)

§ 2140. Special registration plates for members of nonprofit organizations [For application of this section, see 85 Del. Laws, c. 40, § 15].

(a) The owner of a motor vehicle described in subsection (b) of this section who is a member of a nonprofit organization considered eligible by the Division of Motor Vehicles may apply to the Division for the assignment of a special registration plate for such vehicle.

(b) This section applies only to:

(1) A passenger vehicle;

(2) A truck with a $^{3}/_{4}$-ton or smaller manufacturer's rated capacity; or

(3) A van with a $^{3}/_{4}$-ton or smaller manufacturer's rated capacity.

(c) The applicant must submit acceptable proof, as required by the Division, that the applicant is a member in good standing or is otherwise eligible for the issuance of such special plate.

(d) No fee in addition to the regular annual registration fee required by this title is required. However, upon the initial application for a special plate issued pursuant to this section, a 1-time administrative fee of $10 shall be assessed.

(e) The 1-time administrative fee collected pursuant to subsection (d) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of administering this section, notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(f) The nonprofit organization must pay a 1-time setup fee of $200 to the Division to establish the special plate.

(g) At least 200 applications for special plates must be received from a specific organization before the Division of Motor Vehicles will approve the issuance. However, the minimum number of 200 does not apply to any of the following:

(1) Survivors of Pearl Harbor.

(2) Members of university or high school alumni associations, provided that at least 25 applications for special plates must be received from members of a given university or high school alumni association before the Division of Motor Vehicles will approve the issuance of special plates for that particular university or high school alumni association.

(3) Retired Delaware police officers.

(4) Members of Delaware Nur Temple and the Service Alumni Association, provided that at least 100 applications for special plates must be received from members before the Division of Motor Vehicles will approve the issuance of the special plate.

(5) Members of the Marine Corps League and Delaware Veterans of World War 2 Inc. provided that at least 100 applications for special plates must be received from members before the Division of Motor Vehicles will approve the issuance of the special plate.

(6) Members of the Order of Eastern Star, Knights of Columbus, the Telephone Pioneers of America, Lions Club International, and the Senior Olympics, provided that at least 100 applications for special plates must be received from members of any of the said organizations before the Division of Motor Vehicles will approve the issuance of a special plate for that organization, except for the Telephone Pioneers of America who must have a minimum of 75 applications for special plates before the Division of Motor Vehicles will approve the issuance of a special plate for the organization.

(7) Members of "Fraternal Order of Firemen Wilmington Retired Firefighters," provided that at least 50 applications for special plates must be received from members of such organization before the Division of Motor Vehicles will approve the issuance of the special plate.

(8) Members of the "USSVI, Mid-Atlantic Base," the U.S. Submarine Veterans, Inc., organization, provided that at least 35 applications for special plates be received from members of such organization before the Division of Motor Vehicles will approve the issuance of the special plate.

(9) Members of the "Buffalo Soldiers Motorcycle Club of Delaware," provided that at least 25 applications for special plates must be received from members of such organization before the Division of Motor Vehicles will approve the issuance of the special plate.

(10) Members of "atTAcK addiction," provided that at least 50 applications for special plates must be received from members of the organization before the Division of Motor Vehicles will approve the issuance of the special plate.

(h) The numbers and letters assigned to these special plates must be such that they can be integrated with the Division's computerized vehicle registration records.

(i) The Division of Motor Vehicles may refuse to issue special registration plates when it is deemed not in the best interest of the State.

(j) Upon receipt by the Department of information that the individual to whom the special plate has been issued pursuant to paragraph (g)(1), (g)(5), or (g)(8) of this section is deceased, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of subsection (b) of this section as a valid registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration.

(k) The Department upon receipt of any official correspondence from the organization advising that the individual to which a special plate has been issued is no longer affiliated with such organization such special plate shall be forfeited and/or revoked immediately.

(*l*) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(69 Del. Laws, c. 183, § 1; 70 Del. Laws, c. 9, § 1; 70 Del. Laws, c. 12, § 1; 70 Del. Laws, c. 158, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 200, § 2; 70 Del. Laws, c. 317, § 1; 70 Del. Laws, c. 333, § 1; 70 Del. Laws, c. 417, § 1; 73 Del. Laws, c. 170, §§ 1-4; 76 Del. Laws, c. 204, §§ 4, 6-8; 80 Del. Laws, c. 49, § 1; 83 Del. Laws, c. 24, § 1; 85 Del. Laws, c. 40, § 2.)

§ 2140A. Environmental license plates.

(a) The owner of a motor vehicle may apply to the Division of Motor Vehicles for a special environmental license plate.

(b) Upon the initial application for a plate to be issued pursuant to this section, a 1-time fee of $50, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title. This additional fee is required for members of nonprofit organizations even if members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee to be set by the Division which shall cover the cost of the plate.

(c) The 1-time administrative fee collected pursuant to subsection (b) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administering this section. Proceeds remaining after the Division of Motor Vehicles has covered the costs of promoting and administering this section shall be applied pursuant to subsection (e) of this section.

(d) The numbers and/or letters assigned will be the same as the current license plate assigned to the vehicle. No special numbers or letters will be authorized for these plates. The Division of Motor Vehicles may at its discretion drop the wording "The First State" and substitute in place thereof an environmental slogan. The Division of Motor Vehicles shall have the power to refuse any design which it believes would cause a public safety enforcement problem.

(e) The funds derived by the State from that portion of the 1-time fee of $50 that is not defined as an administrative fee pursuant to subsection (c) of this section shall be deposited by the Division of Motor Vehicles with the State Treasurer and shall be specifically set aside and divided equally between:

(1) The Delaware Center for the Inland Bays; and

(2) The Partnership for the Delaware Estuary, Incorporated.

(f) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(70 Del. Laws, c. 281, § 2; 81 Del. Laws, c. 249, § 1.)

§ 2140B. Special license plates for Delaware sport fishing license plates.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Department for the assignment to that vehicle 1 of 2 special Delaware sport fishing license plates either a freshwater design or a saltwater design registration.

(b) This section applies only to:

(1) A private passenger vehicle; or

(2) A truck with a ¾-ton or smaller manufacturer's rated capacity.

(c) Upon the initial application for either of these plates to be issued pursuant to this section, a 1-time fee of $95, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title. This additional fee is required for members of nonprofit organizations even if members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee to be set by the Division which shall cover the cost of the plate.

(d) The 1-time administrative fee collected pursuant to subsection (c) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for administrative costs.

(e) All registration plates issued pursuant to this section shall be of the colors and design as determined by a committee of at least 3 persons including representation of the Division of Motor Vehicles, The Delaware Advisory Council of Recreational Fishing Funding and the Division of Fish and Wildlife. The size, composition, and operation of the committee shall be determined by, and at the discretion of, the Director of the Division of Motor Vehicles. The numbers and/or letters assigned will be the same as the current license plate assigned to the vehicle. The license plate may also include words, a slogan or an emblem indicating support for, or interest in, the mission of promoting both saltwater and freshwater fishing in the State. The committee may, at its discretion, drop the wording "The First State" and substitute in place thereof a slogan related to recreational fishing. The committee may change the species design of fish on both the saltwater and freshwater license plate every 3 to 5 years as deemed needed by both the Delaware Advisory Council on Recreational Fishing Funding and the Division of Fish and Wildlife. The Division of Motor Vehicles shall have the power to refuse any design which it believes would be inappropriate or cause a public safety enforcement problem.

(f) The funds derived by the State from that portion of the 1-time fee of $95 that is not defined as an administrative fee pursuant to subsections (c) and (d) of this section shall be deposited in the State Treasury and credited to a special fund account to be known as the "Delaware Recreational Fishing Enhancement Fund" and transferred to The Division of Fish and Wildlife quarterly in a manner deemed appropriate by the State Treasurer. The funds shall be used by the Division of Fish and Wildlife with advisory recommendations by the Delaware Advisory Council on Recreational Fishing Funding in support of its mission to enhance the pleasure of recreational saltwater and freshwater fishing in the State.

(g) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(81 Del. Laws, c. 321, § 1.)

§ 2140C. Special license plates honoring women's military service [For application of this section, see 85 Del. Laws, c. 137, § 12].

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles for assignment to that vehicle of a special plate "Honoring Women's Military Service," if the owner of the vehicle is a woman who possesses sufficient documentation to establish that she served the United States Armed Forces or the Delaware National Guard, either as a civilian or as a servicemember.

(b) This section applies to only the following:

(1) A private passenger vehicle.

(2) A truck with a $^{3}/_{4}$-ton or less manufacturer's rated capacity.

(3) A van with a $^{3}/_{4}$-ton or less manufacturer's rated capacity.

(c) Upon the initial application for a license plate to be issued under this section, a 1-time fee of $20, which includes an administrative fee of $10, is required in addition to the annual registration fee required by this title. This additional fee is required for members of nonprofit organizations even if members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee to be set by the Division of Motor Vehicles, to cover the cost of the replacement plate.

(d) The Division of Motor Vehicles shall deposit with the State Treasurer the funds derived by this State from that portion of the 1-time fee of $20 that is not defined as an administrative fee under subsection (c) of this section. The deposited funds must be specifically set aside and deposited with the Department of Veterans Affairs for its deposit in the Veterans Trust Fund.

(e) All plates issued under this section must be of the colors and design as determined by the Delaware Women's Military Service Monument Committee. The plate may also include words, a slogan, or an emblem honoring Delaware women's military services. The Committee may drop the wording "The First State" and substitute in lieu thereof "Delaware Women's Military Monument". The Division of Motor Vehicles may refuse any design which it believes would cause a public safety enforcement problem.

(f) The Department shall reserve sufficient special license plates including the letters "WMS" and numbered consecutively beginning with the numeral "1" as are necessary to implement this section.

(g) Upon receipt by the Department of information that the individual to whom the special plate under this section was issued has died, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of subsection (b) of this section as a valid registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration.

If no spouse exists, the Department shall write to the representative of that individual's estate, requesting that the plate be returned to the Department within 90 days.

(h) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(81 Del. Laws, c. 327, § 1; 70 Del. Laws, c. 186, § 1; 85 Del. Laws, c. 137, § 8.)

§ 2140D. Delaware State Fair Centennial limited edition special license plates.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Department for a Delaware State Fair Centennial special registration plate.

(b) This section applies only to:

(1) A private passenger vehicle.

(2) A vehicle that is owned by a business and does not exceed the weight limit under paragraph (b)(3) of this section.

(3) A truck or trailer with a manufacturer's gross vehicle weight rating (GVWR) of 26,000 pounds or less, whether it is owned by an individual or an artificial entity, including a corporation, company, association, firm, partnership, society, or joint-stock company.

(c) Upon the initial application for a plate to be issued pursuant to this section, a 1-time fee of $100, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title. This additional fee is required for all persons applying for this special plate. A replacement plate may be obtained upon payment of a $15 fee to the Division.

(d) The 1-time administrative fee collected pursuant to subsection (c) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for administrative costs.

(e) The funds derived by the State from that portion of the 1-time fee of $100 that is not defined as an administrative fee pursuant to subsections (c) and (d) of this section shall be deposited by the Department with the State Treasurer and shall be forwarded to a special fund account for the Delaware State Fair.

(f) All registration plates issued pursuant to this section shall be the colors and design as determined by the Department in conjunction with representatives from the Delaware State Fair Board of Directors.

(81 Del. Laws, c. 364, § 1; 82 Del. Laws, c. 39, § 1.)

§ 2140E. Special bicycle friendly license plates.

(a) The owner of a motor vehicle may apply to the Division of Motor Vehicles for the assignment to that vehicle of a special "Bicycle Friendly Delaware" registration plate.

(b) Upon the initial application for the plate to be issued pursuant to this section, a 1-time fee of $40, which includes an administrative fee of $15, is required in addition to the annual fee required by this title. This additional fee is required for all persons applying for a special plate pursuant to this section, including members of nonprofit organizations, even if members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee to be set by the Division of Motor Vehicles, which shall cover the cost of the plate.

(c) The 1-time administrative fee collected pursuant to subsection (b) of this section shall be deposited into a special fund by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administering this section. Proceeds remaining after the Division of Motor Vehicles have covered the costs of promoting and administering this section shall be applied pursuant to the subsection (f) of this section.

(d) After making the initial application for a plate to be issued pursuant to this section, the owner shall pay a $25 surcharge annually for each plate in addition to the regular registration fee.

(e) All registration plates issued pursuant to this section shall be of the colors and design as determined by a committee of at least 3 persons including representation of both the Division of Motor Vehicles and Bike Delaware, Inc. The size, composition, and operation of the committee shall be determined by, and at the discretion of, the Director of the Division of Motor Vehicles. The numbers or letters assigned will be the same as the current registration plate assigned to the vehicle. The plate may also include words, a slogan, an emblem or a design indicating support for, or interest in, bicycling or the mission of Bike Delaware. The Committee may, at its discretion, drop the wording "The First State" and substitute in place thereof either "Bicycle Friendly Delaware" or "Bicycle Friendly." The Division of Motor Vehicles shall have the power to refuse any design which it believes would be inappropriate or cause a public safety enforcement problem.

(f) The funds derived from the State from that portion of the initial fee of $40 that is not defined as an administrative fee pursuant to subsections (b) and (c) of this section and the $25 surcharge under subsection (d) shall be deposited by the Division of Motor Vehicles with the State Treasurer, and said funds shall be used to support Bike Delaware, Inc.'s mission to promote safe nonmotorized transportation for Delaware residents.

(82 Del. Laws, c. 33, § 1.)

§ 2140F. Special registration plates for members of a motorcycle club.

(a) An owner of a motorcycle may apply to the Division of Motor Vehicles ("Division") for a motorcycle club's special registration plate for the motorcycle under this section if both of the following apply.

(1) The owner has completed or, at the time of application, is enrolled in an experienced rider course offered by the Division or another entity under § 2726 of this title. If the owner is enrolled in the course at the time of application, the owner must provide verification of completion of the course to the motorcycle club to which the owner belongs.

(2) The owner is a member in good standing with the motorcycle club represented by the special registration plate.

(b) An owner of a motorcycle must provide the Division with acceptable proof that the owner is a member in good standing with the motorcycle club to receive the motorcycle club's special registration plate.

(c) The Division must receive at least 25 applications for a motorcycle club's special registration plate before the Division may approve the issuance of the special registration plate, including from any of the following motorcycle clubs:

(1) Alliance of Bikers Aimed Toward Education (A.B.A.T.E.) of Delaware, Inc.

(2) Buffalo Soldiers Motorcycle Club of Delaware.

(3) Green Knights International Military Motorcycle Club.

(4) Blue Knights International Law Enforcement Motorcycle Club.

(5) Red Knights International Firefighters Motorcycle Club.

(6) American Legion Riders Motorcycle Club.

(7) Vietnam Legacy Veterans Motorcycle Club.

(d) The numbers and letters assigned to special registration plates under this section must be such that the numbers and letters can be integrated with the Division's computerized vehicle registration records.

(e) The Division may refuse to issue a special registration plate when the Division deems it not in the best interest of the State.

(f) (1) Upon the initial application for a special registration plate under this section, a 1-time fee of $20, which includes an administrative fee of $10, is required in addition to the annual registration fee required by this title.

(2) The fee under paragraph (f)(1) of this section is required for all persons applying for a special plate pursuant to this section, including members of nonprofit organizations, even if members are exempt from registration fees under § 2159 of this title.

(3) A replacement special registration plate may be obtained upon payment of a fee to be set by the Division, which must cover the cost of the plate.

(g) The Division shall deposit with the State Treasurer the nonadministrative portion of the fee under paragraph (f)(1) of this section. The State Treasurer must place the deposited funds in a special account. The Division must use the funds in deposited in the special account only for the expenses incurred in the administration of the motorcycle rider education program.

(h) The Division shall revoke a special registration plate issued under this section if either of the following occur:

(1) A motorcycle club provides the Division with official correspondence advising the Division that an owner of a motorcycle to which a special registration plate has been issued has not completed an experienced rider course within 6 months of the receipt of the special registration plate.

(2) A motorcycle club provides the Division with official correspondence advising the Division that an owner of a motorcycle to which a special registration plate has been issued is no longer affiliated with the club.

(i) The Department may promulgate rules and regulations to administer this section.

(82 Del. Laws, c. 63, § 1.)

§ 2140G. Delaware State Education Association centennial limited edition special license plates.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Department for a Delaware State Education Association centennial special registration plate.

(b) This section applies to any of the following:

(1) A private passenger vehicle.

(2) A truck with a $^{3}/_{4}$-ton or less manufactures rated capacity.

(3) A van with a $^{3}/_{4}$-ton or less manufacturer's rated capacity.

(c) Upon the initial application for a plate to be issued pursuant to this section, a 1-time administrative fee of $15 is required in addition to the annual registration fee required by this title. A replacement plate may be obtained upon payment of a $15 fee to the Division.

(d) The 1-time administrative fee collected pursuant to subsection (c) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for administrative costs.

(e) Upon receipt of information by the Department that the individual to whom the special plate under this section was issued has died, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of subsection (b) of this section as a valid registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration. If no spouse exists, the Department shall write to the representative of that individual's estate, requesting that the plate be returned to the Department within 90 days.

(f) All registration plates issued pursuant to this section shall be the colors and design as determined by the Department in conjunction with representatives from the Delaware State Education Association Board of Directors.

(82 Del. Laws, c. 134, § 1.)

§ 2140H. Special registration plates supporting migratory shorebirds.

(a) An owner of a motor vehicle may apply to the Division of Motor Vehicles ("Division") for the assignment to that motor vehicle of a migratory shorebird special registration plate.

(b) (1) On the initial application for a special registration plate under this section, a 1-time fee of $50, which includes an administrative fee of $15, is required in addition to the annual fee required by this title. After making the initial application for a special registration plate under this section, an owner of a motor vehicle shall pay a $25 annual surcharge for each plate, in addition to the regular registration fee.

(2) The 1-time fee and annual surcharge under paragraph (b)(1) of this section are required for all persons applying for a special registration plate under this section, including members of nonprofit organizations, even if members are exempt from registration fees under § 2159 of this title.

(3) A replacement special registration plate may be obtained upon payment of a fee to be set by the Division, which must cover the cost of the plate.

(c) The Division shall deposit the moneys collected under paragraph (b)(1) of this section into a special fund for the purpose of promoting the sale of the special registration plate and administering this section. The Division shall apply the proceeds remaining after the Division has covered the costs of promoting and administering this section as provided under subsection (d) of this section.

(d) The Division shall deposit with the State Treasurer the annual surcharge and the nonadministrative portion of the 1-time fee required under paragraph (b)(1) of this section. The State Treasurer shall direct the deposited funds to the Delaware Ornithological Society for use to support its mission.

(e) (1) All special registration plates issued under this section must be of the colors and design as determined by the Delaware Ornithological Society and a member of the Division.

(2) The numbers and letters assigned by the Division must be the same as the registration plate assigned to an owner's motor vehicle at the time of the application for the special registration plate. The Division may not assign special numbers or letters for special registration plates issued under this section.

(3) The Division may refuse any design which it believes would cause a public safety enforcement problem.

(f) The Division may promulgate rules and regulation to administer this section.

(82 Del. Laws, c. 277, § 1.)

§ 2140I. Special registration plates supporting autism awareness and acceptance.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles for a special "Autism Awareness and Acceptance" registration plate.

(b) This section applies to:

(1) A private passenger vehicle; or

(2) Subject to paragraph (b)(2)b. of this section, a motor vehicle, including a truck or trailer, with a manufacturer's gross vehicle weight rating (GVWR) of 26,000 pounds or less.

a. The motor vehicle described in this paragraph may be owned by an individual or an artificial entity, including a corporation, company, association, firm, partnership, society, or joint-stock company.

b. A truck that qualifies to register for the International Registration Plan (IRP), individually, or as part of a combination of vehicles, as defined § 101 of this title, may not be issued a special plate under this section.

(c) Upon the initial application for a plate to be issued pursuant to this section, a 1-time fee of $50, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title. This additional fee is required for all persons applying for a special plate pursuant to this section, including members of nonprofit organizations, even if members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee to be set by the Division, which shall cover the cost of the plate.

(d) The 1-time administrative fee collected pursuant to subsection (c) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administering this section. Proceeds remaining after the Division of Motor Vehicles has covered the costs of promoting and administering this section shall be applied pursuant to subsection (e) of this section.

(e) The funds derived by the State from that portion of the 1-time fee of $50 that is not defined as an administrative fee pursuant to subsection (d) of this section shall be deposited by the Division of Motor Vehicles with the State Treasurer and shall be specifically set aside and deposited with the Autism Delaware, Inc. for its deposit in the Autism Awareness and Acceptance Fund.

(f) All registration plates issued pursuant to this section shall be of the colors and design as determined by the Autism Delaware, Inc. The numbers and/or letters assigned will be the same as the current license plate assigned to the vehicle. The committee may, at its discretion,

drop the wording “The First State” and substitute in place thereof the wording “Autism Awareness” or “Autism Acceptance”. The Division of Motor Vehicles shall have the power to refuse any design which it believes would cause a public safety enforcement problem.

(g) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(83 Del. Laws, c. 192, § 1.)

§ 2140J. Special registration plates for suicide prevention, awareness, and support.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles for a special “Suicide Prevention, Awareness, and Support” registration plate. The Division shall issue the plate once the required number of applications is received.

(b) This section applies to:

(1) A private passenger vehicle; or

(2) Subject to paragraph (b)(2)b. of this section, a motor vehicle, including a truck or trailer, with a manufacturer’s gross vehicle weight rating (GVWR) of 26,000 pounds or less.

a. The motor vehicle described in this paragraph may be owned by an individual or an artificial entity, including a corporation, company, association, firm, partnership, society, or joint-stock company.

b. A truck that qualifies to register for the International Registration Plan (IRP), individually, or as part of a combination of vehicles, as defined § 101 of this title, may not be issued a special plate under this section.

(c) Upon the initial application for a plate to be issued pursuant to this section, a 1-time fee of $50, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title. This additional fee is required for all persons applying for a special plate pursuant to this section, including members of nonprofit organizations, even if members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee to be set by the Division, which shall cover the cost of the plate.

(d) The 1-time administrative fee collected pursuant to subsection (c) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administering this section. Proceeds remaining after the Division of Motor Vehicles has covered the costs of promoting and administering this section shall be applied pursuant to subsection (e) of this section.

(e) The funds derived by the State from that portion of the 1-time fee of $50 that is not defined as an administrative fee pursuant to subsection (d) of this section shall be deposited by the Division of Motor Vehicles with the State Treasurer and shall be specifically set aside for the American Foundation for Suicide Prevention.

(f) All registration plates issued pursuant to this section shall be of the colors and design as determined by the Division of Motor Vehicles and the suicide prevention, awareness, and support organization. The numbers and/or letters assigned will be the same as the current license plate assigned to the vehicle. The committee may, at its discretion, drop the wording “The First State” and substitute in place thereof the wording “Suicide Prevention, Awareness, and Support” or “Suicide Prevention”. The Division of Motor Vehicles shall have the power to refuse any design which it believes would cause a public safety enforcement problem.

(g) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(83 Del. Laws, c. 369, § 1.)

§ 2140K. Special license plate for atTAcK addiction.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles for a special “atTAcK addiction” registration plate.

(b) This section applies to:

(1) A private passenger vehicle;

(2) A truck with a ¾-ton or less manufacturer’s rated capacity; or

(3) A van with a ¾-ton or less manufacturer’s rated capacity.

(c) Upon the initial application for a plate to be issued pursuant to this section, a 1-time administrative fee of $10 is required in addition to the annual registration fee required by this title. The additional fee is required for members of nonprofit organizations even if the members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee set by the Division of Motor Vehicles to cover the cost of the plate.

(d) The 1-time administrative fee collected pursuant to subsection (c) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for administrative costs and promoting the sale of the plate.

(e) The Division shall reserve sufficient license plates starting with the prefix “WE” and numbered consecutively beginning with the numeral “2” as required for this section.

(f) All registration plates issued pursuant to this section shall be the colors and design of blue/gold with the organization logo placed to the left side of the plate and Delaware listed at the top or bottom of the plate as determined by the Division of Motor Vehicles in conjunction with the atTAcK addiction organization. The Division of Motor Vehicles shall have the power to refuse any design which it believes would cause a public safety enforcement problem.

(g) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(83 Del. Laws, c. 397, § 1.)

§ 2140L. Special license plates for Combat Infantry Badge holders [For application of this section, see 85 Del. Laws, c. 137, § 12].

(a) (1) The owner of any vehicle described in paragraph (a)(2) of this section may apply to the Department for assignment to that vehicle of a special Combat Infantry Badge registration number; provided, however, that the owner of the vehicle must possess and present official documentation which indicates that the owner is a Combat Infantry Badge holder.

(2) This section applies only to the following:

a. A private passenger vehicle; or

b. A truck with a $^{3}/_{4}$-ton or less manufacturer's rated capacity.

(b) Special registration may be issued by the Department under this section if the United States Department of Defense certifies that the applicant is a Combat Infantry Badge holder. The Division shall issue the plate once the required number of applications is received.

(c) No fee in addition to the annual registration fee otherwise required by this title is required for registration under this section; provided, however, that an original application under this section shall be subject to a $10 administrative fee which shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administering this section and to fund Department projects notwithstanding the provisions of Chapters 13 and 14 of Title 2 to the contrary.

(d) Only 1 such plate shall be issued to an applicant.

(e) The Department shall reserve sufficient special license plates including the prefix "CIB" and numbered consecutively beginning with the numeral "1" as are necessary to implement this section.

(f) Upon receipt by the Department of information that the individual to whom the special plate has been issued has died, the Department shall write to the representative of that person's estate, Upon receipt by the Department of information that the individual to whom the special plate has been issued has died, the surviving spouse may transfer the plate to a vehicle owned by the spouse that meets the requirements of paragraph (a)(2) of this section as a valid registration plate. No fee in addition to the annual registration fee otherwise required by this title is required for registration. If no spouse exists, the Department shall write to the representative of that person's estate, requesting that such plate be returned to the Department within 90 days.

(g) All registration plates issued pursuant to this section shall be the colors and design as determined by the Department in conjunction with representatives from the Commission of Veterans Affairs and the Department of Veterans Affairs. The Division of Motor Vehicles shall have the power to refuse any design which it believes would cause a public safety enforcement problem.

(h) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(83 Del. Laws, c. 459, § 1; 85 Del. Laws, c. 137, § 7.)

§ 2140M. Special registration plates supporting the Boy Scouts of America.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles for a special "Boy Scouts of America" registration plate.

(b) This section applies to:

(1) A private passenger vehicle; or

(2) Subject to paragraph (b)(2)b. of this section, a motor vehicle, including a truck or trailer, with a manufacturer's gross vehicle weight rating (GVWR) of 26,000 pounds or less.

a. The motor vehicle described in this paragraph may be owned by an individual or an artificial entity, including a corporation, company, association, firm, partnership, society, or joint-stock company.

b. A truck that qualifies to register for the International Registration Plan (IRP), individually, or as part of a combination of vehicles, pursuant to § 420 of this title, may not be issued a special plate under this section.

(c) Upon the initial application for a plate to be issued pursuant to this section, a 1-time fee of $50, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title. This additional fee is required for all persons applying for a special plate pursuant to this section, including members of nonprofit organizations, even if members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee to be set by the Division, which shall cover the cost of the plate.

(d) The 1-time administrative fee collected pursuant to subsection (c) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administering this section. Proceeds remaining after the Division of Motor Vehicles has covered the costs of promoting and administering this section shall be applied pursuant to subsection (e) of this section.

(e) The funds derived by the State from that portion of the 1-time fee of $50 that is not defined as an administrative fee pursuant to subsection (d) of this section shall be deposited by the Division of Motor Vehicles with the State Treasurer and shall be specifically set aside and deposited with Del-Mar-Va Council, Boy Scouts of America.

(f) All registration plates issued pursuant to this section shall be of the colors and design as determined by the Boy Scouts of America. The numbers or letters assigned will be the same as the current license plate assigned to the vehicle. The committee may, at its discretion, drop the wording "The First State" and substitute in place thereof the wording "Boy Scouts of America". The Division of Motor Vehicles shall have the power to refuse any design which it believes would cause a public safety enforcement problem.

(g) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(83 Del. Laws, c. 520, § 1.)

§ 2140N. Special registration plates for the Delaware State Police.

(a) The Department of Safety and Homeland Security may apply to the Division of Motor Vehicles for a special Delaware State Police registration plate.

(b) This section applies to the following vehicles owned by the Department of Safety and Homeland Security and assigned to the Delaware State Police:

(1) A "motorcycle" as defined in § 101 of this title.

(2) A private passenger vehicle.

(3) A truck or van with a $^{3}/_{4}$ ton or less manufacturer's rated capacity; GVWR of 10,000 pounds or less.

(c) Upon the initial application for a plate to be issued pursuant to this section, a 1-time administrative fee of $10 is required in addition to the annual registration fee required by this title. A replacement plate may be obtained upon payment of a fee set by the Division of Motor Vehicles to cover the cost of the plate.

(d) The 1-time administrative fee collected pursuant to subsection (c) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for administrative costs related to the issuance of the plate.

(e) The Division shall reserve sufficient license plates starting with the prefix "ST" and numbered consecutively beginning with the numeral "2" as required for this section. Any other valid license plates beginning with the prefix "ST" and already assigned are not subject to this section.

(f) All registration plates issued pursuant to this section shall be the colors and design of the Delaware State Police as determined by the Division of Motor Vehicles in conjunction with the Delaware State Police. The registration plate issued pursuant to this section need not bear a specific registration sticker indicating the expiration date. Instead, the Superintendent of the State Police shall maintain accurate records which reflect the fleet vehicles assigned to a specialty license plate. Such records shall be provided to the Department upon request.

(g) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(84 Del. Laws, c. 22, § 1.)

§ 2140O. Special registration plates supporting Plastic Free Delaware.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles for a special waste reduction registration plate. The Division shall issue the plate if it receives at least 200 of such applications.

(b) This section applies to:

(1) A private passenger vehicle; or

(2) Subject to paragraph (b)(2)b. of this section, a motor vehicle, including a truck or trailer, with a manufacturer's gross vehicle weight rating (GVWR) of 26,000 pounds or less.

a. The motor vehicle described in this paragraph may be owned by an individual or an artificial entity, including corporation, company, association, firm, partnership, society, or joint-stock company.

b. A truck that qualifies to register for the International Registration Plan (IRP), individually, or as part of a "combination of vehicles," as defined § 101 of this title, may not be issued a special plate under this section.

(c) Upon the initial application for a plate to be issued pursuant to this section, a 1-time fee of $50, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title. This additional fee is required for all persons applying for a special plate pursuant to this section, including members of nonprofit organizations, even if members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee to be set by the Division, which shall cover the cost of the plate.

(d) The 1-time administrative fee collected pursuant to subsection (c) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administering this section. Proceeds remaining after the Division of Motor Vehicles has covered the costs of promoting and administering this section shall be applied pursuant to subsection (e) of this section.

(e) The funds derived by the State from that portion of the 1-time fee of $50 that is not defined as an administrative fee pursuant to subsection (c) and (d) of this section shall be deposited by the Division of Motor Vehicles with the State Treasurer and shall be specifically set aside and deposited to support education and outreach programs in Plastic Free Delaware's Fund.

(f) All registration plates issued pursuant to this section shall be of the colors and design as determined by the Division and Plastic Free Delaware, Inc. The numbers and letters assigned will be the same as the current license plate assigned to the vehicle. The committee may, at its discretion, drop the wording "The First State" and substitute in lieu thereof the wording agreed upon with the organization.

(g) The Division of Motor Vehicles shall have the power to refuse any design which it believes would cause a public safety enforcement problem. The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(84 Del. Laws, c. 178, § 1.)

§ 2140P. Special registration plates supporting Whitetails Unlimited.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Department for a special "Whitetails Unlimited" registration plate.

(b) This section applies only to:

(1) A private passenger vehicle; or

(2) A truck with a ¾-ton or less manufacturer's rated capacity.

(c) Upon the initial application for a plate to be issued pursuant to this section, a 1-time administrative fee of $10 is required in addition to the annual registration fee required by this title. The additional fee is required for members of nonprofit organizations even if the members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee set by the Division of Motor Vehicles to cover the cost of the plate.

(d) The 1-time administrative fee collected pursuant to subsection (c) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for administrative costs and promoting the sale of the plate.

(e) The Division shall reserve sufficient license plates starting with the prefix "WTU" and numbered consecutively beginning with the numeral "1" as required for this section.

(f) All registration plates issued pursuant to this section shall be the colors and design of blue/gold with the organization logo placed to the left side of the plate and "Delaware" listed at the top or bottom of the plate as determined by the Division of Motor Vehicles in conjunction with Whitetails Unlimited. The Division of Motor Vehicles shall have the power to refuse any design which it believes would cause a public safety enforcement problem.

(g) The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section. A minimum of 200 applicants for this plate shall be required prior to issuance of the plate.

(84 Del. Laws, c. 188, § 1.)

§ 2140Q. Special registration plates supporting Delaware Greenwing Ducks Unlimited.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles for a special Greenwing Ducks Unlimited registration plate. The Division shall issue the plate if it receives at least 200 of such applications.

(b) This section applies to any of the following:

(1) A private passenger vehicle.

(2) Subject to paragraph (b)(2)b. of this section, a motor vehicle, including a truck or trailer, with a manufacturer's gross vehicle weight rating (GVWR) of 26,000 pounds or less.

a. The motor vehicle described in this paragraph may be owned by an individual or an artificial entity, including corporation, company, association, firm, partnership, society, or joint-stock company.

b. A truck that qualifies to register for the International Registration Plan (IRP), individually, or as part of a "combination of vehicles," as defined in § 101 of this title, may not be issued a special plate under this section.

(c) Upon the initial application for a plate to be issued pursuant to this section, a 1-time fee of $50, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title. This additional fee is required for all persons applying for a special plate pursuant to this section, including members of nonprofit organizations, even if members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee to be set by the Division of Motor Vehicles, which shall cover the cost of the plate.

(d) After making the initial application for a plate to be issued pursuant to this section, the owner shall pay a $35 annual surcharge for each plate in addition to the regular registration fee.

(e) The 1-time administrative fee collected pursuant to subsection (c) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administering this section. Proceeds remaining after the Division of Motor Vehicles has covered the costs of promoting and administering this section shall be applied pursuant to subsection (f) of this section.

(f) The funds derived by the State from that portion of the 1-time fee of $50 and the $35 annual surcharge that are not defined as administrative fees pursuant to subsection (c) of this section shall be deposited by the Division of Motor Vehicles with the State Treasurer and shall be specifically set aside and deposited for the Greenwing Members of Delaware Ducks Unlimited deposit in the Greenwing Delaware Ducks Unlimited Fund.

(g) All registration plates issued pursuant to this section shall be of the colors and design as determined by the Division of Motor Vehicles and the Greenwing Delaware Ducks Unlimited. The numbers and letters assigned to the license plate will be the same as the

current license plate assigned to the vehicle. The committee may drop the wording “The First State” and substitute in its place “Greenwing Ducks Unlimited.”

(h) The Division of Motor Vehicles shall have the power to refuse any design which it believes would cause a public safety enforcement problem. The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(84 Del. Laws, c. 243, § 1.)

§ 2140R. Special registration plates supporting University of Delaware Athletics Community and Campus Recreation

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles for a special Delaware Blue Hens registration plate. The Division shall issue the plate if it receives at least 200 of such applications.

(b) This section applies to any of the following:

(1) A private passenger vehicle.

(2) Subject to paragraph (b)(2)b. of this section, a motor vehicle, including a truck or trailer, with a manufacturer’s gross vehicle weight rating (GVWR) of 26,000 pounds or less.

a. The motor vehicle described in this paragraph may be owned by an individual or an artificial entity, including corporation, company, association, firm, partnership, society, or joint-stock company.

b. A truck that qualifies to register for the International Registration Plan (IRP), individually, or as part of a “combination of vehicles,” as defined in § 101 of this title, may not be issued a special plate under this section.

(c) Upon the initial application for a plate to be issued pursuant to this section, a 1-time fee of $50, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title. This additional fee is required for all persons applying for a special plate pursuant to this section, including members of nonprofit organizations, even if members are exempt from registration fees under § 2159 of this title. A replacement plate may be obtained upon payment of a fee to be set by the Division of Motor Vehicles, which shall cover the cost of the plate.

(d) The 1-time administrative fee collected pursuant to subsection (c) of this section shall be deposited into a special fund and used by the Division of Motor Vehicles for the purpose of promoting the sale of the plate and administering this section. Proceeds remaining after the Division of Motor Vehicles has covered the costs of promoting and administering this section shall be applied pursuant to subsection (e) of this section.

(e) The funds derived by the State from that portion of the 1-time fee of $50, that are not defined as administrative fees pursuant to subsection (c) of this section, shall be deposited by the Division of Motor Vehicles with the State Treasurer and shall be specifically set aside and deposited to Support the Delaware Blue Hens deposit in the University of Delaware Athletics Community and Campus Recreation Fund.

(f) All registration plates issued pursuant to this section shall be of the colors and design as determined by the Division of Motor Vehicles and by University Athletics Community and Campus Recreation. The numbers and letters assigned to the license plate will be the same as the current license plate assigned to the vehicle. The committee may drop the wording “The First State” and substitute in its place “Support Delaware Blue Hens.”

(g) The Division of Motor Vehicles shall have the power to refuse any design which it believes would cause a public safety enforcement problem. The Division of Motor Vehicles may promulgate rules and regulations as required to administer this section.

(84 Del. Laws, c. 248, § 1.)

§ 2140S. United Way of Delaware Pride Council special license plate.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles (“Division”) for a special United Way of Delaware Pride Council license plate. The Division shall issue the plate only if the Division receives at least 200 applications for the plate.

(b) This section only applies to the following:

(1) A private passenger vehicle.

(2) Subject to paragraph (b)(2)b. of this section, a motor vehicle or trailer with a manufacturer’s gross vehicle weight rating (“GVWR”) of 26,000 pounds or less.

a. The motor vehicle or trailer described in this paragraph (b)(2) may be owned by an individual or an artificial entity, including a corporation, company, association, firm, partnership, society, or joint-stock company.

b. A motor vehicle that qualifies to register for the International Registration Plan (“IRP”), individually, or as part of a combination of vehicles, may not be issued a special plate under this section.

(c)(1) On the initial application for a plate to be issued under this section, a 1-time fee of $50, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title.

(2) The initial application fee under paragraph (c)(1) of this section is required for any person applying for the plate, including a member of a nonprofit organization, even if the member is exempt from registration fees under § 2159 of this title.

(3) A replacement plate may be obtained on payment of a fee to be set by the Division, which must cover the cost of the plate.

(d) The Division shall deposit the 1-time administrative fee collected under subsection (c) of this section into a special fund and use the fund for the purpose of promoting the sale of the plate and administering this section. Proceeds remaining after the Division has covered the costs of promoting the sale of the plate and administering this section must be applied under subsection (e) of this section.

(e) The funds derived by the State from the portion of the 1-time fee of $50 under subsection (c) of this section other than the funds spent by the Division under subsection (d) of this section must be deposited by the Division with the State Treasurer and must be specifically set aside in the United Way of Delaware Pride Council's Fund for use by the United Way of Delaware Pride Council to support its mission to organize community resources to improve the lives of lesbian, gay, bisexual, transgender, and questioning youth and adults in Delaware.

(f) The design for all plates issued under this section must be submitted by the United Way of Delaware Pride Council for final color and design approval by the Division, and are subject to the following:

(1) The wording, "The First State", may be dropped and substituted with the wording "LGBTQ+ Pride".

(2) A plate may not be solely black and white in color.

(3) The Division may refuse any design that it believes would cause a public safety enforcement problem.

(g) The numbers, letters, or both, assigned will be the same as the license plate assigned to the owner's vehicle at the time of the application for the plate.

(h) The Division may promulgate regulations as required to administer this section.

(84 Del. Laws, c. 306, § 1.)

§ 2140T. William Penn High School special license plate.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles ("Division") for a special William Penn High School license plate. The Division shall issue the plate only if it receives at least 200 applications for the plate.

(b) This section only applies to the following:

(1) A private passenger vehicle.

(2) Subject to paragraph (b)(2)b. of this section, a motor vehicle or trailer with a manufacturer's gross vehicle weight rating ("GVWR") of 26,000 pounds or less.

a. The motor vehicle or trailer described in this paragraph (b)(2) may be owned by an individual or an artificial entity, including a corporation, company, association, firm, partnership, society, or joint-stock company.

b. A motor vehicle that qualifies to register for the International Registration Plan ("IRP"), individually, or as part of a combination of vehicles, may not be issued a special plate under this section.

(c) (1) On the initial application for a plate to be issued under this section, a 1-time fee of $50, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title.

(2) The initial application fee under paragraph (c)(1) of this section is required for any person applying for the plate, including a member of a nonprofit organization, even if the member is exempt from registration fees under § 2159 of this title.

(3) A replacement plate may be obtained on payment of a fee to be set by the Division, which must cover the cost of the plate.

(d) The Division shall deposit the 1-time administrative fee collected under subsection (c) of this section into a special fund and use the fund for the purpose of promoting the sale of the plate and administering this section. Proceeds remaining after the Division has covered the costs of promoting the sale of the plate and administering this section must be applied under subsection (e) of this section.

(e) The funds derived by the State from that portion of the 1-time fee of $50 under subsection (c) of this section other than the funds spent by the Division under subsection (d) of this section must be deposited by the Division with the State Treasurer and must be specifically set aside in the scholarship fund for use by the William Penn Alumni Association Fund to support its mission to raise funding for scholarships and organize community events sponsored by the high school.

(f) The design for all plates issued under this section must be submitted by the William Penn Alumni Association for final color and design approval by the Division, and are subject to the following:

(1) The wording, "The First State" , may be dropped and substituted with the wording "William Penn High School."

(2) A plate may not be solely black and white in color.

(3) The Division may refuse any design that it believes would cause a public safety enforcement problem.

(g) The numbers, letters, or both, assigned will be the same as the license plate assigned to the owner's vehicle at the time of the application for the plate.

(h) The Division may promulgate rules and regulations as required to administer this section.

(85 Del. Laws, c. 109, § 1.)

§ 2140U. Delaware's celebration of America's 250th anniversary special license plate [Expires Dec. 31, 2026, pursuant to 85 Del. Laws, c. 219, § 1].

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles ("Division") for a special Delaware 250 license plate. The Division shall issue the plate only if the Division receives at least 200 applications for the plate.

(b) This section only applies to the following:

(1) A private passenger vehicle.

(2) Subject to paragraph (b)(2)b. of this section, a motor vehicle or trailer with a manufacturer's gross vehicle weight rating ("GVWR") of 26,000 pounds or less.

a. The motor vehicle or trailer described in this paragraph (b)(2) may be owned by an individual or an artificial entity, including a corporation, company, association, firm, partnership, society, or joint-stock company.

b. A motor vehicle that qualifies to register for the International Registration Plan ("IRP"), individually, or as part of a combination of vehicles, may not be issued a special plate under this section.

(c) (1) On the initial application for a plate to be issued under this section, a 1-time fee of $50, which includes an administrative fee of $15, is required in addition to the annual registration fee required by this title.

(2) The initial application fee under paragraph (c)(1) of this section is required for any person applying for the plate, including a member of a nonprofit organization, even if the member is exempt from registration fees under § 2159 of this title.

(3) A replacement plate may be obtained on payment of a fee to be set by the Division, which must cover the cost of the plate.

(d) The Division shall deposit the 1-time administrative fee collected under subsection (c) of this section into a special fund and use the fund for the purpose of promoting the sale of the plate and administering this section. Proceeds remaining after the Division has covered the costs of promoting the sale of the plate and administering this section must be applied under subsection (e) of this section.

(e) (1) The funds derived by the State from the portion of the 1-time fee of $50 under subsection (c) of this section, other than the funds spent by the Division under subsection (d) of this section, must be deposited by the Division with the State Treasurer and must be specifically set aside in the name of Delaware 250 Fund for use by Delaware 250 in support of Delaware's celebration of America's 250th anniversary.

(2) Delaware 250 may determine how to spend the moneys in the Delaware 250 Fund, including which expenditures support Delaware's celebration of America's 250th anniversary.

(f) The design for all plates issued under this section must be submitted by Delaware 250 for final color and design approval by the Division, and are subject to the following:

(1) The wording, "The First State", may be dropped and substituted with the wording "Delaware 250".

(2) A plate may not be solely black and white in color.

(3) The Division may refuse any design that it believes would cause a public safety enforcement problem.

(g) The numbers, letters, or both, assigned will be the same as the license plate assigned to the owner's vehicle at the time of the application for the plate.

(h) The Division may promulgate regulations as required to administer this section.

(85 Del. Laws, c. 219, § 1.)

Subchapter III
Inspection of Vehicles

§ 2141. Inspection places.

The Department shall provide and maintain 1 or more places in each county together with such facilities and such number of qualified inspectors as may be required for registration and inspection purposes.

(36 Del. Laws, c. 10, § 24; Code 1935, § 5562; 43 Del. Laws, c. 244, § 13; 21 Del. C. 1953, § 2141.)

§ 2142. Purpose of inspections.

Inspection shall be for the purpose of determining whether a vehicle is in a safe and fit condition to be operated upon the highways of the State, and whether it is equipped in the manner provided by law.

(36 Del. Laws, c. 10, § 24; Code 1935, § 5562; 43 Del. Laws, c. 244, § 13; 21 Del. C. 1953, § 2142.)

§ 2143. Inspection of motor vehicle before registration; exception; vehicles outside State.

(a) Before the Department registers, renews the registration of or reregisters a motor vehicle required to be registered under this title, such vehicle shall first be inspected by the Department and determined to be safe and fit for operation and found equipped according to law. The Department may waive all inspection requirements with respect to the registration of new motor vehicles and the initial registration or renewal of vehicles no older than 7 model years. Upon application, subject to approval by the Secretary, the Department may assign to a motor vehicle dealer the authority to perform safety and vehicle identification number (VIN) inspections on motor vehicles, 7 model years old or newer, as such inspections relate to the motor vehicle's registration or reregistration, provided that the motor vehicle is owned by that motor vehicle dealer and such inspection occurs at a motor vehicle dealer facility.

(b) Upon application, subject to approval by the Secretary, the Department may waive such inspection requirements with respect to the renewal of registration of a vehicle registered in this State which is not in this State at the time the inspection is required, provided

that an out of state inspection, certified on forms prescribed by the Secretary, is submitted to the Department. It shall be the duty of the owner of any vehicle so inspected to submit such vehicle for inspection by the Department within 10 days after the date the vehicle is returned to this State.

(c) Upon application, subject to the approval by the Secretary, the Department may waive such registration requirements with respect to new or used motor vehicles where a fleet account is involved. A fleet account shall consist of 10 or more vehicles. The inspection requirements may be waived provided there are adequate inspection and repair facilities at the fleet headquarters located in this State. Such fleet account waiver shall not apply to fleets of school buses which transport pupils of any public, parochial or private school of the State. For the purposes of this subsection only, any trailer which requires inspection shall qualify as a motor vehicle.

(d) The Department shall waive the requirement for inspection for those small trailers with a gross weight of vehicle and load of 4,000 pounds or less, which are not required to be equipped with brakes.

(e) The Department shall waive the requirement for inspection for fire trucks, fire engines, rescue trucks, ladder trucks, tank trucks, tank trailers and ambulances which are used by fire companies, and volunteer ambulance and rescue services in this State; provided, that at the time of the renewal of registrations for these vehicles, the principal officer of such company shall present a certification that each vehicle has been inspected by the officer or the officer's designee and that it is safe to operate on the streets and highways and equipped according to law. The waiver shall not apply to passenger cars owned or used by fire companies.

(f) The Department shall waive the requirement for inspection for all vehicles or motor vehicles registered under the International Registration Plan pursuant to Chapter 4 of this title. The Department may adopt rules and/or procedures to implement this subsection.

(36 Del. Laws, c. 10, § 24; 37 Del. Laws, c. 10, § 7; Code 1935, § 5562; 43 Del. Laws, c. 244, § 13; 21 Del. C. 1953, § 2143; 53 Del. Laws, c. 6; 55 Del. Laws, c. 273; 56 Del. Laws, c. 392, § 1; 57 Del. Laws, c. 670, § 8A; 60 Del. Laws, c. 442, § 1; 64 Del. Laws, c. 260, § 1; 66 Del. Laws, c. 98, § 1; 70 Del. Laws, c. 28, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 18, § 4; 78 Del. Laws, c. 82, § 1; 79 Del. Laws, c. 252, § 1; 81 Del. Laws, c. 184, § 3; 84 Del. Laws, c. 11, § 1.)

§ 2144. Other inspections; procedure; duty of owner.

(a) At any time and notwithstanding the possession of current registration plates, as provided by this title, the Secretary, or any authorized agent of the Department or any police officer may, upon reasonable cause, require the owner or operator of a vehicle to stop and submit such vehicle and the equipment to such further inspection and test with reference thereto as may be appropriate. In the event such vehicle is found to be in an unsafe condition or lacking the required equipment or is not in proper repair and adjustment, the officer shall give a written notice to the driver and shall send a copy thereof to the Department. The notice shall require that such vehicle and its equipment be placed in safe condition and in proper repair and adjustment and/or that proper equipment be obtained, and that a certificate of inspection and approval for such vehicle be obtained within 5 days thereafter.

(b) Every owner or driver upon receiving the notice prescribed in subsection (a) of this section shall comply therewith and shall, within the 5-day period, secure an endorsement upon such notice by an inspector of the Department that such vehicle is in safe condition and properly equipped and its equipment in proper repair and adjustment and shall then forward the notice to the Department. No person shall operate any such vehicle after receiving a notice with reference thereto as above provided, except as may be necessary to return such vehicle to the residence or the place of business of the owner or driver if within a distance of 20 miles or to a garage until the vehicle and its equipment has been placed in proper repair and adjustment and otherwise made to conform to the requirements of this title.

(36 Del. Laws, c. 10, § 24; 40 Del. Laws, c. 38, § 9; Code 1935, § 5562; 43 Del. Laws, c. 244, § 13; 21 Del. C. 1953, § 2144; 57 Del. Laws, c. 670, § 8A; 67 Del. Laws, c. 95, § 1.)

§ 2145. School bus inspection.

All school buses which transport pupils of any public, parochial or private school of this State shall receive a special inspection twice yearly at such time and place as specified by Department regulations. At such inspection each school bus shall be inspected by the Department to determine if it is safe and fit for operation and properly equipped, and a special check shall be accomplished with respect to specific school bus safety features in accordance with the rules and regulations adopted by the Department.

(21 Del. C. 1953, § 2145; 56 Del. Laws, c. 393, § 1.)

§ 2146. Regulation of vehicular flow through inspection places.

The Department shall adopt and enforce by July 1, 1969, such administrative rules and regulations as may be necessary to insure an even distribution of vehicular inspections at the inspection places in each county on a monthly basis.

(21 Del. C. 1953, § 2146; 56 Del. Laws, c. 437, § 1.)

§ 2147. Reconstructed motor vehicles.

(a) Any motor vehicle that is more than 25 years old with a title brand of "reconstructed" that does not qualify to be registered as an antique motor vehicle under this chapter shall be exempt from emissions testing by the Division of Motor Vehicles. The vehicle must continue to meet and be inspected for safety and anti-tampering requirements for its model year.

(b) A vehicle exempt from emissions testing as set forth in subsection (a) of this section shall only be used for participation in club activities, exhibits, tours, parades, and similar uses, but in no event shall it be used for general transportation or 1,000 miles per year.

(c) Vehicles exempted under subsection (a) of this section shall provide a self-certification that the vehicle had not traveled in excess of the mileage allowed under subsection (b) of this section. If this certification is not submitted or the vehicle had traveled in excess of the mileage allowed, the vehicle will be deemed no longer eligible for the exemption.

(79 Del. Laws, c. 242, § 1.)

Subchapter IV

Fees

§ 2151. Fee schedule; time of payment [For application of this section, see 85 Del. Laws, c. 40, § 15].

At the time of application for the registration of a motor vehicle and prior to the issuance of the current registration plates required by this title, there shall be paid to the Department registration fees according to the following schedule:

(1) For the registration of any motorcycle, $15 per year.

(2) For the registration of each motor vehicle commonly used for pleasure or for the chief purpose of carrying persons (except motor vehicles commonly known as passenger buses) and including station wagons, $40 per year.

(3) For the registration of other motor vehicles, including those propelled by diesel engines, $40 per year if the gross load weight does not exceed 5,000 pounds, and an additional $18 per year for each 1,000 pounds or fraction thereof over and above 5,000 pounds. The gross load weight shall be the weight of the chassis, body, equipment and maximum allowable load as specified by the application.

(4) Such vehicles as are authorized to operate or to be moved as provided by § 4504 of this title shall be registered in the same manner as other vehicles. The fee for such registration shall be at the same rate required for trucks and semitrailers.

(5) For the registration of any recreational vehicle or recreational trailer, the fee shall be $40 per year if the gross load weight of the vehicle or trailer does not exceed 5,000 pounds, and in the event the gross load weight exceeds 5,000 pounds, $6.40 per year for each 1,000 pounds or fraction thereof over and above 5,000 pounds. The gross load weight shall be the weight of the chassis, body, equipment and maximum allowable load as specified by the application.

(6) A fee of $20, in addition to the registration fee, shall be imposed at the time of renewal of registration of a motor vehicle or semitrailer if the Delaware registration has expired. This fee may not be imposed if the registration has expired over 12 months or if a permit has been purchased for the vehicle pursuant to § 2103 of this title. The fee may not be imposed if a transfer of ownership on the vehicle has taken place or if the motor vehicle or trailer has been inspected prior to the expiration of registration.

(7) Of each of the motorcycle registration fees collected pursuant to paragraph (1) of this section the sum of $4.00 per year is appropriated to the Department of Transportation and shall be placed in a special account to be used only for the expenses incurred in the administration of the motorcycle rider education program and improved motorcycle licensing procedures.

(8) For the registration of a motor farm truck owned and used exclusively by a farmer who derives at least $1,000 of the farmer's annual income from the operation of the farmer's farm and who owns or rents at least 10 acres which are actively used in the farming operation from which the farmer derives that income, the fee is $40 per year if the gross load weight does not exceed 5,000 pounds, and an additional $3.80 per year for each 1,000 pounds or fraction thereof over and 46 above 5,000 pounds. The gross load weight is as calculated in paragraph (3) of this section, but in no case shall the required fee for motor vehicles, except trailers, under this paragraph be less than $40 per year.

(9) For the registration of a farm motor vehicle, farm vehicle, or farm trailer owned and used exclusively by a farmer who derives at least $1,000 of the farmer's annual income from the operation of the farmer's farm and the farmer owns or rents at least 10 acres which are actively used in the farming operation from which the farmer derives that income, and are operated or towed within a 20-mile radius of a farm owned or managed by the owner of the vehicle or trailer, there is a 1-time fee of $10.

(10) For the registration of trailers with a gross weight of 1,000 pounds or less the fee is $15 per year; if a trailer's gross load weight exceeds 1,000 pounds there shall be an additional fee of $5.00 per year for each 1,000 pounds or fraction thereof over and above the 1,000 pounds up to a maximum of 2,000 pounds. The fee for the registration of trailers with a gross weight exceeding 2,000 pounds is as provided in paragraph (3) of this section.

(11) The Secretary of the Department of Transportation in conjunction with the Secretary of the Department of Agriculture shall promulgate regulations as necessary for the administration and implementation of this section.

(36 Del. Laws, c. 10, § 26; 37 Del. Laws, c. 10, § 8; 38 Del. Laws, c. 27, §§ 1, 2; 40 Del. Laws, c. 38, § 1; Code 1935, § 5564; 45 Del. Laws, c. 287, § 2; 46 Del. Laws, c. 123; 47 Del. Laws, c. 17, § 2; 47 Del. Laws, c. 159; 47 Del. Laws, c. 255, § 3; 47 Del. Laws, c. 332; 48 Del. Laws, c. 62, §§ 1, 2; 21 Del. C. 1953, § 2151; 49 Del. Laws, c. 360; 53 Del. Laws, c. 221, §§ 3, 4; 55 Del. Laws, c. 156, § 2; 55 Del. Laws, c. 176; 58 Del. Laws, c. 363; 59 Del. Laws, c. 57, § 3; 62 Del. Laws, c. 233, § 1; 62 Del. Laws, c. 337, § 1; 64 Del. Laws, c. 207, § 3; 65 Del. Laws, c. 27, §§ 3, 4; 67 Del. Laws, c. 260, § 1; 67 Del. Laws, c. 411, §§ 5-9; 68 Del. Laws, c. 156, §§ 56(a)-(d), (g), 59(a); 69 Del. Laws, c. 77, §§ 59, 60; 69 Del. Laws, c. 217, § 3; 74 Del. Laws, c. 110, § 44; 74 Del. Laws, c. 166, § 2; 74 Del. Laws, c. 383, § 2; 76 Del. Laws, c. 76, §§ 5-10; 79 Del. Laws, c. 210, § 2; 80 Del. Laws, c. 77, § 6; 85 Del. Laws, c. 40, § 3.)

§ 2151A. Alternative fuel registration fees [For application of this section, see 85 Del. Laws, c. 40, § 15].

At the time of application for the registration of a motor vehicle and prior to the issuance of the current registration plates required by this title, there shall be paid to the Department registration fees according to the following schedule:

(1) For the registration of an electric motor vehicle, in addition to the registration fee under § 2151 of this title, a fee of $110 per year if the gross load weight is 6,000 pounds or less. The additional fee is $150 per year if the gross load weight is over 6,000 pounds and as much as 10,000 pounds. The additional fee is $260 per year if the gross load weight is over 10,000 pounds and as much as 26,000 pounds. The additional fee is $900 per year if the gross load weight is in excess of 26,000 pounds.

(2) For the registration of a plug-in electric vehicle, in addition to the registration fee specified in § 2151 of this title, a fee of $85 per year if the gross load weight is 6,000 pounds or less. The additional fee is $115 per year if the gross load weight is over 6,000 pounds and as much as 10,000 pounds. The additional fee is $200 per year if the gross load weight is over 10,000 pounds and as much as 26,000 pounds. The additional fee is $600 per year if the gross load weight is in excess of 26,000 pounds.

(3) For the registration of a non-plug-in electric vehicle, in addition to the registration fee specified in § 2151 of this title, a fee of $60 per year if the gross load weight is 6,000 pounds or less. The additional fee is $80 per year if the gross load weight is over 6,000 pounds and as much as 10,000 pounds. The additional fee is $140 per year if the gross load weight is over 10,000 pounds and as much as 26,000 pounds. The additional fee is $480 per year if the gross load weight is in excess of 26,000 pounds.

(4) For the registration of an other fuel vehicle, in addition to the registration fee specified in § 2151 of this title, a fee of $110 per year if the gross load weight is 6,000 pounds or less. The additional fee is $150 per year if the gross load weight is over 6,000 pounds and as much as 10,000 pounds. The additional fee is $260 per year if the gross load weight is over 10,000 pounds and as much as 26,000 pounds. The additional fee is $900 per year if the gross load weight is in excess of 26,000 pounds.

(5) For the registration of a motorcycle, as defined by § 101 of this title, which is an electric motor vehicle, non-plug-in electric motor vehicle, other fuel vehicle, or plug-in electric vehicle, in addition to the registration fee specified in § 2151(1) of this title, a fee of $15 per year. A “moped,” as defined by § 101 of this title, is exempt from the additional registration fee under this section.

(85 Del. Laws, c. 40, § 4.)

§ 2152. Optional provision for tractor trailer units.

(a) The owner of every pickup truck, truck or truck tractor which is used to pull a semitrailer may elect to have the total gross load weight of the pickup truck, truck or truck tractor and semitrailer assessed against the pickup truck, truck or truck tractor and to pay the fees set forth in § 2151(3) of this title by filing with the Department an election form as provided by the Secretary.

(b) Upon election to have the total gross load weight assessed pursuant to subsection (a) of this section, an owner may have not more than 3 semitrailers, as designated by the owner, registered upon the payment of a $40 per year fee for each designated semitrailer. No other fee for registration of the semitrailer shall be required.

(c) The Secretary shall promulgate such rules and regulations as may be necessary to effectuate this section.

(21 Del. C. 1953, § 2151A; 55 Del. Laws, c. 176; 57 Del. Laws, c. 670, § 8A; 60 Del. Laws, c. 192, § 1; 62 Del. Laws, c. 388, § 1; 67 Del. Laws, c. 411, § 10; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 76, § 11.)

§ 2153. Fee for manufacturers’, transporters’, automotive recyclers’ and dealers’ plates.

Manufacturers, transporters, automotive recyclers and dealers who qualify under this chapter for special number plates shall pay to the Department for each calendar year $10 for each set of special plates. These special number plates may be issued for 1 or 2 years at a fee of $10 per plate for each year.

(36 Del. Laws, c. 10, § 26; 38 Del. Laws, c. 27, §§ 1, 2; 40 Del. Laws, c. 38, § 1; Code 1935, § 5564; 45 Del. Laws, c. 287, § 2; 21 Del. C. 1953, § 2152; 53 Del. Laws, c. 221, § 5; 65 Del. Laws, c. 318, § 3; 67 Del. Laws, c. 411, § 11.)

§ 2154. Special number plates for towed stock cars and other motor vehicles.

(a) An owner of a stock car of the type used for racing may apply to the Department, upon appropriate forms provided by the Department, for a special plate which shall be displayed on the stock car when it is being towed upon the highways.

(b) A person whose business involves towing motor vehicles upon the highways may apply to the Department, upon appropriate forms provided by the Department, for a special plate or plates, which shall be displayed on motor vehicle(s) when being towed upon the highways by such person in the course of such person’s business.

(c) Special plates issued pursuant to this section shall not be displayed on trailers, construction vehicles or vehicles being operated under their own power.

(d) Special plates issued pursuant to this section shall contain the words “towed vehicle” which shall distinguish them from other plates issued under this chapter.

(e) Special plates issued pursuant to this section shall not be assigned to a particular vehicle and may be used by the applicant on any towed vehicle except those vehicles excluded under subsection (c) of this section.

(f) The fee for each special plate issued pursuant to this section is $10 per year. The plate may be originally issued or renewed for 1 or 2 years, and shall expire at midnight on December 31 of the year of expiration.

(g) [Repealed.]

(36 Del. Laws, c. 10, § 26; Code 1935, § 5564; 45 Del. Laws, c. 287, § 2; 21 Del. C. 1953, § 2153; 49 Del. Laws, c. 71; 64 Del. Laws, c. 367, § 1; 67 Del. Laws, c. 411, § 12; 70 Del. Laws, c. 186, § 1.)

§ 2155. Fees for half-year and quarter-year registration.

The registration fees for vehicles provided by this chapter shall be for a period of 12 months, but if the vehicle is registered or the registration renewed for a 6-month period, the applicant shall pay to the Department $^1/_2$ of the annual registration fee and an additional fee of $1.00. If the registration is renewed for a 3-month period, the applicant shall pay to the Department $^1/_4$ of the annual registration fee and an additional fee of $1.00. A renewal of a registration for a 3-month period shall be permitted only for a motor vehicle which has a gross registered weight of 18,000 pounds or more.

(36 Del. Laws, c. 10, § 26; Code 1935, § 5564; 45 Del. Laws, c. 287, § 2; 21 Del. C. 1953, § 2154; 64 Del. Laws, c. 466, § 8.)

§ 2156. Fee for convertible vehicles, station wagons and suburbans; gross load weight of buses.

(a) The registration fee for all convertible vehicles shall be ascertained upon the basis of the vehicle's gross load weight. It shall be determined which is the greater, the gross load weight as a carrier of persons or the gross load weight as the carrier of property, and the greater gross load weight shall be the basis for calculating the required registration fees. The fee for all station wagons shall be the same as for vehicles used for pleasure as provided in § 2151 of this title.

(b) The gross load weight of buses used for carrying persons shall be ascertained by multiplying the maximum number of persons the vehicle is provided to carry by 150 pounds and adding the result thereby obtained to the weight of the vehicle as specified in the application.

(36 Del. Laws, c. 10, § 26; 38 Del. Laws, c. 27, §§ 1, 2; 40 Del. Laws, c. 38, § 1; Code 1935, § 5564; 45 Del. Laws, c. 287, § 2; 21 Del. C. 1953, § 2155; 49 Del. Laws, c. 14, § 1; 55 Del. Laws, c. 156, § 3; 71 Del. Laws, c. 20, § 2; 74 Del. Laws, c. 166, § 3.)

§ 2157. Credit for registration fee on destroyed vehicle.

Whenever the Department is furnished with satisfactory evidence of the destruction of a motor vehicle, either complete or to such an extent as to render it impossible to operate such vehicle as a motor vehicle during the period for which it has been registered, and if the owner thereof desires to register another motor vehicle during the period for which such destroyed motor vehicle was registered, such owner shall be entitled to a credit on the new registration fee of the unexpired portion of the registration fee of the destroyed motor vehicle from the date of the new registration.

(36 Del. Laws, c. 10, § 26; Code 1935, § 5564; 45 Del. Laws, c. 287, § 2; 21 Del. C. 1953, § 2156; 62 Del. Laws, c. 190, § 7.)

§ 2158. Fee for duplicate certificate of registration, registration plate or validation sticker.

(a) The fee for a duplicate certificate of registration shall be $10.

(b) The fee for a duplicate registration plate shall be $5.00.

(c) The fee for a duplicate registration validation sticker shall be $5.00.

(36 Del. Laws, c. 10, § 26; Code 1935, § 5564; 45 Del. Laws, c. 287, § 2; 46 Del. Laws, c. 80, § 1; 47 Del. Laws, c. 121; 48 Del. Laws, c. 47; 21 Del. C. 1953, § 2157; 53 Del. Laws, c. 221, §§ 6, 7; 65 Del. Laws, c. 178, § 2; 80 Del. Laws, c. 77, §§ 11, 12.)

§ 2159. Motor vehicles exempt from registration fees; plates for ambulances and fire and rescue trucks.

(a) The following motor vehicles shall be registered but shall be exempt from the payment of registration fees:

(1) All motor vehicles of the State or any governmental agency thereof, including school buses owned by private contractors holding valid pupil transportation contracts with a school district or with the State Board of Education, or of any fire department, fire engine company, police department or any county or incorporated city or town thereof, used exclusively in the performance of the principal's, official's, employee's or agent's respective functions or duties;

(2) All motor ambulances owned and used by any agency in this State for charitable purposes or for the benefit of any hospital or hospitals in this State;

(3) All motor vehicles owned by any veteran's organization and used by such organization in charitable or public welfare work;

(4) All motor vehicles owned and used by the Delaware Civil Air Patrol (CAP) registered in this State and used by such organization for its respective functions or duties;

(5) All motor vehicles owned by the American Red Cross and used by such organization in charitable or public welfare work;

(6) All motor vehicles owned by the Salvation Army and used by such organization in charitable or public welfare work;

(7) All motor vehicles owned by any organization exempt from tax under § 501(c)(3) of the Internal Revenue Code [26 U.S.C. § 501(c)(3)] and used by such organization in charitable or public welfare work;

(8) All motor vehicles owned by a nonprofit educational foundation organized to promote instructional effectiveness and educational achievement.

The Secretary shall furnish, without cost, certain number and registration plates for all such vehicles, of such design as will distinguish them from other plates for which fees are paid. Number and registration plates for certain motor vehicles of the fire departments and fire companies of this State shall have such design and bear such numbers, words and letters as are provided in subsection (b) of this section. Nothing herein contained shall be construed as exempting such vehicles from the requirement of inspection.

(b) Number and registration plates furnished by the Secretary to fire departments and fire companies of this State for ambulances, fire trucks and rescue trucks shall have displayed thereon:

(1) The capital letter "A" followed by the fire station or fire company number for ambulance plates;

(2) The capital letter "FD" followed by the fire station or fire company number for fire truck plates; and

(3) The capital letter "R" followed by the fire station or fire company number for rescue truck plates.

In addition, such plates shall have displayed thereon the word "Delaware," the words "THE FIRST STATE," the expiration date of the plates, the vehicle number assigned to the vehicle by the fire company, department or other proper official or organization and red letters on white background.

(36 Del. Laws, c. 11; Code 1915, § 236A; 36 Del. Laws, c. 10, § 27; Code 1935, § 5565; 43 Del. Laws, c. 244, § 16; 21 Del. C. 1953, § 2158; 57 Del. Laws, c. 342, §§ 1-3; 57 Del. Laws, c. 670, § 8A; 58 Del. Laws, c. 36; 65 Del. Laws, c. 262, § 1; 65 Del. Laws, c. 348, § 258; 66 Del. Laws, c. 41, § 1; 66 Del. Laws, c. 271, §§ 1, 2; 67 Del. Laws, c. 46, § 50(a); 75 Del. Laws, c. 33, § 1.)

§ 2160. Optional 7-year registration plates for trailers.

(a) The owner of a fleet of trailers, meeting the requirements specified under § 2143(c) of this title, may elect to register such trailers for a 7-year period, by making application to the Department in accordance with this section.

(b) The application shall be made on a form and contain information as prescribed by the Secretary. Upon payment of the required fees and upon meeting other requirements prescribed by the Secretary, there shall be issued, to each vehicle for which application has been made, a registration plate and validation sticker which shall be valid for 7 years, provided that all requirements of this section are complied with.

(c) At the time application for registration or renewal of registration is made under this section, the applicant shall pay all fees required under this title for the first year of the 7-year plate. The applicant shall submit acceptable evidence of a surety bond in a form and with a surety approved by the Secretary and in an amount equal to the total registration fees required for all vehicles registered pursuant to this section to the applicant for the remaining 6 years.

(d) The owner is required to pay all registration renewal fees for vehicles registered pursuant to this section on an annual basis prior to the expiration date of such registrations.

(e) The Secretary may adopt rules and regulations necessary for the administration and enforcement of this section.

(60 Del. Laws, c. 294, § 1; 81 Del. Laws, c. 184, § 4.)

§ 2160A. Issuance of vehicle registration expiration notice upon request.

Upon request by a vehicle owner, the Department shall mail a vehicle registration expiration notice 40 days prior to the expiration of the registration for the vehicle. A minimum fee of $1.00 per notice to cover the cost of this service shall be paid to the Department at the time the request is made. The amount of the fee shall be revised annually by the Department pursuant to § 6531 of Title 29 to reflect the true cost of this service.

(60 Del. Laws, c. 381, § 1.)

Subchapter V

Refusal or Cancellation of Registration; Appeals

§ 2161. Grounds for refusal to grant registration.

The Department shall not grant an application for the registration of a motor vehicle when:

(1) The applicant is not entitled thereto under this title;

(2) The applicant has neglected or refused to furnish the Department with the information required in the appropriate official form or to give reasonable additional information required by the Department;

(3) Fees required therefor by law have not been paid;

(4) The vehicle is in an unsafe and unfit condition to be operated upon the highways of this State and when it is not equipped in the manner provided by law.

(36 Del. Laws, c. 10, § 23; 38 Del. Laws, c. 29, § 1; Code 1935, § 5561; 43 Del. Laws, c. 244, § 12; 21 Del. C. 1953, § 2161.)

§ 2162. Rescission, cancellation or suspension of registration.

(a) The Department shall rescind, cancel or suspend the registration of a motor vehicle whenever the person to whom the registration card or registration or number plates therefor have been issued makes or permits to be made any unlawful use of the card or plates or permits the use thereof by a person not entitled thereto.

(b) The Department shall rescind, cancel or suspend the registration of any motor vehicle if it is determined by the Department that such motor vehicle should not have been registered in this State or that the person to whom the registration card or registration or number

plates therefor have been issued is not the owner of the vehicle or that such person has made or permitted to be made illegal use of the motor vehicle.

(c) The Department shall rescind, cancel or suspend the registration of any motor vehicle and shall rescind, cancel, or suspend and shall take up the current registration plates of any motor vehicle which is determined by the Department at any time, upon inspection pursuant to this chapter, to be unsafe or unfit to be operated or to be not equipped as required by law.

(d) The Department shall rescind, cancel or suspend the registration of a commercial motor vehicle if the commercial motor carrier responsible for its safety has been prohibited from operating by a federal agency.

(36 Del. Laws, c. 10, § 24; 38 Del. Laws, c. 29, § 2; Code 1935, § 5562; 43 Del. Laws, c. 244, § 13; 21 Del. C. 1953, § 2162; 76 Del. Laws, c. 116, § 1.)

§ 2163. Appeal from decision of Department.

An appeal to the Superior Court of the county wherein the registrant resides may be taken from any decision of the Department refusing, rescinding, cancelling or suspending the registration of any motor vehicle.

(36 Del. Laws, c. 10, § 24; 38 Del. Laws, c. 29, § 2; Code 1935, § 5562; 43 Del. Laws, c. 244, § 13; 21 Del. C. 1953, § 2163.)

§ 2164. Registration and inspection of motor vehicles of disabled veterans.

Any motor vehicle owned by a veteran with a disability who shall ever have been eligible for certain benefits under 38 U.S.C. § 1901 et seq. or Public Law 538, 93rd Congress shall be registered, but shall be exempt from the payment of registration fees; provided that such exemption shall be limited to 1 automobile per eligible veteran at any 1 time. The Secretary shall furnish, without cost, number and registration plates for all such vehicles of such design as will distinguish them from other plates for which fees are paid. Nothing herein contained shall be construed as exempting such vehicles from the requirement of inspection.

(21 Del. C. 1953, § 2164; 57 Del. Laws, c. 413; 60 Del. Laws, c. 557, § 1; 63 Del. Laws, c. 361, § 1; 79 Del. Laws, c. 371, § 16.)

Subchapter VI

Taxicabs and Limousines

§ 2171. Operation of unregistered taxicab or limousine; exception.

No person shall drive or move, nor shall any person, being the owner of a taxicab or limousine, knowingly permit to be driven or moved upon any highway, any taxicab or limousine which is not registered as a taxicab or limousine and for which a certificate of title has not been issued or applied for, or for which current taxicab or limousine registration plates have not been issued, as provided in this title, or for which the appropriate fees have not been paid when and as required by this chapter, except that when application accompanied by the proper fee has been made for taxicab or limousine registration and certificate of title for a vehicle, it may be operated temporarily pending complete registration upon displaying a duplicate application duly verified or other evidence of such application, or otherwise under rules and regulations promulgated by the Department.

(Code 1935, § 5719a; 46 Del. Laws, c. 270, § 1; 21 Del. C. 1953, § 2171; 49 Del. Laws, c. 220, § 22; 62 Del. Laws, c. 354, § 1; 77 Del. Laws, c. 141, § 10.)

§ 2172. Number plates.

(a) The Department shall furnish for each vehicle registered as a taxicab or limousine 1 number plate as hereinafter provided. Upon the termination of the lawful use of any such plates, they shall be returned to the Department.

(b) The number plate shall have displayed thereon the taxicab or limousine registration number assigned to the vehicle and the name of this State, which may be abbreviated. Each number plate shall bear a distinctive word, letter or marking which shall be designated by the Department for the purpose of identifying taxicabs and limousines.

(Code 1935, § 5719g; 46 Del. Laws, c. 270, § 1; 21 Del. C. 1953, § 2179; 62 Del. Laws, c. 354, § 1; 77 Del. Laws, c. 141, §§ 11, 12.)

§ 2173. Marking of taxicabs.

Every motor vehicle which is at any time used as a taxicab or which is intended to be used as a taxicab on any highway shall have painted thereupon in distinctive color and shall at all times bear the word “TAXI,” in letters having height of at least 4 inches and a width of at least 1 inch. The word “TAXI” shall appear on the front and rear of the body of the taxicab, and shall be so located that it shall be plainly visible from a height of 4 feet.

(Code 1935, § 5719i; 46 Del. Laws, c. 270, § 1; 21 Del. C. 1953, § 2182; 62 Del. Laws, c. 354, § 1.)

§ 2174. Penalties.

Whoever violates this subchapter shall for the first offense be fined not less than $25 nor more than $100. For each subsequent like offense, such person shall be fined not less than $100 nor more than $200, or imprisoned not less than 10 nor more than 30 days, or both.

(Code 1935, § 5719hh; 46 Del. Laws, c. 270, § 1; 21 Del. C. 1953, § 2194; 62 Del. Laws, c. 354, § 1; 65 Del. Laws, c. 503, § 9; 70 Del. Laws, c. 186, § 1.)

Subchapter VII
Antique Motor Vehicles

§ 2196. Special antique motor vehicle plates.

(a) Upon application, the Department may furnish to the owner of a registered antique motor vehicle a special antique motor vehicle plate to be displayed on such antique motor vehicle. This special plate shall be issued in addition to the plate already issued for such vehicle under this chapter.

(b) The term "antique motor vehicle" includes every automobile, truck, motorcycle or other motor vehicle, but not a reproduction thereof, manufactured more than 25 years prior to the current year, which has been maintained in or restored to a condition which is substantially in conformity with manufacturer's specifications. A vehicle which has undergone substantial alterations from its original specifications and appearance, or has had its horsepower or dimensions changed, shall not be eligible for an antique license plate pursuant to this section.

(c) Any antique motor vehicle, registered pursuant to this section, shall be used only for participation in club activities, exhibits, tours, parades and similar uses, but in no event shall it be used for general transportation.

(d) Such special antique motor vehicle license plate shall be issued for a fee of $25 and shall be valid without further payment of a renewal fee as long as the vehicle is in existence and is owned by the same person. This fee shall be in addition to the vehicle document fee, title fee or other fees required by this title.

(e) In the event of a transfer of ownership of an antique motor vehicle registered with a special plate pursuant to this section, the transferor shall surrender the special plate to the Department.

(21 Del. C. 1953, § 2196; 50 Del. Laws, c. 283, § 1; 57 Del. Laws, c. 670, §§ 8A-8C; 62 Del. Laws, c. 206, § 1; 64 Del. Laws, c. 364, § 1; 72 Del. Laws, c. 336, § 2.)

§ 2197. Street rods.

(a) If any modified antique motor vehicle manufactured more than 25 years prior to the current year, hereinafter referred to as a "street rod," is duly registered in the State, the owner of such street rod may apply to the Secretary of the Department of Transportation, on special application forms prescribed by the Secretary, for a special street rod motor vehicle plate, to be displayed on such street rod in lieu of the standard vehicle registration plate.

(b) Any street rod, registered pursuant to this section, shall be used only for participation in club activities, exhibits, tours, parades and similar uses, but in no event shall it be used for general transportation.

(c) Upon receipt of an application for a special street rod motor vehicle plate on a form prescribed by the Secretary, the Secretary shall issue to such applicant a special street rod motor vehicle plate on a permanent basis, and it shall bear the inscription "STREET ROD" with yellow letters on a blue background. In addition, such plates shall have displayed thereon the word "DELAWARE," the words "THE FIRST STATE," the expiration date of the plates and the vehicle number assigned to the vehicle by the Secretary. This special plate shall be issued for the applicant's use only for such motor vehicle, and in the event of a transfer of title, the transferor shall surrender the special plate to the Secretary.

(d) Upon approval of the application the Secretary shall assess the applicant an initial fee of $25, in addition to the registration fee levied under this chapter. The special plate shall be renewed upon payment of the registration fee levied under this chapter.

(e) A "street rod" shall mean a vehicle, the body and frame of which were manufactured more than 25 years prior to the current year and which has been modified for safe road use, or a kit car which resembles that of an original vehicle manufactured more than 25 years prior to the current year and has also been modified for safe road use. For the purposes of this section "modified" means, but is not limited to, a substantial and material alteration, or replacement of the engine, drive-train, suspension or brake system or alteration of the body which may be chopped, channeled, sectioned, filled or otherwise changed dimensionally from the original manufactured body.

(f) Street rod requirements:

(1) *Door latches.* — Every street rod that is equipped with doors leading directly into a compartment that contains 1 or more seating accommodations shall be equipped with mechanically or electrically activated door latches which firmly and automatically secure the door when pushed closed and which allow each door to be opened from the inside by the activation of a convenient lever handle or other suitable device.

(2) *Glazing.* — Every street rod shall be equipped with a laminated safety glass windshield that complies with the provisions appearing in the current ANSI Z26.1 Standard, AS1 or AS10. The windshield shall be in such a position that it affords continuous horizontal frontal protection to the driver and front seat occupants.

The minimum vertical height of the windshield glass shall be not less than 7 inches, or as originally equipped by a recognized manufacturer.

a. *Side and rear glass.* — These items are not required, but if they are present, they must comply with the provisions of current ANSI Z26.1 Standard. (AS1, AS2, AS4, AS6, AS10, or AS11.)

b. *Window tinting.* — Shall be allowed only as permitted in Delaware Motor Vehicle Regulations, § 4313 of this title and [former] Division of Motor Vehicles Policy Regulation number 76 [see now 2 DE Admin. Code 2277].

(3) *Hood latches.* — A front opening hood should be equipped with a primary and a secondary latching system to hold in a closed position.

(4) *Hood.* — a. Hoods on street rods shall be optional, but if the hood, top and/or sides are removed from the vehicle, the fan must be enclosed within a shroud of substantial rigid material to prohibit anyone from inadvertently being injured and to prevent the fan from flying up from the engine compartment should it become loose.

b. Protrusions from engine compartment shall be no more than 6 inches above the highest point of the hood, or when the hood has been removed 6 inches above the highest point of the hood's normal location.

(5) *Instrumentation & controls.* — a. *Speedometer.* — Every street rod shall be equipped with an operating speedometer calibrated to indicate "miles per hour."

b. *Odometer.* — Every street rod shall be equipped with an operating odometer calibrated to indicate "total miles driven."

c. *Steering wheel.* — Every street rod shall be equipped with a circular steering wheel with an outside diameter of not less than 13 inches.

(6) *Rear view mirror.* — Every street rod shall be equipped with 2 rear view mirrors, each providing a clear field of vision 200 feet to the rear.

One shall be mounted on the inside of the vehicle in such a position that it affords the driver a clear view to the rear. The other shall be mounted on the outside of the vehicle on the driver's side in such a position that it affords the driver a clear view to the rear. When an inside mirror does not give a clear view to the rear due to window tint or other obstructions, a right-hand outside mirror shall be required in lieu thereof. The mirror mounting shall provide for mirror adjustment by tilting in both horizontal and vertical directions.

(7) *Seat belts.* — Every street rod shall be equipped with a safety belt system for each occupant of the vehicle. Any such safety belt system must at a minimum be a Type 1 (lap belt) and must meet Federal Motor Vehicle Safety Standard 209 [49 C.F.R. § 571.209]. All safety belts systems shall be securely anchored to the body or frame.

(8) *Windshield wipers.* — Every street rod shall be equipped with at least 1 windshield wiper installed in a position which effectively clears the windshield area directly in front of the driver. The operation of the windshield wiper shall be controlled by the driver from within the vehicle and shall be electrically or vacuum-operated.

(9) *Accelerator control system.* — Every street rod shall be equipped with an accelerator control system that returns the engine throttle to an idle position when the driver removes the actuating force from the accelerator control.

(10) *Service brakes.* — Every street rod shall be equipped with hydraulic brakes acting on all wheels. The service brakes, upon application, must meet all the requirements as specified in the Delaware Motor Vehicle Regulations, § 4303 of this title.

(11) *Parking brakes.* — Shall meet all the requirements of the Delaware Motor Vehicle Regulations, § 4304 of this title.

(12) *Bumpers.* — Shall be optional on street rods.

(13) *Exhaust systems.* — Every street rod shall be equipped with an exhaust system that is free of leaks including the exhaust manifolds (including headers), the piping leading from the flange of the exhaust manifold(s) and the tail piping.

Exhaust systems on street rods shall discharge the exhaust fumes at a location to the rear of the vehicle body or direct the exhaust fumes outward from the side of the vehicle body at a location rearward of any operable side windows. No part of the exhaust system shall pass through any area of the vehicle that is used as a passenger carrying compartment. Every street rod must be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise. Muffler cutouts or mufflers without internal baffle plates are prohibited.

(14) *Fenders.* —

Street rods shall not be required to have fenders on wheels.

(15) *Fuel systems.* — Every street rod shall have all fuel system components, such as tank tubing, hoses, clamps, etc., securely fastened to the vehicle with fasteners designed for this purpose so as not to interfere with the vehicles' operation and shall be leak proof.

Fuel lines shall be positioned so as not to be in contact with high temperature surfaces or moving components.

(16) *Steering.* — A street rod shall have no steering components extending below the wheel rims in their lowest position. The use of unconventional steering components such as chain drive, sprockets or electric solenoids shall be prohibited. The steering system shall remain unobstructed when turned from lock to lock.

(17) *Suspension.* — A street rod shall be equipped with a damping device at each wheel.

(18) *Tires & wheels.* — The tires and wheels on street rods shall comply with current Federal Motor Vehicle Safety Standards (D.O.T. approved). All tires must be grooved and have $^{3}/_{32}$# tread depth minimum.

(19) *Electrical system.* — a. *Lighting.* — 1. Street rods shall have a minimum of 2 headlights.

2. All headlights must be equipped with 2-position dimmer switch which will lower and raise the candle power of the headlights. Rheostat type switch not allowed.

3. Vehicle must be equipped with taillight, brake lights and a license plate light which illuminates the license plate.

4. Two taillights and 2 brake lights required. Each light shall provide 6 square inches of luminous lens area unless a National Street Rod Association inspector verifies the lights are original equipment.

5. All replacement lenses shall be made of approved reflective material.

6. Street rods shall have turn signals, front and rear. Each turn signal shall provide 6 square inches of luminous lens area, unless a National Street Rod Association inspector verifies the turn signals are original equipment.

b. *Horn.* — Every street rod shall be equipped with a horn that is electrically operated and that will emit a minimum sound level of 92 db(A) measured at a distance of 200 feet directly in front of the vehicle under clear weather conditions. The switch used to actuate the horn shall be easily accessible to the driver when operating the vehicle.

(20) *Automatic transmission lockout.* — Street rods equipped with an automatic transmission shall have a neutral safety switch which allows the vehicle to start in either neutral and/or park only.

(21) *Emission.* — Street rods shall be exempt from state and federal emission standards.

(22) Except as required by this section, unless the presence of certain equipment was specifically required by a statute of this State as a condition of sale when the vehicle was manufactured, the presence of any specific equipment is not required for the operation of a vehicle registered under this section.

(61 Del. Laws, c. 62, § 2; 67 Del. Laws, c. 411, §§ 13, 14; 71 Del. Laws, c. 321, § 1; 72 Del. Laws, c. 336, § 1; 74 Del. Laws, c. 110, §§ 45, 46; 76 Del. Laws, c. 207, §§ 1, 2; 79 Del. Laws, c. 256, § 1; 82 Del. Laws, c. 40, § 1.)

§ 2198. Inspection.

(a) A motor vehicle registered as an antique motor vehicle shall be exempt from annual inspection. A motor vehicle must pass an initial inspection prior to the motor vehicle being registered as an antique motor vehicle. Motor vehicles registered as antique motor vehicles shall be provided EXEMPT validating stickers in lieu of the usual expiration date stickers upon passing the initial inspection.

(b) A motor vehicle registered as a street rod shall be exempt from annual inspection. A street rod must pass an initial inspection as prescribed in § 2197(f) of this title (street rod requirements), prior to the motor vehicle being registered as a street rod.

(c) A vehicle registered as a unique vehicle, which includes a vehicle assigned a unique unregistered vehicle title, is exempt from annual inspection. A unique vehicle must pass an initial inspection prior to being registered as a unique vehicle. A vehicle registered as a unique vehicle shall be provided EXEMPT validating stickers in lieu of the usual expiration date stickers upon passing the initial inspection.

(21 Del. C. 1953, § 2198; 50 Del. Laws, c. 283, § 1; 59 Del. Laws, c. 338, § 1; 61 Del. Laws, c. 62, § 1; 62 Del. Laws, c. 28, § 1; 67 Del. Laws, c. 411, § 15; 72 Del. Laws, c. 336, § 1; 73 Del. Laws, c. 261, § 1; 76 Del. Laws, c. 207, §§ 3, 4; 84 Del. Laws, c. 304, § 3.)

Part II
Registration, Title and Licenses

Chapter 23
Title and Liens

Subchapter I

Certificates of Title

§ 2301. Certificate of title required before vehicle registered or operated.

(a) The Department shall not register or renew the registration of any motor vehicle or truck tractor unless and until the owner thereof makes application for and is granted an official certificate of title for such vehicle or presents satisfactory evidence that a certificate of title for such vehicle has been previously issued to such owner by the Department.

(b) The owner of a motor vehicle registered in this State shall not operate or permit the operation of any such vehicle upon any highway without first obtaining a certificate of title therefor from the Department nor shall any person operate any such vehicle upon the highways knowing or having reason to believe that the owner has failed to obtain a certificate of title therefor.

(c) The Department shall not register any motor vehicle, truck tractor, trailer or motorcycle after July 1, 1969, until the motor vehicle document fee imposed by § 3002 of Title 30 has been paid to the Department, unless such motor vehicle is exempted from such fee by § 3002 of Title 30.

(d) The Department shall not transfer the title of a mobile home or house trailer to a new owner until all county taxes levied by the jurisdiction in which the trailer is located have been paid in full. The Receiver of Taxes and County Treasurer of Kent County may charge a fee in such amount as is established by the Kent County Levy Court for issuing a letter of certification as to the county taxes.

(36 Del. Laws, c. 10, § 34; Code 1935, § 5572; 21 Del. C. 1953, § 2301; 57 Del. Laws, c. 136, § 29; 57 Del. Laws, c. 188, § 39; 63 Del. Laws, c. 239, § 1; 64 Del. Laws, c. 74, § 1.)

§ 2302. Application for certificate of title.

(a) Every application for an original certificate of title shall be made upon the appropriate form furnished or approved by the Department and shall contain a full description of the motor vehicle including the name of the maker, the vehicle serial number or any number as may be assigned by the Department and any distinguishing marks thereon and whether the vehicle is new or used, together with a full and complete statement of each and all liens or encumbrances, if any, upon the motor vehicle. The application shall also contain a statement of the name and address of the person to whom the certificate of title shall be delivered and such other information as the Department may require. If the applicant desires a certificate of title in transfer-on-death form, the application shall contain the information required pursuant to § 2304 of this title. Every application shall be accompanied by the required fee. Whenever a new motor vehicle is purchased from a dealer the application for a certificate of title shall also include a statement of transfer by the dealer and a certificate of origin therefor.

(b) The owner shall certify, under penalty of perjury, that the statements made on the application for a certificate of title are true and correct to the best of the owner’s knowledge, information and belief.

(c) No application for an original certificate of title shall be accepted by the Department from any person under 18 years of age unless said certificate stating consent to said application is signed by at least 1 parent or guardian of said person.

(d) Any person who purchases for consideration, receives by gift or otherwise receives or acquires in any transaction any new or used trailer after July 1, 1969, shall apply to the Department for an original certificate of title for such trailer. Such application shall be made upon the appropriate form furnished or approved by the Department and shall contain a full description of the trailer including the name of the maker, the trailer serial number or any number as may be assigned by the Department, and any distinguishing marks thereon and whether said trailer is new or used, together with a full and complete statement of each and all liens or encumbrances, if any, upon the trailer. The application shall also contain a statement of the name and address of the person to whom the certificate of title shall be delivered and such other information as the Department may require. The Department shall not issue the original certificate of title until the document fee imposed by § 3002 of Title 30 has been paid to the Department.

(e) When a mobile home, park trailer or house trailer is sold by a Delaware licensed mobile home dealer the dealer shall be responsible for immediately submitting the application for certificate of title, related documents and all fees to the Division of Motor Vehicles for the purpose of securing a title.

(32 Del. Laws, c. 8; Code 1915, § 254K; 34 Del. Laws, c. 17; 35 Del. Laws, c. 9; 36 Del. Laws, c. 10, §§ 8, 35; 37 Del. Laws, c. 10, § 3; 38 Del. Laws, c. 28, § 1; 40 Del. Laws, c. 32; Code 1935, §§ 5546, 5573; 43 Del. Laws, c. 244, § 2; 21 Del. C. 1953, § 2302; 50 Del. Laws, c. 182, § 2; 54 Del. Laws, c. 365, § 1; 57 Del. Laws, c. 75; 57 Del. Laws, c. 188, § 25; 57 Del. Laws, c. 670, § 9A; 58 Del. Laws, c. 112, § 1; 58 Del. Laws, c. 511, § 40; 63 Del. Laws, c. 239, § 2; 64 Del. Laws, c. 466, § 9; 69 Del. Laws, c. 72, § 1; 69 Del. Laws, c. 454, § 4; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 274, § 1.)

§ 2303. Bill of sale for new vehicle.

When the application for a certificate of title refers to a new vehicle purchased from a dealer, the application shall be accompanied by the bill of sale or other written statement of the sale by the dealer, which bill of sale or statement shall show any lien upon the vehicle retained by the dealer.

(36 Del. Laws, c. 10, § 8; Code 1935, § 5546; 43 Del. Laws, c. 244, § 2; 21 Del. C. 1953, § 2303.)

§ 2304. Certificate of title; transfer-on-death.

(a) A motor vehicle may be titled in transfer-on-death form by including in the certificate of title a designation of a beneficiary or beneficiaries to whom the motor vehicle shall be transferred on death of the owner or the last to die of 2 or more owners with right of survivorship, subject to the rights of all lien holders, whether created before, simultaneously with, or after the creation of the transfer-on-death interest. A trust may be the beneficiary of a transfer-on-death certificate of title.

(b) A motor vehicle is titled in transfer-on-death form by designating in the certificate of title, the name of the sole owner, or the names of the owners who own the motor vehicle as tenants in common, tenants by the entirety or joint tenants with right of survivorship, followed in substance by the words "transfer on death to [name of beneficiary or beneficiaries]." Instead of the words "transfer on death to" the abbreviation "TOD" may be used.

(c) The transfer-on-death beneficiary or beneficiaries shall have no interest in the motor vehicle until the death of the owner or the last to die of all multiple owners with right of survivorship. A beneficiary designation may be changed at any time by the owner or all then surviving multiple owners with right of survivorship, without the consent of the beneficiary or beneficiaries, by filing an application for a subsequent certificate of title.

(d) Ownership of a motor vehicle titled in transfer-on-death form, for which an application for a subsequent certificate of title has not been filed, shall vest in the designated beneficiary or beneficiaries on the death of the owner or the last to die of all multiple owners with right of survivorship, subject to the rights of all lien holders. If no beneficiary survives the death of the owner or the last to die of all multiple owners with right of survivorship, then such interest in the motor vehicle belongs to the estate of the deceased owner or the last to die of all multiple owners with right of survivorship.

(e) A certificate of title in transfer-on-death form shall not be considered a testamentary disposition.

(78 Del. Laws, c. 274, § 2.)

§ 2305. Fee [For applicability of this section, see 80 Del. Laws, c. 77, § 23].

The fee for issuing a certificate of title for a vehicle shall be $35. Such fee shall be in addition to any fee charged for registration of the vehicle.

(32 Del. Laws, c. 8; Code 1915, § 254K; 34 Del. Laws, c. 17; 35 Del. Laws, c. 9; 36 Del. Laws, c. 10, §§ 26, 35; 38 Del. Laws, c. 27, §§ 1, 2; 38 Del. Laws, c. 28, § 1; 40 Del. Laws, c. 32; 40 Del. Laws, c. 38, § 1; Code 1935, §§ 5564, 5573; 43 Del. Laws, c. 244, § 15; 45 Del. Laws, c. 287, § 2; 21 Del. C. 1953, § 2305; 53 Del. Laws, c. 221, § 12; 65 Del. Laws, c. 178, § 3; 68 Del. Laws, c. 156, § 60(a); 76 Del. Laws, c. 76, § 13; 80 Del. Laws, c. 77, § 18.)

§ 2306. Certificate of title; issuance.

(a) The Department, when satisfied that the applicant for a certificate of title is the owner of the motor vehicle, shall thereupon issue in the name of the owner a certificate bearing a serial number and the signature of the Secretary, under the seal of the Secretary's office. The certificate of title shall contain the same information as is required upon the face of the registration card except that the period of registration shall be omitted. The Department may make address and vehicle registered weight changes to the vehicle record and registration card without issuing a new title.

(b) The certificate of title shall also contain a space for the signature of the owner in order to validate the same and forms for assignment of title or interest and warranty thereof by the owner with a space for notation of liens and encumbrances upon the vehicle at the time of a transfer. If an owner has elected to have a title issued in transfer-on-death form, then the title shall also contain the designations made by the owner pursuant to § 2304 of this title.

(c) The certificate of title shall be delivered to the registered owner unless another person has been named to receive the certificate in the application, in which event the certificate shall be delivered to such person.

(d) The Department shall not issue a certificate of title to any person under 18 years of age unless at least 1 parent or guardian of said person shall sign said certificate stating consent to the issuance of same.

(e) If a licensed dealer holds for sale a motor vehicle, truck tractor or trailer, or any other vehicle required by this title to be registered or titled by the Department, and transfers or sells such motor vehicle, truck tractor, trailer or other vehicle to someone other than another licensed dealer who holds such vehicle for sale, the dealer shall:

(1) Comply with this chapter; and

(2) Within 30 days of the date of delivery of the vehicle to the purchaser or transferee, transmit to the Department the application for certificate of title and such other accompanying documents and fees as are required by the Department; or

(3) Within 10 days of the date of delivery of the vehicle, transmit to the purchaser or transferee of such vehicle the application for certificate of title and such other accompanying documents as are required by the Department, in which case the purchaser or transferee shall submit the application and other documents to the Department within 30 days of the date of delivery of the vehicle.

(4) If, due to extenuating circumstances, the dealer or purchaser or transferee is unable to transmit the application to the Department within 30 days of the date of delivery of the vehicle, the Director in the Director's discretion may grant an extension of time within which the dealer, purchaser or transferee must do so.

(36 Del. Laws, c. 36, §§ 10, 36; 38 Del. Laws, c. 28, § 2; Code 1935, §§ 5548, 5574; 43 Del. Laws, c. 244, § 5; 21 Del. C. 1953, § 2306; 54 Del. Laws, c. 365, § 2; 57 Del. Laws, c. 75; 57 Del. Laws, c. 670, § 9A; 58 Del. Laws, c. 511, § 41; 64 Del. Laws, c. 466, § 11; 69 Del. Laws, c. 71, § 1; 69 Del. Laws, c. 72, § 2; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 274, § 3.)

§ 2307. Duration of certificate.

The certificate of title shall be good for the life of the motor vehicle so long as the vehicle is owned or held by the original holder of such certificate.

(36 Del. Laws, c. 10, § 36; 38 Del. Laws, c. 28, § 2; Code 1935, § 5574; 21 Del. C. 1953, § 2307.)

§ 2308. File of surrendered certificates of title; return of certificates to issuing jurisdictions.

The Department shall retain and appropriately file every surrendered certificate of title or copy thereof. The file is to be so maintained as to permit the tracing of title of the vehicles designated therein. Certificate of title issued by other jurisdictions may be returned to those jurisdictions at the discretion of the Director of Motor Vehicles.

(36 Del. Laws, c. 10, § 38; Code 1935, § 5576; 21 Del. C. 1953, § 2308; 62 Del. Laws, c. 190, § 11; 65 Del. Laws, c. 352, § 1.)

§ 2309. Duplicate certificates; fee.

In the event of the loss of a certificate of title, the loss of which is accounted for to the satisfaction of the Department, a duplicate or substitute may be issued, the charge therefor to be $50.

(36 Del. Laws, c. 10, §§ 26, 40; Code 1935, §§ 5564, 5578; 43 Del. Laws, c. 244, § 15; 45 Del. Laws, c. 287, § 2; 21 Del. C. 1953, § 2309; 64 Del. Laws, c. 366, § 1; 67 Del. Laws, c. 260, § 1; 68 Del. Laws, c. 156, § 60(b); 76 Del. Laws, c. 76, § 14; 80 Del. Laws, c. 77, § 10.)

§ 2310. Altered or changed serial number.

The owner of a motor vehicle, the serial number of which has been altered, removed or defaced, may make application for a special number in the form prescribed by the Department accompanied by a fee of $2.00. The applicant shall furnish such information as will satisfy the Department that such applicant is the owner, whereupon the Department shall assign a special number for the motor vehicle preceded by a symbol indicating this State. A record of special numbers so assigned shall be maintained by the Department. The title inspector shall stamp the number upon the vehicle as directed by the Department and, upon receipt by the Department of a certificate that the title inspector has inspected and stamped the number upon the motor vehicle as directed, in a workmanlike manner, together with application for a certificate of title, such special number shall be regarded as the serial number of the motor vehicle.

(36 Del. Laws, c. 10, § 44; Code 1935, § 5582; 21 Del. C. 1953, § 2310; 62 Del. Laws, c. 190, § 12; 67 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2311. [Reserved].

§ 2312. Refusal or revocation of certificate of title — Grounds.

If the Department determines that an applicant for a certificate of title to a motor vehicle is not entitled thereto, it may refuse to issue such certificate and, in that event, unless the Department reverses its decision or its decision is reversed by a court of competent jurisdiction, the applicant shall have no further right to apply for a certificate of title on the statements in said application. The Department may, for a like reason, revoke any outstanding certificate of title.

(36 Del. Laws, c. 10, § 39; Code 1935, § 5577; 21 Del. C. 1953, § 2312.)

§ 2313. Refusal or revocation of certificate of title — Hearing; notice.

No outstanding certificate of title shall be revoked by the Department without notice to the owner of the vehicle and a hearing. The notice shall be served in person or by registered mail.

(36 Del. Laws, c. 10, § 39; Code 1935, § 5577; 21 Del. C. 1953, § 2313.)

§ 2314. Refusal or revocation of certificate of title — Appeal.

An appeal from any decision of the Department refusing or revoking a certificate of title may be taken to the Superior Court.

(36 Del. Laws, c. 10, § 39; Code 1935, § 5577; 21 Del. C. 1953, § 2314.)

§ 2315. False statements; penalty.

Whoever knowingly makes any false statement in any application or other document required by the terms of this chapter shall be guilty of an unclassified misdemeanor, and shall be fined not less than $100 nor more than $1,000, or imprisoned not less than 60 days nor more than 1 year, or both.

(36 Del. Laws, c. 10, §§ 41, 48; 37 Del. Laws, c. 10, § 13; Code 1935, §§ 5579, 5586; 21 Del. C. 1953, § 2315; 77 Del. Laws, c. 60, § 7.)

§ 2316. Altering or forging certificate of title, manufacturer's certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plate.

Whoever:

(1) Alters with fraudulent intent any certificate of title, manufacturer's certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plate issued by the Division; or

(2) Forges or counterfeits any certificate of title, manufacturer's certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plate issued by the Division; or

(3) Alters or falsifies with fraudulent intent or forges any assignment of a certificate of title, manufacturer's certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plates; or

(4) Holds or uses any certificate of title, manufacturer's certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plate or an assignment thereof, knowing the same to have been altered, forged or falsified;

is guilty of a class E felony as the same is defined in Chapter 42 of Title 11 and shall be sentenced in accordance therewith.

(36 Del. Laws, c. 10, §§ 42, 49; Code 1935, §§ 5580, 5588; 21 Del. C. 1953, § 2316; 59 Del. Laws, c. 531, § 1.)

Subchapter II

Liens

§ 2331. Evidence of liens on application for a certificate of title.

Every application for a certificate of title shall contain a section where the applicant must disclose any and all liens on the vehicle to be titled.

(Code 1915, § 254K; 32 Del. Laws, c. 8; 34 Del. Laws, c. 17; 35 Del. Laws, c. 9; 36 Del. Laws, c. 10, § 35; 38 Del. Laws, c. 28, § 1; 40 Del. Laws, c. 32; Code 1935, § 5573; 21 Del. C. 1953, § 2331; 67 Del. Laws, c. 87, § 1; 71 Del. Laws, c. 376, § 1.)

§ 2332. Notation of liens and encumbrances on certificate of title.

Each certificate of title shall contain a statement of the owner's title and of the liens and encumbrances upon the vehicle therein described as noted in the application and whether possession is held by the owner under a lease, contract of conditional sale or other like agreement.

(36 Del. Laws, c. 10, § 10; Code 1935, § 5548; 43 Del. Laws, c. 244, § 5; 21 Del. C. 1953, § 2332.)

§ 2333. Uniform Commercial Code — Filing requirements not applicable when there is compliance with this title.

In accordance with § 9-311(a)(2) of Title 6 (Uniform Commercial Code), where a lien is required to be filed and noted on a certificate of title pursuant to this title, no additional filing shall be required under Article 9 of Subtitle I of Title 6 (Uniform Commercial Code).

(21 Del. C. 1953, § 2332A; 56 Del. Laws, c. 15, § 1.)

§ 2334. Uniform Commercial Code — Requirements applicable to security interest in inventory of motor vehicles.

This title does not apply to the creation or perfection of a security interest in a motor vehicle held by the debtor as inventory held for sale. The validity and effect of such security interest shall be governed by Article 9 of Subtitle I of Title 6 (Uniform Commercial Code).

(21 Del. C. 1953, § 2332B; 56 Del. Laws, c. 15, § 2.)

§ 2335. Application for recording lien upon motor vehicle where certificate is outstanding [For applicability of this section, see 80 Del. Laws, c. 77, § 23].

(a) In the event that any claim of any kind is sought to be secured upon any motor vehicle for which a certificate of title has been previously issued by the Department, and the certificate remains outstanding and valid and no assignment of the certificate has been made or sought to be made and no transfer of title or ownership or possession of the motor vehicle is made or sought to be made, the certificate of title shall be returned to the Department together with the application for placing and recording of such claim as a lien or encumbrance upon the motor vehicle. The application shall be made upon the appropriate form furnished and approved by the Department. Every application shall be accompanied by a fee of $20, which shall be in addition to any other fees required by this title. Upon the filing of the application and the entering of the claim, the certificate of title shall be returned to the person entitled to receive it.

(b) No claim of any kind shall be entered upon the certificate of title for any motor vehicle until the applicant has fully complied with all the provisions of this subchapter, insofar as such provisions may be applicable thereto.

(Code 1915, § 254K; 32 Del. Laws, c. 8; 34 Del. Laws, c. 17; 35 Del. Laws, c. 9; 36 Del. Laws, c. 10, § 36; 38 Del. Laws, c. 28, §§ 1, 2; 40 Del. Laws, c. 32; Code 1935, §§ 5573, 5574; 21 Del. C. 1953, § 2333; 53 Del. Laws, c. 221, § 13; 68 Del. Laws, c. 156, § 60(c); 71 Del. Laws, c. 376, § 2; 80 Del. Laws, c. 77, § 19.)

§ 2336. Recording liens; fee.

The Director shall keep a record of liens or encumbrances upon motor vehicles for a period of 8 years from the date of entering such lien or encumbrance on any certificate of title. For making entry on liens or encumbrances in the aforementioned record, the Director shall charge a fee of $10 which shall be paid by the applicant at the time of entering such lien or encumbrance on the certificate of title.

(Code 1915, § 254K; 32 Del. Laws, c. 8; 34 Del. Laws, c. 17; 35 Del. Laws, c. 9; 37 Del. Laws, c. 11, § 3; 38 Del. Laws, c. 28, § 1; 40 Del. Laws, c. 32; Code 1935, § 5573; 21 Del. C. 1953, § 2334; 50 Del. Laws, c. 210, § 1; 53 Del. Laws, c. 221, § 14; 57 Del. Laws, c. 670, § 9A; 58 Del. Laws, c. 174; 61 Del. Laws, c. 110, § 1; 67 Del. Laws, c. 260, § 1; 68 Del. Laws, c. 156, § 60(d).)

§ 2337. Priority of liens.

Liens or encumbrances on a motor vehicle properly set out in the application for a certificate of title, whereby any such liens or encumbrances are sought to be secured on a motor vehicle, shall for all purposes be valid from the date of the issuance of the certificate of title. If there is more than one such lien on any one motor vehicle, then such liens shall have priority according to the dates of the application as evidence of such claims. Such liens and encumbrances entered upon the certificate of title and recorded in the lien register shall be notice to all creditors of whatever description that such liens or encumbrances exist against the motor vehicle.

(36 Del. Laws, c. 10, § 36; 38 Del. Laws, c. 28, § 2; Code 1935, § 5574; 47 Del. Laws, c. 391; 21 Del. C. 1953, § 2335; 71 Del. Laws, c. 376, § 3.)

§ 2338. Duration of liens in favor of firms which cease to do business.

Any lien recorded in favor of a firm or corporation which, since the recording of such lien, has dissolved, ceased to do business or gone out of business for any reason, and which remains of record as a lien of such firm or corporation for a period of more than 3 years from the date of the recording thereof shall become null and void and of no further force and effect.

(Code 1915, § 254K; 32 Del. Laws, c. 8; 34 Del. Laws, c. 17; 35 Del. Laws, c. 9, § 1; 40 Del. Laws, c. 32; Code 1935, § 5573; 21 Del. C. 1953, § 2336.)

§ 2339. Satisfaction of liens.

Within 30 days from the date of final payment being made on any lien or encumbrance recorded under this subchapter, the certificate of title shall be signed accordingly in the manner prescribed by the Department. Upon the certificate of title being presented to the Department, the lien register shall be amended to reflect that the lien or encumbrance has been satisfied and the certificate of title shall be marked or stamped satisfied.

(Code 1915, § 254K; 32 Del. Laws, c. 8; 34 Del. Laws, c. 17; 35 Del. Laws, c. 9; 37 Del. Laws, c. 11, § 3; 38 Del. Laws, c. 28, § 1; 40 Del. Laws, c. 32; Code 1935, § 5573; 21 Del. C. 1953, § 2337; 53 Del. Laws, c. 221, § 15; 57 Del. Laws, c. 670, § 9A; 61 Del. Laws, c. 110, § 2; 65 Del. Laws, c. 327, § 1.)

§ 2340. Failure to satisfy lien after payment; satisfaction by Secretary; penalty.

For failure to satisfy any lien or encumbrance within 30 days after final payment has been made, the lien holder shall be fined not less than $25 nor more than $100. Proceedings for enforcement of these provisions shall be made by the Secretary of Transportation in the office of any justice of the peace in the State. Should any lien holder fail, refuse or neglect to satisfy any lien or encumbrance within 60 days after final payment thereon has been made, the Secretary, after due and timely notice given to the lien holder, may, upon the presentation of convincing evidence which the Secretary shall retain in the Secretary's office and file with the lien registrar, satisfy such lien or encumbrance recorded in the lien register.

(Code 1915, § 254K; 32 Del. Laws, c. 8; 34 Del. Laws, c. 17; 35 Del. Laws, c. 9; 38 Del. Laws, c. 28, § 1; 40 Del. Laws, c. 32; Code 1935, § 5573; 41 Del. Laws, c. 220; 21 Del. C. 1953, § 2338; 57 Del. Laws, c. 670, §§ 9A, 9B; 65 Del. Laws, c. 503, § 10; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 47.)

§ 2341. Transfer of title without disclosure of liens.

Any person, association of persons, firm or corporation and every agent or officer thereof participating in the transaction, who shall assign, transfer or set over, or cause to be assigned, transferred or set over, to any person, association of persons, firm or corporation the title to any motor vehicle for which a certificate of title is required by this title or who shall sell to any such person, association of persons, firm or corporation a motor vehicle for which a certificate of title is required by this title, shall disclose to such assignee, transferee or purchaser the existence of all existing liens and encumbrances in any form upon such motor vehicle, the holder or holders of such liens or encumbrances and the true amount thereof with all charges and interest due in respect thereof at the time of such assignment, transfer or sale.

(Code 1935, § 5575A; 43 Del. Laws, c. 244, § 18; 21 Del. C. 1953, § 2339.)

§ 2342. Terminal rental adjustment clauses.

In the case of motor vehicles or trailers, notwithstanding any other provision of law, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

(70 Del. Laws, c. 433, § 1.)

Subchapter III

Penalties

§ 2351. Violations of chapter.

(a) Whoever violates this chapter shall be fined not less than $25 nor more than $500, or imprisoned not less than 30 days nor more than 1 year or both.

(b) This section shall not apply to violations for which a specific punishment is set forth in this chapter.

(36 Del. Laws, c. 10, § 49; Code 1935, § 5587; 21 Del. C. 1953, § 2351.)

Part II
Registration, Title and Licenses
Chapter 25
Transfer of Title, Registration and Liens

§ 2501. Expiration of registration upon transfer of title.

Whenever the owner of a vehicle registered under this title transfers or assigns the title or interest thereto, the registration of such vehicle shall expire.

(36 Del. Laws, c. 10, § 15; Code 1935, § 5553; 43 Del. Laws, c. 244, § 9; 21 Del. C. 1953, § 2501; 70 Del. Laws, c. 186, § 1.)

§ 2502. Endorsement and delivery of registration card upon transfer.

An owner, upon transferring a registered vehicle, shall endorse the name and address of the transferee and the date of transfer upon the registration card issued for such vehicle and shall immediately give or send such card to the Department or an authorized representative thereof, except as otherwise provided by law in the case of transfers to dealers.

(36 Del. Laws, c. 10, § 15; Code 1935, § 5553; 43 Del. Laws, c. 244, § 9; 21 Del. C. 1953, § 2502.)

§ 2503. New certificate of title, registration and inspection; exceptions [For applicability of this section, see 80 Del. Laws, c. 77, § 23].

(a) The transferee of a Delaware registered vehicle shall make application for a new certificate of title immediately following purchase, but in no case more than 30 days after purchase of said vehicle. If due to extraordinary circumstances the purchaser is unable to apply for a certificate of title within 30 days of the purchase date, the Director, in the Director's discretion and for good cause shown, may grant an extension of time within which the purchaser must do so. The transferee, before operating or permitting the operation of a motor vehicle which has been transferred to such transferee upon a highway, shall apply for a transfer of title, obtain the registration of the vehicle as upon original registration, submit the vehicle to inspection and obtain new registration plates and new number plates as provided in this title. If the transferor has not had the registration plates and number plates transferred and assigned to another vehicle, then the transferee may, before operating or permitting the operation of such vehicle upon a highway, apply for and obtain, upon the payment of a fee of $35, a transfer of title and registration. Upon any such application the Department shall issue to the transferee without additional fee or inspection a new certificate of title and a new registration card, which card shall show the same period for which such vehicle was originally registered by the owner.

(b) Subsection (a) of this section shall not apply to the operation of vehicles by dealers or under temporary or limited permits or certificates as otherwise provided by this title.

(c) The Department shall transfer a certificate of title or registration certificate to any person 18 years of age or older if such person is otherwise qualified to obtain such certificate of title or registration certificate. The Department may transfer a certificate of title or registration certificate to a person under 18 years of age if at least 1 parent or guardian of said person signs the certificate of title or registration certificate stating consent to the transfer of same.

(36 Del. Laws, c. 10, § 15; Code 1935, § 5553; 43 Del. Laws, c. 244, § 9; 48 Del. Laws, c. 115, § 2; 21 Del. C. 1953, § 2503; 53 Del. Laws, c. 221, § 16; 54 Del. Laws, c. 365, § 3; 57 Del. Laws, c. 75; 58 Del. Laws, c. 551, § 42; 59 Del. Laws, c. 48, § 4; 65 Del. Laws, c. 178, § 5; 68 Del. Laws, c. 156, § 60(e); 69 Del. Laws, c. 74, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 76, § 15; 80 Del. Laws, c. 77, § 20.)

§ 2504. Transfer to a dealer; transfer by a dealer.

(a) If the transferee is a dealer, the owner upon transferring a registered vehicle shall properly endorse the registration card and deliver it together with the certificate of title properly assigned to the dealer who shall immediately report such transfer to the Department. After reporting the transfer, the dealer may operate such vehicle upon the highways during the period for which it is currently registered without dealer's plates solely for the purposes of testing, demonstrating or selling the vehicle but upon the sale of such vehicle the dealer shall endorse the name and address of the purchaser and the date of transfer upon the registration card and shall immediately give or send the card to the Department or an authorized representative thereof. The purchaser or transferee of the dealer shall, before operating or permitting the operation of the vehicle upon a highway, comply with this chapter.

(b) If ownership of a vehicle held by a registered dealer for sale is transferred, the transferring dealer, without applying for a new certificate of title, may execute an assignment of title to the transferee on a dealer's reassignment form, prescribed by the Department. Such assignment shall include a statement certifying all liens and encumbrances on the vehicle.

Every dealer, upon transferring a vehicle, shall immediately give a written notice of such transfer to the Department upon the official form provided by the Department.

(c) Dealer reassignment forms may be issued to a qualified dealer upon application for not less than 5 such forms and payment of a fee of $10 for each form.

(36 Del. Laws, c. 10, § 15; Code 1935, § 5553; 43 Del. Laws, c. 244, § 9; 21 Del. C. 1953, § 2504; 60 Del. Laws, c. 336, § 1; 65 Del. Laws, c. 178, § 6; 68 Del. Laws, c. 156, § 60(f); 79 Del. Laws, c. 46, § 1.)

§ 2505. Transfer to automotive recycler.

(a) Whenever an automotive recycler purchases or otherwise acquires any vehicle, whether registered or unregistered, for the purpose of wrecking or dismantling it in order to resell the parts thereof, such automotive recycler shall obtain the certificate of title issued by this State or any other state, a salvage certificate or other acceptable evidence of ownership from the seller or transferee which shall be deemed to meet all State proof of ownership, and shall be kept by the automotive recycler at the place of business where the vehicle was originally acquired by the automotive recycler. The automotive recycler shall report the acquisition of all vehicles to the Department on a monthly basis on a form devised by the Department. If the vehicle is transferred by the automotive recycler or the recycler's agent to another person or location, it shall be noted by the automotive recycler in the record, and the proof of ownership shall be transferred and kept at the same location as the vehicle, unless the vehicle is transferred to a scrap processor for recycling the vehicle scrap in which case the automotive recycler shall immediately send or deliver the proof of ownership of the vehicle to the Department. In this case the automotive recycler shall complete a 3-part form provided by the Department and shall:

(1) Retain 1 copy in the recycler's records;

(2) Forward 1 copy to the Department together with the proof of ownership;

(3) Forward the remaining copy to the scrap processor; and

(4) The scrap processor shall, upon destruction of the vehicle, retain a copy in such processor's records. The copy retained by the scrap processor shall be kept for a period of 3 years and the scrap processor shall make the same available for inspection by any police officer during the regular working hours of such business.

(b) The records and information required by this section shall be maintained by the automotive recycler for as long as said vehicle remains in the recycler's possession or control; provided, however, that if the automotive recycler transfers such vehicle to another person the recycler shall nevertheless keep such records and information for a period of 3 years from the date of such transfer. All records shall be maintained at the approved business location.

(c) If the ownership of the vehicle held for resale is transferred for titling and registration purposes, the transferring licensed automotive recycler without applying for a new certificate of title may execute an assignment of the certificate of title or salvage certificate to the transferee on the reassignment form prescribed by the Department.

(d) Any person who fails, neglects or refuses to maintain the records and information required by this section, or who shall refuse to permit the examination of the records or information by persons permitted to do so by this section or Chapter 75 of this title, shall be guilty of a class B misdemeanor as the same is defined in Chapter 42 of Title 11, and shall be subject to the penalties prescribed therein.

(36 Del. Laws, c. 10, §§ 15, 26; Code 1935, §§ 5553, 5564; 43 Del. Laws, c. 244, §§ 9, 15; 45 Del. Laws, c. 287, § 2; 21 Del. C. 1953, § 2505; 51 Del. Laws, c. 223, § 2; 59 Del. Laws, c. 541, § 3; 63 Del. Laws, c. 53, § 1; 65 Del. Laws, c. 318, § 4; 70 Del. Laws, c. 186, § 1.)

§ 2506. Transfer by operation of law; duty of transferee.

In the event of the transfer by operation of law of the title or interest of an owner in and to a vehicle as upon transfer-on-death, inheritance, devise or bequest, order in bankruptcy or insolvency or execution sale, the registration thereof shall expire and the vehicle shall not be operated upon the highways until and unless the person entitled thereto applies for and obtains the registration and inspection thereof and a transfer of title therefor. The surviving spouse, the child or children of any deceased person and the immediate members of the deceased's family residing in the household, after giving due and proper notice to the Department in such manner and on such form as may be provided therefor by the Department, may operate such vehicle and the current registration thereof shall continue in full force and effect until normal expiration thereof at which time the registration of such vehicle shall expire. An administrator, executor, trustee or other representative of the owner, or a sheriff or other officer or the assignee or legal representative of any such person may operate or cause to be operated any vehicle upon the highways for a distance not exceeding 125 miles from the place where formerly kept by the owner, to a garage, warehouse or other place of keeping or storage, upon displaying upon such vehicle the number plates issued for it and obtaining a temporary or limited permit for such operation as provided by this title.

(36 Del. Laws, c. 10, § 15; Code 1935, § 5553; 42 Del. Laws, c. 169; 43 Del. Laws, c. 244, § 9; 21 Del. C. 1953, § 2506; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 274, § 4.)

§ 2507. Retitling vehicle in another state.

Whenever any motor vehicle for which a title has been issued by the Department, whether such vehicle is registered or unregistered, is removed from this State, through transfer or otherwise, for the purpose of retitling the vehicle in another state, the owner thereof, upon transferring and/or removing such vehicle, shall, in addition to complying with all the other provisions of this chapter, remove the number plates and, if the vehicle is registered, the registration plates therefrom and shall immediately give or send such plates to the Department or an authorized representative thereof, together with a report that such vehicle is to be retitled in another state. If the Department is satisfied that the vehicle is to be removed from this State for the purpose aforesaid, the title to such vehicle shall be canceled.

(36 Del. Laws, c. 10, § 15; Code 1935, § 5553; 44 Del. Laws, c. 188, § 1; 45 Del. Laws, c. 287, § 3; 21 Del. C. 1953, § 2507; 51 Del. Laws, c. 223, § 3.)

§ 2508. Fee to transfer title [For applicability of this section, see 80 Del. Laws, c. 77, § 23].

The fee for transferring title to a vehicle shall be $35. A $35 penalty fee shall be charged for the issuance of a new certificate of title on a Delaware titled vehicle when the application is received more than 30 days after the transfer date of said vehicle. The penalty fee

shall be waived if the Director has granted an extension of time within which to apply for a certificate of title in accordance with § 2503(a) of this title.

(36 Del. Laws, c. 10, § 26; Code 1935, § 5564; 43 Del. Laws, c. 244, § 15; 45 Del. Laws, c. 287, § 2; 21 Del. C. 1953, § 2508; 53 Del. Laws, c. 221, § 17; 65 Del. Laws, c. 178, § 4; 68 Del. Laws, c. 156, § 60(g); 69 Del. Laws, c. 74, § 2; 76 Del. Laws, c. 76, § 16; 80 Del. Laws, c. 77, § 21.)

§ 2509. Delivery of title application to Department.

If a licensed dealer holds for sale a motor vehicle, truck tractor, trailer or any other vehicle required by this title to be registered or titled by the Department and transfers the motor vehicle, truck tractor, trailer or other vehicle to someone other than another licensed dealer who holds such vehicle for sale, the dealer shall:

(1) Comply with this chapter; and

(2) Within 30 days of the date of delivery of the vehicle to the purchaser or transferee, transmit to the Department the application for certificate of title and such other accompanying documents and fees as are required by the Department; or

(3) Within 10 days of the date of delivery of the vehicle, transmit to the purchaser or transferee of such vehicle the application for certificate of title and such other accompanying documents as are required by the Department, in which case the transferee or purchaser shall submit the application and other documents to the Department within 30 days of the date of delivery of the vehicle.

(4) If, due to extenuating circumstances, the dealer or purchaser or transferee is unable to transmit the application to the Department within 30 days of the date of delivery of the vehicle, the Director, in the Director's discretion may grant an extension of time within which the dealer, purchaser or transferee must do so.

(36 Del. Laws, c. 10, § 17; Code 1935, § 5555; 21 Del. C. 1953, § 2509; 64 Del. Laws, c. 466, § 12; 70 Del. Laws, c. 186, § 1.)

§ 2510. Endorsement and delivery of certificate of title upon transfer; penalty [For applicability of this section, see 80 Del. Laws, c. 77, § 23].

(a) The owner of a motor vehicle for which a certificate of title is required shall not sell or transfer that title or interest in or to such vehicle unless the owner has obtained a certificate of title thereto or, unless having procured a certificate of title, the owner shall in every respect comply with the requirements of this section. Whoever violates this section shall be fined not less than $25 nor more than $500, or imprisoned not less than 30 days nor more than 1 year or both.

(b) The owner of a motor vehicle who transfers or sells that title or interest in or to such motor vehicle shall endorse an assignment and warranty of title upon the certificate of title for such vehicle with a statement, as certified by the owner under penalty of perjury, of all liens or encumbrances thereon and the owner shall deliver the certificate of title to the purchaser or transferee at the time of delivering the vehicle.

(c) The transferee, except as provided in subsection (d) of this section, shall thereupon present such certificate endorsed and assigned to the Department, accompanied by a transfer fee of $35 and make application for and obtain a new certificate of title for such vehicle.

(d) When the transferee of a vehicle is a dealer who holds the vehicle for resale and operates it only for purposes of demonstration under dealer's number plates or when the transferee does not drive such vehicle or permit such vehicle to be driven upon the highways, such transferee shall not be required to forward the certificate of title to the Department, as provided in subsection (c) of this section, but such transferee upon transferring that title or interest to another person shall execute and acknowledge an assignment and warranty of title upon the certificate of title and deliver the same to the person to whom such transfer is made. No dealer or other transferee shall hold the certificate of title to a motor vehicle for resale and/or transfer that title or interest to another person by executing an assignment and warranty of title upon the certificate of title without first having satisfied or caused to be satisfied all liens or encumbrances against the motor vehicle recorded in the office of the Secretary.

(e) Whenever the ownership of any motor vehicle passes otherwise than by voluntary transfer, the new owner may obtain a certificate of title therefore from the Department upon application therefore and payment of a fee of $35, accompanied with such instruments or documents of authority, or certified copies thereof, as may be required by law to evidence or effect a transfer of title or interest in or to chattels in such case. The Department, when satisfied of the genuineness and regularity of such transfer, shall issue a new certificate of title to the person entitled thereto.

(f) Whenever a dealer purchases or otherwise acquires a previously registered vehicle, the dealer shall immediately notify the Department, giving the name of the former owner and a sufficient description of the vehicle to identify it.

(36 Del. Laws, c. 10, §§ 37, 49; 37 Del. Laws, c. 10, § 12; 40 Del. Laws, c. 33, § 1; Code 1935, §§ 5575, 5587; 43 Del. Laws, c. 244, § 17; 21 Del. C. 1953, § 2510; 53 Del. Laws, c. 221, §§ 18, 19; 57 Del. Laws, c. 670, § 10; 64 Del. Laws, c. 466, § 10; 65 Del. Laws, c. 178, §§ 7, 8; 68 Del. Laws, c. 156, § 60(h); 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 76, § 17; 80 Del. Laws, c. 77, § 22.)

§ 2511. Penalties.

(a) Whoever violates this chapter shall for the first offense be fined not less than $25 nor more than $100, or imprisoned not less than 30 days nor more than 90 days or both. For each subsequent like offense, the person shall be fined not less than $100 nor more than $200, or imprisoned not less than 90 days nor more than 6 months or both.

(b) This section shall not apply to violations for which a specific punishment is set forth elsewhere in this chapter.

(36 Del. Laws, c. 10, § 32; 37 Del. Laws, c. 10, §§ 10, 11; Code 1935, § 5570; 21 Del. C. 1953, § 2511; 70 Del. Laws, c. 186, § 1.)

§ 2512. Transfer for salvage.

(a) Except as provided under subsection (g) of this section, when a registered or unregistered motor vehicle, for which a title has been issued by the Department, is transferred as salvage as a result of a total loss insurance settlement, the insurance company or its authorized agent shall send the certificate of title of the vehicle to the Department within 30 days from the date of settlement. Upon receipt of the certificate of title and appropriate fee, the Department shall issue a salvage certificate. Such salvage certificate is deemed to meet all state proof of ownership.

(b) If the owner of any registered or unregistered motor vehicle for which a title has been issued by the Department receives a total loss insurance settlement for the vehicle and chooses to retain ownership of the vehicle as owner retained salvage, the insurance company shall either comply with the requirements in subsection (a) of this section or require the owner of the vehicle to procure a salvage certificate from the Department prior to paying the total loss insurance settlement.

(c) Every scrap processor which takes in a scrapped or dismantled vehicle without a title shall upload the vehicle identification number into the National Motor Vehicle Title Information System (NMVTIS) by the close of business the next business day and shall have the vehicle cleared by a Delaware State Police auto theft technician before the vehicle is scrapped, dismantled, or altered in any way.

(d) The Department shall issue to the seller a receipt in the name of the seller, agent, or owner for the salvage certificate. The seller or vehicle owner or agent shall keep such records and receipt for a period of 3 years from the date of sale and shall make such records and receipts available for inspection and examination by any police officer during the regular working hours of such business, seller, or agent.

(e) A person who fails, neglects, or refuses to maintain the records and information required by this section, or who refuses to permit the examination of the records or information by persons permitted by this section to do so, is guilty of a class B misdemeanor as defined in Chapter 42 of Title 11, and is subject to the penalties proscribed therein.

(f) The recordkeeping requirements outlined in this section is applicable to scrap processors, salvage dealers, junk dealers, and insurance companies or their authorized agents. The record keeping requirement and penalties for failure to maintain such records does not apply to individual owners who choose to retain ownership of their total loss vehicle as owner retained salvage.

(g) (1) An insurance company that does not receive, within 30 days from the date of the total loss insurance settlement, the properly endorsed certificate of title for a motor vehicle acquired as salvage may apply to the Department for a salvage certificate in the name of the insurance company, without surrendering the certificate of title for the vehicle.

(2) Regardless of the existence of a lien against the vehicle, the Department shall issue a salvage certificate in the name of the insurance company, free and clear of all liens, if the application is accompanied by all of the following:

a. Evidence of payment of the total loss claim.

b. An affidavit from the insurance company or its authorized agent stating that it has made at least 2 written requests for the properly endorsed certificate of title that were addressed to the vehicle owner of record and any known lienholders and sent by certified mail or commercial courier whose regular business is delivery service and that provides proof of delivery.

(h) (1) A licensed auto auction may apply for a salvage certificate in the name of the auto auction without surrendering the certificate of title if all of the following exist:

a. The auto auction took possession of a motor vehicle at the request of an insurance company.

b. The motor vehicle is the subject of an insurance claim.

c. There is no total loss insurance settlement resulting in transfer of ownership of the motor vehicle to the insurance company.

d. The motor vehicle has been abandoned at the facility of the auto auction for more than 30 days.

(2) Regardless of the existence of a lien against the vehicle, the Department shall issue a salvage certificate in the name of the auto auction, free and clear of all liens, if the application is accompanied by evidence that the auto auction made at least 2 written attempts to have the vehicle removed from the facility that were addressed to the vehicle owner of record and any known lienholders and sent by certified mail or commercial courier whose regular business is delivery service and that provides proof of delivery.

(59 Del. Laws, c. 541, § 1; 63 Del. Laws, c. 53, § 2; 71 Del. Laws, c. 57, §§ 1, 2; 80 Del. Laws, c. 328, § 1; 81 Del. Laws, c. 319, § 1.)

§ 2513. Duty of owner or holder of certificate of title in reference to stolen vehicles.

Whenever any motor vehicle for which a title has been issued by the Department, whether such vehicle is registered or unregistered, is stolen, the owner or holder of the certificate of title shall, within 30 days of such theft, in addition to complying with all the other provisions of this chapter, send the certificate of title of the stolen vehicle to the Department or an authorized representative thereof. If the stolen vehicle is recovered after the title has been sent to the Department, the Department shall return the title at no cost to the owner or former holder of the certificate of title within 10 days after receiving a request therefor from such owner or former holder.

(59 Del. Laws, c. 541, § 2.)

§ 2514. Sale of used taxicabs; notice; inspection; penalty.

(a) No person shall knowingly offer for sale or exchange in this State any motor vehicle which was previously licensed and used as a taxicab or for public transportation until the certificate of title for such motor vehicle has been surrendered to the Secretary of Transportation and until the Secretary has stamped in a conspicuous place on such certificate of title the designation "PREV TAXI."

(b) No taxicab or other vehicle which was previously used for public transportation shall be sold to any person until such vehicle has been examined and determined safe and fit for operation and found equipped according to law by the agents of the Secretary of Transportation of this State. In the event such vehicle is found to be in an unsafe condition or the required equipment is not present or is not in proper repair and adjustment, the Secretary or the Secretary's agent shall give a written notice of the unsafe condition to the owner of the motor vehicle. In event the taxicab or motor vehicle is not placed in a safe condition and equipped according to law, the Department shall rescind, cancel or suspend the registration of such vehicle.

(c) Any person who sells a motor vehicle contrary to this section and every officer, agent or employee of any person, firm or corporation and every person who shall sell or who shall authorize, direct, aid in or consent to the sale of a motor vehicle contrary to the provisions of this section shall be fined not more than $1,000 or be imprisoned not more than 1 year, or both.

(64 Del. Laws, c. 466, § 13; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, §§ 48, 49.)

§ 2515. Sale of motor vehicles lacking catalytic converters.

(a) No person shall sell a motor vehicle from which the catalytic converter has been removed without first advising the purchaser in writing and obtaining the purchaser's signature upon said notification that the catalytic converter is missing and that the vehicle may not pass inspection. It shall be a defense to any cause of action brought pursuant to this section if the motor vehicle was not required by federal laws or regulations to have a catalytic converter as part of its equipment.

(b) Any person who sells a motor vehicle in violation of this section shall make restitution to the purchaser in an amount reasonably necessary to pay for:

(1) Parts and labor to replace the catalytic converter; and

(2) All reasonable costs and attorneys' fees for bringing an action pursuant to this section.

(70 Del. Laws, c. 429, § 1.)

Part II
Registration, Title and Licenses

Chapter 26
Uniform Commercial Driver License Act

§ 2601. Short title.

This chapter may be cited as the "Uniform Commercial Driver License Act."

(67 Del. Laws, c. 157, § 1.)

§ 2602. Statement of intent and purpose.

(a) The purpose of this chapter is to implement the federal Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Title XII of Pub. Law 99-570) [49 U.S.C. § 521, Appendix §§ 2304, 2701-2716; repealed] and reduce or prevent commercial motor vehicle accidents, fatalities and injuries by:

(1) Permitting commercial drivers to hold only 1 license;

(2) Disqualifying commercial drivers who have committed certain serious traffic violations, or other specified offenses;

(3) Strengthening commercial driver licensing and testing standards.

(b) This chapter is a remedial law and shall be liberally construed to promote the public health, safety and welfare. To the extent that this chapter conflicts with general driver licensing provisions, this chapter prevails. Where this chapter is silent, the general driver licensing provisions apply.

(67 Del. Laws, c. 157, § 1.)

§ 2603. Definitions.

Notwithstanding any other provision of this title, the following definitions apply to this chapter:

(1) "Alcohol" means any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propanol and isopropanol.

(2) "Alcohol concentration" means:

a. The number of grams of alcohol per 100 milliliters of blood; or

b. The number of grams of alcohol per 210 liters of breath.

(3) "Alien" means any person not a citizen or national of the United States.

(4) "CDL downgrade" means either:

a. Except where otherwise provided in this title, the Division allows the driver to change the driver's self-certification to interstate but operating exclusively in transportation or operation excepted from 49 C.F.R. Part 391, as provided in § 390.3(f), § 391.2, § 391.68, or § 398.3;

b. The Division allows the driver to change the driver's self-certification to intrastate only if the driver is physically qualified for intrastate-only driving under § 4704(b) of this title;

c. The Division allows the driver to change the driver's certification to intrastate but operating exclusively in transportation or operations excepted under § 4704(c)(1)or (2) of this title driver physical qualification requirements; or

d. The Division removes the CDL privilege from the driver license.

(5) "CDLIS driver record" means the electronic record of the individual CDL driver's status and history stored by the state of record as part of the Commercial Driver's License Information System (CDLIS) established under 49 U.S.C. § 31309.

(6) "CDLIS motor vehicle record" means a report generated from the CDLIS driver record meeting the requirements for access to CDLIS information and provided by states to users authorized in 49 C.F.R. § 384.225(e)(3) and (4), subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. §§ 2721-2725, and § 305 of this title.

(7) "Commercial learner permit" (CLP) means a permit issued pursuant to § 2608(d) of this title.

(8) "Commercial driver license" (CDL) means a license issued in accordance with the requirements of this chapter to an individual which authorizes the individual to drive a certain class of commercial motor vehicle.

(9) "Commercial driver license information system" (CDLIS) means the information system established pursuant to the CMVSA to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(10) "Commercial motor vehicle (CMV)" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle

a. Has a gross combination weight rating (GCWR) of 26,001 pounds or more inclusive of a towed unit(s) with a gross vehicle weight rating (GVWR) of more than 10,000 pounds; or

b. Has a gross vehicle weight rating (GVWR) of 26,001 pounds or more; or

c. Is designed to transport 16 or more passengers, including the driver; or

d. Is of any size and is used in the transportation of hazardous materials.

(11) "Controlled substance" means any substance so classified under § 102(6) of the Controlled Substances Act (21 U.S.C. § 802(6)), and includes all substances listed on Schedules I through V, of 21 C.F.R. part 1308, as they may be revised from time to time.

(12) "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(13) "Disqualification" means any of the following actions:

a. The suspension, revocation, or cancellation of a CDL or CLP by the state or jurisdiction of issuance.

b. Any withdrawal of a person's privileges to drive a Commercial Motor Vehicle (CMV) by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations).

c. A determination by the FMCSA that a person is not qualified to operate a commercial motor vehicle under Part 391 of 49 C.F.R.

(14) "Drive" means to drive, operate or be in physical control of a motor vehicle.

(15) "Driver" means any person who drives, operates, or is in physical control of a commercial motor vehicle, or who is required to hold a commercial driver license.

(16) "Driver license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle.

(17) "Driving a commercial motor vehicle while under the influence of alcohol" means committing any one or more of the following acts in a CMV:

a. Driving a CMV while the person's alcohol concentration is 0.04 or more;

b. Driving under the influence of alcohol as prescribed by state law; or

c. Refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of § 383.51(b) or § 392.5(a)(2) of 49 C.F.R.

(18) "Drug and Alcohol Clearinghouse" (the "Clearinghouse") means the secure online database that gives employers, FMCSA, Delaware state driver-licensing agencies, and Delaware state law-enforcement personnel real-time information about CDL holder's drug and alcohol program violations.

(19) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

(20) "Excepted interstate commerce" means a CDL/CLP applicant must certify that the applicant operates or expects to operate in interstate commerce but engages exclusively in transportation or operations excepted under 49 C.F.R. § 390.3(f), § 391.2, § 391.68, or § 398.3 from all or parts of the qualification requirements of 49 C.F.R. Part 391 and is, therefore, not required to obtain a federal medical examiner's certification by 49 C.F.R. § 391.45.

(21) "Excepted intrastate commerce" means a CDL/CLP applicant must certify that the applicant operates in intrastate commerce but engages exclusively in transportation or operations excepted from all or parts of the Delaware's driver medical qualification requirements in §§ 2621 and 4704(c)(2) of this title.

(22) "Fatality" means the death of a person as a result of a motor vehicle accident.

(23) "Felony" means any offense under state or federal law that is punishable by death or imprisonment for a term exceeding 1 year.

(24) "FMCSA" means Federal Motor Carrier Safety Administration.

(25) "Foreign jurisdiction" means any jurisdiction other than a state of the United States or District of Columbia.

(26) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer or manufacturers as the maximum loaded weight of a single vehicle. The GVWR of a combination (articulated) vehicle (commonly referred to as the "Gross Combination Weight Rating" or "GCWR") is the GVWR of the power unit plus the GVWR of the towed unit or units.

(27) "Hazardous material" means any material that has been designated as hazardous under 49 U.S.C. § 5103 and is required to be placarded under subpart F of 49 C.F.R. part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. part 73.

(28) "Human trafficking" means as "human trafficking" is defined in § 787 of Title 11.

(29) "Imminent hazard" means the existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury or endangerment.

(30) "Issue and issuance" means initial licensure, license transfers, license renewals, license upgrades, and nonresident commercial driver's licenses.

(31) "Major traffic violation" means any conviction defined as "major" as specified by 49 C.F.R. § 383.51(b) Table 1.

(32) "Manual transmission" means a transmission utilizing a driver-operated clutch that is activated by a pedal or lever and a gearshift mechanism either operated by hand or foot.

(33) “Measurable amount of alcohol” means the alcohol concentration of the person’s blood or breath is equal to or greater than 0.02 but less than 0.04.

(34) “Medical examiner” for purposes of conducting U.S. Department of Transportation physical examination for CMV certification means a person who is licensed, certified, and/or registered, in accordance with applicable state laws and regulations, to perform physical examinations. The term includes but is not limited to, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic. For medical examinations conducted on and after May 21, 2014, a medical examiner must be certified by FMCSA and listed on the National Registry of Certified Medical Examiners as defined in this section.

(35) “Medical variance” means a driver has received 1 of the following from FMCSA that allows the driver to be issued a medical certificate:

a. An exemption letter permitting operation of a commercial motor vehicle pursuant to 49 C.F.R. Part 381, Subpart C, or § 391.64;

b. A skill performance evaluation certificate permitting operation of a commercial motor vehicle pursuant to 49 C.F.R. § 391.49.

(36) “Motor vehicle” means every vehicle which is self-propelled, and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails, except vehicles moved solely by human power, motorized wheel chairs, farm implements of husbandry, mopeds, tripeds and OHVs.

(37) “Motor vehicle record” means the report of the driving status and history of a driver generated from the driver record, provided to users, such as drivers or employers, and subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. §§ 2721-2725 and § 305 of this title.

(38) “National Registry of Certified Medical Examiners” means a program administered by the Federal Motor Carrier Safety Administration (FMCSA) that establishes requirements for healthcare professionals who perform physical qualification examinations for commercial motor vehicle (CMV) drivers. All healthcare professionals whose scope of practice authorizes them to perform physical examinations and who intend to perform physical examinations and issue medical certificates for CMV drivers to meet the requirements of § 391.41 of the Federal Motor Carrier Safety Regulations (FMCSRs) [49 C.F.R. § 391.41] must be certified and listed on FMCSA’s National Registry no later than May 21, 2014.

(39) “Non-CMV” means a motor vehicle or combination of motor vehicles not defined by the term “commercial motor vehicle (CMV)” in this section.

(40) “Non-domiciled CDL” means a CDL or CLP issued by a state under either of the following 2 conditions:

a. To an individual domiciled in a foreign country meeting the requirements of § 383.23(b)(1) of 49 C.F.R.

b. To an individual domiciled in another state meeting the requirements of § 383.23(b)(2) of 49 C.F.R.

(41) “Non-excepted interstate commerce” means a CDL/CLP applicant must certify that the applicant operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 C.F.R. Part 391, and is required to obtain a federal medical examiner’s certification by 49 C.F.R. § 391.45.

(42) “Non-excepted intrastate commerce” means a CDL/CLP applicant must certify that the applicant operates only in intrastate commerce and, therefore, is subject to the Delaware driver medical qualification requirements in § 4704(a), (b), and (c)(1) of this title.

(43) “Out-of-service order” means a declaration by the Federal Highway Administration or an authorized enforcement officer of a federal, state, local or governmental agency from Puerto Rico, Canada or Mexico that a driver or a commercial motor vehicle or motor carrier operation (as defined in the Federal Motor Carrier Safety Regulations [49 C.F.R. Part 390]) is out-of-service pursuant to § 386.72 (imminent hazard), § 392.5 (intoxicating beverage), § 395.13 (drivers declared out-of-service) or § 396.9 (inspection of motor vehicles in operation) of the Federal Motor Carrier Safety Regulations or comparable laws of any governmental agency referred to above or the North American Uniform Out-of-Service Criteria.

(44) “Railroad-highway grade crossing violation” means any conviction defined as “railroad-highway grade crossing” as specified by 49 C.F.R. 383.51(d) Table 3.

(45) “School bus” means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events, or any vehicle which meets the regulatory requirements adopted by the Department of Education with the advice of the Division of Motor Vehicles as specified under § 2901 of Title 14. “School bus” does not include a bus used as a common carrier.

(46) “Serious traffic violation” means any conviction defined as “serious,” specified by 49 C.F.R. § 383.51(c) Table 2.

(47) “State” for the purpose of this chapter means a state, territory or possession of the United States, the District of Columbia, the Republic of Mexico, the Commonwealth of Puerto Rico and any province of the Dominion of Canada.

(48) “Tank vehicle” means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks, having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or chassis.

(49) “United States” means the 50 states and the District of Columbia.

(67 Del. Laws, c. 157, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 87, §§ 1, 2; 73 Del. Laws, c. 345, § 1; 74 Del. Laws, c. 216, §§ 1-3; 74 Del. Laws, c. 217, §§ 1-8; 75 Del. Laws, c. 391, §§ 1, 2; 77 Del. Laws, c. 311, § 1; 77 Del. Laws, c. 312, § 9; 78 Del.

Laws, c. 87, § 1; 79 Del. Laws, c. 214, § 1; 79 Del. Laws, c. 279, § 7; 81 Del. Laws, c. 79, § 34; 82 Del. Laws, c. 252, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 285, § 1.)

§ 2604. Limitation on number of driver licenses.

No person who drives a commercial motor vehicle may have more than 1 driver license.

(67 Del. Laws, c. 157, § 1.)

§ 2605. Notification required by driver.

(a) *Notification of convictions.* — (1) *To State.* — Any driver holding a commercial driver license issued by this State, who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control, in this or any other state, other than parking violations, shall notify the Division of Motor Vehicles in the manner specified by the Division of Motor Vehicles within 30 days of the date of conviction.

(2) *To Employers.* — Any driver holding a commercial driver license issued by this State, who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in this or any other state, other than parking violations, must notify the person's employer in writing of the conviction within 30 days of the date of conviction.

(b) *Notification of suspensions, revocations and cancellations.* — Each driver whose driver license is suspended, revoked, or canceled by any state, or who loses the privilege to drive a commercial motor vehicle in any state, for any period, including being disqualified from driving a commercial motor vehicle, or who has been issued an out of service order, must notify the person's employer of that fact before the end of the business day following the day the driver received notice of that fact.

(c) *Notification of previous employment.* — (1) Each person who applies to be a commercial motor vehicle driver must provide the employer, at the time of the application, with the following information for the 10 years preceding the date of application:

a. A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle;

b. The dates between which the applicant drove for each employer; and

c. The reason for leaving that employer.

(2) The applicant must certify that all information furnished is true and complete.

(3) An employer may require an applicant to provide additional information to substantiate the statements made in conjunction with this section.

(4) Before an application is submitted, the employer should inform the applicant that the information the applicant provides in accordance with this section may be used, and the applicant's previous employers may be contacted for the purpose of investigating the applicant's work history.

(67 Del. Laws, c. 157, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2606. Employer responsibilities.

(a) Each employer must require the applicant to provide the information specified in § 2605(c) of this title.

(b) No employer may allow, permit, or authorize a driver to drive a commercial motor vehicle during any period:

(1) In which the driver has had a CDL/CLP suspended, revoked, or cancelled by any state, is currently disqualified from driving a commercial vehicle, or has been issued an out of service order in any state; or

(2) In which the driver has more than 1 driver license.

(3) In which the driver does not have a CDL/CLP for the type vehicle the employer requires the driver to drive.

(c) No employer may knowingly allow, require, permit or authorize a driver to operate a commercial motor vehicle in violation of a federal, state or local law or regulation pertaining to railroad-highway grade crossing violations.

(d) No employer may knowingly allow, require, permit or authorize a driver to operate a commercial motor vehicle in violation of an out-of-service order.

(67 Del. Laws, c. 157, § 1; 70 Del. Laws, c. 134, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 345, § 3; 77 Del. Laws, c. 311, § 2; 79 Del. Laws, c. 214, § 2; 79 Del. Laws, c. 279, § 7.)

§ 2607. Commercial driver license required.

(a) Except when driving under a CLP and accompanied by the holder of a commercial driver license valid for the vehicle being driven or while being tested by the Department for a commercial driver's license, no person may drive a commercial motor vehicle unless the person holds a commercial driver license and applicable endorsements valid for the vehicle being driven and is in possession of such license.

(b) No person may drive a commercial motor vehicle while that person's driving privilege is denied, withdrawn, barred, canceled, suspended, revoked, or disqualified.

(c) No person may drive a commercial motor vehicle in violation of an out-of-service order.

(d) No person may drive a commercial motor vehicle while an out-of-service order is in effect while transporting hazardous materials required to be placarded or while operating a vehicle designed to transport 16 or more passengers, including the driver.

(e) Conditional or occupational licenses may not be issued to holders of a CDL or CLP, nor may any person drive a commercial motor vehicle while in possession of a conditional or occupational license.

(f) Any violation of this section shall be an unclassified misdemeanor, with the penalties set forth in § 2622 of this title.

(67 Del. Laws, c. 157, § 1; 70 Del. Laws, c. 134, § 3; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 345, § 4; 75 Del. Laws, c. 391, § 3; 77 Del. Laws, c. 60, § 8; 79 Del. Laws, c. 214, § 3; 79 Del. Laws, c. 279, § 7.)

§ 2608. Commercial driver license qualification standards [For application of this section, see 85 Del. Laws, c. 40, § 15].

(a) *Testing.* — (1) *General.* — No person may be issued a commercial driver license unless that person is a resident of this State and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulation enumerated in 49 C.F.R. part 383, subparts G and H, and has satisfied all other requirements of the CMVSA in addition to other requirements imposed by state law or federal regulation. The tests must be prescribed and conducted by the Division of Motor Vehicles.

(2) *Third-party testing.* — The Division of Motor Vehicles may authorize a person, including an agency of this or another state, an employer, a private driver training facility, or other private institution, or a department, agency or instrumentality of local government, to administer the skills test specified by this section, provided:

a. The test is the same which would otherwise be administered by the State; and

b. The third party has entered into an agreement with the State which complies with requirements of 49 C.F.R. § 383.75.

(3) *Testing by State.* — Only an agency of the State, as approved by the Division of Motor Vehicles, shall be permitted to administer the skills test specified by this chapter.

(b) *Waiver of skills test.* — The Division of Motor Vehicles may waive the skills test specified in this section for a commercial driver license applicant who meets the requirements of 49 C.F.R. § 383.77.

(c) *Limitations on issuance of license.* — (1) A commercial driver license or CLP may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver license is suspended, revoked, denied or cancelled in any state; nor may a commercial driver license be issued to a person who has a commercial driver license issued by any other state unless the person first surrenders all such licenses, which must be returned to the issuing state(s) for cancellation.

(2) The Division shall query the Drug and Alcohol Clearinghouse and deny the issuance, renewal, upgrade, or transfer of a CDL and the issuance, upgrade, or renewal of a CLP if the query indicates the driver is subject to the CMV driving prohibition due to a violation of 49 C.F.R. Part 382.

(d) *Commercial learner permit (CLP).* — (1) The issuance of a CLP is a precondition to the initial issuance of a CDL. A CLP may be issued to an individual who has satisfied all of the following requirements:

a. Is at least 18 years of age.

b. Holds a valid Delaware driver license.

c. Has passed the vision and written tests required for a CDL.

(2) The CLP may be issued for a period that does not exceed 1 year. Only 1 renewal or re-issuance may be granted within a 1-year period. The 1-year period begins with the issuance date of the original permit. The holder of a CLP may, unless otherwise disqualified, drive a commercial motor vehicle only when accompanied by the holder of a commercial driver license, valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle; provided that the CLP holder may not operate a commercial motor vehicle transporting hazardous materials as defined in § 2603 of this title.

(3) If for any reason the applicant fails to pass the required examinations during the 1-year period granted by the permit, the CLP is void and the $10 fee is forfeited.

(4) A CLP holder is not eligible to take the CDL pre-trip, skills or road test in the first 14 days after initial issuance of the CLP.

(5) A CLP holder is eligible to apply for a passenger, school bus, or tank endorsement while holding a CLP provided the written test is passed for each endorsement prior to the permit issuance. A CLP holder with a passenger or school bus endorsement is prohibited from carrying passengers or students. A CLP holder with a tank endorsement may only operate an empty tank vehicle. All other endorsements as defined by 49 C.F.R. § 383.153 are prohibited on a CLP.

(6) The issuance of a CLP is a precondition to the upgrade of a CDL if the upgrade requires a skills test.

(7) *Content of CLP.* — The commercial learner permit must be marked "Commercial Learner Permit" or "CLP" and must be, to the maximum extent possible, tamperproof. The CLP must include, but not be limited to, the following information:

a. The name and residential address of the person;

b. The person's photograph;

c. A physical description of the person including sex, height, weight, and eye color;

d. Date of birth;

e. Any unique number or identifier deemed appropriate by the Division of Motor Vehicles;

f. The person's signature;

g. The class or type of commercial motor vehicle(s) which the person is authorized to drive together with any endorsements or restrictions;

h. The name of this State;

i. The issue date of the current license; and

j. The expiration date of the current license.

(8) *CLP restrictions.* — a. "P" — Restricts the driver from operating CMV with passengers.

b. "X" — Restricts the driver from operating tank vehicle with cargo.

c. "L" — Restricts the driver from operating a vehicle with airbrakes.

d. "V" — Restricts the driver from operating a CMV without a valid medical variance issued by the Federal Motor Carrier Safety Administration.

e. "M" — Restricts the driver from operating a Class A passenger vehicle.

f. "N" — Restricts the driver from operating a Class A or B passenger vehicle.

g. "K" — Restricts the driver from operating a CMV out of the State of Delaware.

(67 Del. Laws, c. 157, § 1; 74 Del. Laws, c. 216, § 4; 78 Del. Laws, c. 87, § 1; 79 Del. Laws, c. 214, § 4; 79 Del. Laws, c. 279, §§ 1, 7; 82 Del. Laws, c. 253, § 1; 84 Del. Laws, c. 285, § 2; 85 Del. Laws, c. 40, § 5.)

§ 2609. Non-domiciled CDL or CLP.

(a) The Division of Motor Vehicles may issue a non-domiciled CDL or CLP to an applicant who:

(1) Is domiciled in a foreign jurisdiction if the United States Secretary of Transportation has determined that the commercial motor vehicle testing and licensing standards in the foreign jurisdiction do not meet the testing standards established in 49 C.F.R. Part 383; or

(2) If the applicant is domiciled in a state that is prohibited from issuing CDLs and CLPs in accordance with 49 C.F.R. § 384.405. The applicant is eligible to obtain a non-domiciled CDL or CLP from any state that complies with testing and licensing standards in accordance with 49 C.F.R. Part 383, and elects to issue non-domiciled CDLs or CLPs.

(3) The word "non-domiciled" must appear on the face of the non-domiciled CDL or CLP. An applicant must surrender any non-domiciled CDL or CLP issued by another state. Prior to issuing a non-domiciled CDL or CLP, the Division of Motor Vehicles must establish the practical capability of revoking, suspending, or cancelling the non-domiciled CDL or CLP and disqualifying that person with the same conditions applicable to the commercial driver license issued to a resident of this State.

(b) [Repealed.]

(67 Del. Laws, c. 157, § 1; 74 Del. Laws, c. 217, § 9; 79 Del. Laws, c. 214, § 5; 79 Del. Laws, c. 279, §§ 2, 7.)

§ 2610. Application for commercial driver license or commercial learner permit.

(a) The application for a commercial driver license or commercial learner permit must include the following:

(1) The full name and current residential and mailing address of the person;

(2) A physical description of the person including sex, height, weight and eye color;

(3) Date of birth;

(4) The applicant's Social Security number;

(5) The person's signature;

(6) Certifications including those required by 49 C.F.R. part 383.71(a);

(7) Any other information required by the Division of Motor Vehicles; and

(8) A consent to release driving record information.

(b) Delaware adopts by reference 49 C.F.R. Part 1572. Therefore, if applying for a hazardous materials endorsement, the applicant must comply with Transportation Security Administration requirements codified in 49 C.F.R. Part 1572, and provide proof of citizenship, by presenting a United States passport, a certificate of birth that bears an official seal and was issued by a State, county, municipal authority or outlying possession of the United States, a Certification of Birth Abroad issued by the U.S. Department of State (Form FS-545 or DS-1350), a Certificate of Naturalization (Form N-550 or N-570), a Certificate of U.S. Citizenship (Form N-560 or N-561) or immigration status by presenting a Permanent Resident Card, Alien Registration Receipt Card (Form 1-551), Temporary I-551 stamp in foreign passport, a Temporary 1-551 stamp on Form 1-94, Arrival/Departure Record with photograph of the bearer or a Reentry Permit (Form 1-327). A lawful permanent resident of the United States requesting a hazardous materials endorsement must additionally provide that lawful permanent resident's Bureau of Citizenship and Immigration Services (BCIS) Alien registration number.

(c) The applicant's noncommercial and commercial driver license from any other jurisdiction must be surrendered to the Division.

(d) The applicant must provide the names of all states where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

(e) When the name, residential address, or mailing address of a commercial driver license holder changes, an application for a corrected license must be made as provided in this title.

(f) No person who has been a resident of this State for 30 days may drive a commercial motor vehicle under the authority of a commercial driver license issued by another jurisdiction.

(g) Any person who knowingly falsifies information or certifications required under subsection (a) of this section is subject to disqualification of the person's CDL or CLP for a period of at least 60 consecutive days and is guilty of perjury and shall be fined or imprisoned.

(h) If the Division receives credible information that a CLP- or CDL-holder is suspected, but has not been convicted of fraud related to the issuance of the CLP or CDL, the driver must be required to retake the CDL skills and knowledge tests. Within 30 days of receiving notification from the State that retesting is necessary, the affected CLP or CDL holder must make an appointment or otherwise schedule to take the next available test. A person's CLP or CDL will be disqualified if such person fails to make an appointment within 30 days, does not take the required knowledge or skills test, or fails the knowledge or skills test. Once a CLP or CDL holder's privileges have been disqualified, such person must reapply for a CLP or CDL under state application procedures.

(i) Any person who has been convicted of fraud related to the issuance, renewal, transfer, or upgrade of a CDL/CLP, other than falsifying information or certifications as specified in subsection (g) of this section, shall be disqualified for a period of not less than 1 year.

(67 Del. Laws, c. 157, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 216, § 5; 74 Del. Laws, c. 217, § 11; 77 Del. Laws, c. 311, §§ 3, 4; 79 Del. Laws, c. 214, § 6; 79 Del. Laws, c. 279, §§ 3, 7; 84 Del. Laws, c. 42, § 1.)

§ 2611. Commercial driver license [For application of this section, see 85 Del. Laws, c. 40, § 15].

(a) *Content of license.* — The commercial driver license must be marked "Commercial Driver License" and must be, to the maximum extent practicable, tamper proof. It must include, but not be limited to, the following information:

(1) The name and residential address of the person;

(2) The person's photograph;

(3) A physical description of the person including sex, height, weight, and eye color;

(4) Date of birth;

(5) Any unique number or identifier deemed appropriate by the Division of Motor Vehicles;

(6) The person's signature;

(7) The class or type of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsements or restrictions;

(8) The name of this State;

(9) The issue date of the current license; and

(10) The expiration date of the current license.

(b) *Classifications, endorsements and restrictions.* — Commercial driver licenses may be issued with the following classifications, endorsements, and restrictions; the holder of a valid commercial driver license may drive all vehicles in the class for which that license is issued, and all lesser classes of vehicles except motorcycles and taxicabs which require special endorsements, unless the proper endorsement appears on the license:

(1) *Classification.* — a. *CDL Class A.* — Any combination of vehicles with a GCWR of 26,001 pounds or more, provided the GVWR of the towed unit(s) is in excess of 10,000 pounds.

b. *CDL Class B.* — Any single vehicle with a GVWR of 26,001 pounds or more, or any such vehicle towing a vehicle not in excess of 10,000 pounds.

c. *CDL Class C.* — Any single vehicle or combination of vehicles with a GVWR of less than 26,001 pounds or any such vehicle towing a vehicle with a GVWR not in excess of 10,000 pounds that is either designed to transport 16 or more passengers, including the driver; or used in the transportation of hazardous materials which requires the vehicle to be placarded under 49 C.F.R. Part 172, subpart F.

(2) *Endorsements.* — a. "H" — Authorizes the driver to drive a vehicle transporting hazardous materials.

b. "T" — Authorizes driving double and triple trailers.

c. "P" — Authorizes driving vehicles carrying passengers.

d. "N" — Authorizes driving tank vehicles.

e. "X" — Represents a combination of hazardous materials and tank vehicle endorsements.

f. "S" — Authorizes driving school buses.

(3) *Restrictions.* — a. "L" — Restricts the driver from operating vehicles equipped with airbrakes.

b. "Z" — Restricts the driver from operation of full air brake system vehicles.

c. "E" — Restricts the driver from operation of manual transmission vehicles.

d. "O" — Restricts the driver from operating tractor-trailer CMVs.

e. "M" — Restricts the driver from operating a Class A passenger vehicle.

f. "N" — Restricts the driver from operating a Class A or B passenger vehicle.

g. "K" — Restricts the driver from operating a CMV outside the State of Delaware.

h. "V" — Restricts the driver from operating a CMV without a valid medical variance issued through the Federal Motor Carrier Safety Administration.

(c) *Applicant record check.* — Before issuing a commercial driver license or permit to any person, the Division will perform a records check of the commercial driver license information system, the national driver register's problem driver pointer system, and/or any other information system designated by federal regulation to confirm the holder's identity and determine the applicant's license eligibility. The records check will be performed no earlier than 24 hours prior to the issuance of a commercial driver license or permit. A commercial driver license will not be issued before these mandatory record checks are completed.

(d) *License surrender.* — A commercial driver license or permit may not be issued to a person who has a CDL or a driver's license issued by another state unless the person first surrenders all such licenses. The Division will either return the surrendered license to the issuing state for cancellation or the Division will destroy the surrendered license document and notify the previous issuing state that the person is now licensed in this State.

(e) *Notification of license issuance.* — Within 10 days after issuing a commercial driver license or commercial learner permit, the Division of Motor Vehicles must notify the commercial driver license information system of that fact, providing all information required to ensure identification of the person. In the case of transfer issuances, the Division will also implement change state of record transactions in the commercial driver license information system, thereby notifying the commercial driver license information system and the previous state of record that Delaware is now the state of record.

(f) *Expiration of license.* — Upon receipt of the application and fee and after such examination as provided in this chapter, the Division shall issue, if the applicant has complied with the provisions of this title, a commercial motor vehicle driver license which shall expire and be renewable on the eighth anniversary date of the birth of the applicant next following the date of its issuance unless the birth date is February 29, in which event the license shall expire and be renewable on February 28 every eighth year. Notwithstanding the provisions of the first sentence of this subsection, the Secretary shall issue a commercial motor vehicle driver license endorsed for the transport of hazardous materials for a period of 5 years or less to coincide with the expiration of the Transportation Security Administration approval for the driver to transport hazardous materials.

(g) *License transfer and renewal procedures.* — Every person applying for a license transfer or renewal of a commercial driver license must complete the application form required by § 2610(a) of this title providing updated information and required certifications, supplying any CDL issued by the previous state, and provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years. If the applicant wishes to retain a hazardous materials endorsement, the applicant must have passed the tests required by 49 C.F.R. § 383.121. At the time of application for a transfer, the applicant shall appear and be photographed.

(h) Fees. — (1) The fee for a commercial motor vehicle driver license is $55 except when the commercial motor vehicle driver license is endorsed for the transport of hazardous materials in which event the fee is $30. The fee for a non-CDL Class A or non-CDL Class B driver license is $40.

(2) The fee for renewal of a commercial motor vehicle driver license is $55 except when the commercial motor vehicle driver license is endorsed for the transport of hazardous materials in which event the fee shall be $30. The fee for renewal of a non-CDL Class A or non-CDL Class B driver license. is $50. A late fee of $10 is assessed in addition to the renewal fee for every person whose commercial motor vehicle driver license has expired.

(3) The fee for changing from 1 class to another class is $10, if the change requires a written examination or skills test. There is no fee assessed if the driver wishes to change to a class of a lower weight vehicle and such change is made at time of renewal of license.

(4) If the applicant wishes to add an endorsement after a commercial driver license has been issued, the fee for adding the endorsement is $10.

(5) The fee for removal of a restriction after a commercial driver license has been issued is $10.

(i) *Compliance with the Military Selective Service Act.* — (1) Any male applicant who applies for a commercial driver license instruction permit or license or a renewal of any such permit or license and who is at least 18 years of age but less than 26 years of age shall be registered in compliance with the requirements of § 3 of the "Military Selective Service Act," 50 U.S.C. App. § 453, as amended.

(2) The Department shall forward in an electronic format the necessary personal information of the applicants identified in paragraph (i)(1) of this section to the selective service system. The applicant's signature on the application shall serve as an indication that the applicant either has already registered with the selective service system or that the applicant is authorizing the Department to forward to the selective service system the necessary information for such registration. The Department shall notify the applicant at the time

of application that the applicant's signature constitutes consent to registration with the selective service system, if the applicant is not already registered.

(67 Del. Laws, c. 157, § 1; 70 Del. Laws, c. 134, § 4; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 56, § 3; 72 Del. Laws, c. 485, § 1; 74 Del. Laws, c. 110, § 50; 74 Del. Laws, c. 216, § 6; 74 Del. Laws, c. 217, §§ 12, 13; 75 Del. Laws, c. 183, § 1; 75 Del. Laws, c. 220, § 3; 75 Del. Laws, c. 391, §§ 4, 9; 76 Del. Laws, c. 76, §§ 19, 20; 76 Del. Laws, c. 81, § 29; 78 Del. Laws, c. 8, §§ 1-4; 78 Del. Laws, c. 87, § 2; 79 Del. Laws, c. 214, § 7; 79 Del. Laws, c. 279, §§ 4, 7; 80 Del. Laws, c. 77, § 5; 80 Del. Laws, c. 341, § 1; 85 Del. Laws, c. 40, § 8.)

§ 2612. Disqualification and cancellation.

(a) A person operating a CMV while either holding a CDL, CLP, or being required to hold a CDL, CLP, or any CDL or CLP holder operating a non-CMV shall be disqualified from driving a commercial motor vehicle for a period of not less than 1 year if convicted of a first violation of the following in accordance with 49 C.F.R. § 383.51, Table 1:

(1) Driving, operating or having in physical control a noncommercial vehicle or a commercial motor vehicle, under the influence of alcohol or a controlled substance, or any drug which impairs driving ability.

(2) Driving, operating or having in physical control a commercial motor vehicle while the alcohol concentration of the person's blood or breath is 0.04 or more.

(3) Knowingly and wilfully leaving the scene of an accident.

(4) Using a motor vehicle in the commission of any felony as defined in this chapter.

(5) Refusal to submit to a breath or blood test to determine the driver's alcohol concentration while driving, operating or having in physical control a motor vehicle.

(6) Using the vehicle to commit a felony, other than a felony described in subsection (d) of this section.

(7) Driving a commercial motor vehicle when, as a result of prior violations committed operating a commercial motor vehicle, the driver's CDL or CLP is revoked, suspended, or canceled, or the driver is disqualified from operating a commercial motor vehicle.

(8) Causing a fatality through the negligent operation of a commercial motor vehicle, including but not limited to crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide.

If any of the above violations occurred while transporting a hazardous material required to be placarded, the person shall be disqualified for a period of 3 years.

(b) A person is disqualified for life if convicted of 2 or more violations of any of the offenses specified in subsection (a) of this section, or any combination of those offenses, arising from 2 or more separate incidents.

(c) The Division of Motor Vehicles may issue regulations establishing guidelines, including conditions, under which a disqualification for life under subsection (b) of this section may be reduced to a period of not less than 10 years.

(d) A person is disqualified from driving a commercial motor vehicle for life who uses a motor vehicle as follows:

(1) In the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance or possession with intent to manufacture, distribute, or dispense a controlled substance.

(2) In the commission of a felony involving human trafficking.

(e) A person is disqualified from driving a commercial motor vehicle for a period of 60 days if convicted of 2 serious traffic violations, or 120 days if convicted of 3 or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a 3-year period or committed while operating a noncommercial motor vehicle if the conviction results in the revocation, cancellation, or suspension of the person's license or noncommercial motor vehicle driving privileges. The 120-day disqualification period must be served in addition to any other previous period of disqualification. Serious traffic violations for purposes of this section shall be those violations as specified in 49 C.F.R. § 383.51, Table 2.

(f) After suspending, revoking, or canceling a commercial driver license or commercial learner permit, the Division of Motor Vehicles must update its records to reflect that action within 10 days. After suspending, revoking or canceling a nonresident commercial driver's privileges, the Division of Motor Vehicles must notify the licensing authority of the state which issued the commercial driver license or commercial learner permit within 10 days.

(g) A person who has been disqualified from operating a commercial motor vehicle pursuant to this chapter may be issued a license to operate a noncommercial motor vehicle during such disqualification period provided such person is not otherwise suspended, revoked or canceled pursuant to this title.

(h) After September 30, 1997, a driver who is convicted of violating an out-of-service order is disqualified for the following periods in accordance with 49 C.F.R. § 383.51, Table 4:

(1) *First violation.* — A driver shall be disqualified for a period of not less than 180 days or more than 1 year if the driver is convicted of a first violation of an out-of-service order. If any such driver is transporting hazardous materials required it be placarded under the Hazardous Materials Transportation Act [§§ 8223 to 8230 of Title 29] or is operating a motor vehicle designed to transport more than 15 passengers, including the driver, that driver shall be disqualified for a period of not less than 180 days nor more than 2 years.

(2) *Second violation.* — A driver shall be disqualified for a period of not less than 2 years nor more than 5 years if, during any 10-year period, the driver is convicted of 2 violations of out-of-service orders in separate incidents. If any such driver is transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act [§§ 8223 to 8230 of Title 29] or is operating a motor vehicle designed to transport more than 15 passengers, including the driver, that driver shall be disqualified for a period of not less than 3 years nor more than 5 years.

(3) *Third or subsequent violations.* — A driver shall be disqualified for a period of not less than 3 years nor more than 5 years; if, during any 10-year period the driver is convicted of 3 or more violations of out-of-service orders in separate incidents.

(4) *Additional penalties.* — In addition to the disqualification, drivers convicted of violating an out-of-service order shall be fined not less than $2,500 nor more than $3,500 for a first conviction and not less than $5,000 nor more than $6,000 for a second or subsequent conviction within a 10-year period. Employers convicted of violating an out-of-service order shall be fined not less than $2,750 nor more than $25,000.

(i) A driver who is convicted of a railroad-highway grade crossing violation shall be disqualified for the following periods in accordance with 49 C.F.R. § 383.51, Table 3:

(1) *First violation.* — A driver must be disqualified for not less than 60 days if the driver is convicted of a first violation of a railroad-highway grade crossing violation.

(2) *Second violation.* — A driver must be disqualified for not less than 120 days if, during any 3-year period, the driver is convicted of a second railroad-highway grade crossing violation in a separate incident.

(3) *Third or subsequent violation.* — A driver must be disqualified for 1 year if, during any 3-year period, the driver is convicted of a third or subsequent railroad-highway grade crossing violation in a separate incident.

(4) *Employer penalties.* — An employer who is convicted of a railroad-highway grade crossing violation will be subject to a civil penalty of not more than $10,000 in accordance with 49 C.F.R. § 383.53.

(j) The Division of Motor Vehicles will disqualify a Delaware CDL licensee or CLP holder if the Federal Motor Carrier Safety Administrator declares the licensee not qualified and orders disqualification for them.

(67 Del. Laws, c. 157, § 1; 71 Del. Laws, c. 87, § 3; 73 Del. Laws, c. 345, § 2; 74 Del. Laws, c. 217, § 10; 75 Del. Laws, c. 186, §§ 1, 2; 75 Del. Laws, c. 391, § 5; 76 Del. Laws, c. 348, §§ 1-3; 79 Del. Laws, c. 214, § 8; 79 Del. Laws, c. 279, §§ 5-7; 82 Del. Laws, c. 252, § 2.)

§ 2613. Prohibited alcohol offenses for commercial motor vehicle drivers.

(a) Notwithstanding any other provision of this title, a person may not drive, operate, or be in physical control of a commercial motor vehicle within this State while having any measurable amount of alcohol in the person's system.

(b) A person who drives, operates, or is in physical control of a commercial motor vehicle within this State while having any measurable amount of alcohol in the person's system or who refuses to submit to an alcohol test as provided by § 2614 of this title, must be placed out of service for 24 hours.

(c) Any person who drives, operates or is in physical control of a commercial motor vehicle within this State with an alcohol concentration of 0.04 or more must, in addition to any other sanctions which may be imposed under this title, be disqualified from driving a commercial motor vehicle under § 2612 of this title.

(d) Upon certification by the police officer that there existed probable cause to believe that the person was in violation of § 4177M of this title or a local ordinance substantially conforming thereto, and the person was arrested on that occasion for a violation of § 4177M of this title or a local ordinance substantially conforming thereto, the Secretary shall disqualify the person's commercial driver license and/or driving privileges in accordance with provisions specified in § 2612(a) and (b) of this title.

(e) Any violation of this section shall be an unclassified misdemeanor, with the penalties set forth in § 2622 of this title.

(67 Del. Laws, c. 157, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 60, § 9; 77 Del. Laws, c. 311, § 5.)

§ 2614. Implied consent requirements for commercial motor vehicle drivers.

(a) A person who drives a commercial motor vehicle within this State is deemed to have given consent, subject to provisions of this title, to take a test or tests of that person's blood or breath for the purpose of determining that person's alcohol concentration, or the presence of other drugs.

(b) A test or tests may be administered at the direction of a law-enforcement officer, who after stopping or detaining the commercial motor vehicle driver, has probable cause to believe that driver was driving a commercial motor vehicle while having alcohol or drugs in the driver's system.

(c) A person requested to submit to a test as provided in subsection (a) of this section must be warned by the law-enforcement officer requesting the test, that a refusal to submit to the test will result in that person being immediately placed out of service for a period of 24 hours and being disqualified from operating a commercial motor vehicle for a period of not less than 1 year under § 2612 of this title.

(d) If the person refuses testing, or submits to a test which discloses an alcohol concentration of 0.04 or more, the law-enforcement officer must submit a sworn report to the Division of Motor Vehicles certifying that the test was requested pursuant to subsection (a) of this section and that the person refused to submit to testing, or submitted to a test which disclosed an alcohol concentration of 0.04 or more.

(e) Upon receipt of the sworn report of a law-enforcement officer submitted under subsection (d) of this section, the Division of Motor Vehicles must disqualify the driver from driving a commercial motor vehicle under § 2612 of this title.

(67 Del. Laws, c. 157, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2615. Notification of traffic convictions.

(a) Whenever a person who holds a CDL from another state is convicted of a violation of this State or local law relating to motor vehicle traffic control (other than a parking violation), in any type of vehicle, the Division must notify the licensing entity in the State where the driver is licensed of this conviction within 30 days of the conviction, except beginning on September 30, 2008, the notification must be made within 10 days of the conviction.

(b) Whenever a person who does not hold a CDL or CLP but is licensed to drive by another State and is convicted of a violation of this State or local law relating to motor vehicle traffic control (other than a parking violation), in a CMV, the Division must notify the licensing entity in the State where the driver is licensed of this conviction within 30 days of the conviction, except beginning on September 30, 2008, the notification must be made within 10 days of the conviction.

(c) Whenever the Division receives notification of failure to appear, failure to pay, or failure to comply from a Delaware court or from any other state for a violation relating to motor vehicle traffic control (other than a parking violation) the failure to appear, failure to pay, or failure to comply will be posted to the driver's record as a conviction under the following conditions:

(1) For any person operating a CMV while either holding a CDL/CLP or being required to hold a CDL/CLP; or

(2) For any CDL/CLP holder operating any type of vehicle.

(d) Whenever an unlicensed driver from this State is convicted of any violation as provided in § 2612 of this title, the Division will establish a driving record in the person's name and, if appropriate, withdraw the person's driving privileges by license suspension, revocation, disqualification, cancellation or denial when authorized by statute or Division policy. Those persons whose driving privileges are withdrawn under this section will be reinstated when they have completed the reinstatement procedures specified in statute or Division policy.

(67 Del. Laws, c. 157, § 1; 75 Del. Laws, c. 391, § 6; 77 Del. Laws, c. 311, § 6; 79 Del. Laws, c. 214, § 9; 79 Del. Laws, c. 279, §§ 6, 7.)

§ 2616. Driving record information to be furnished.

Notwithstanding any other provision of law to the contrary, the Division of Motor Vehicles must furnish full information regarding the driving record of any person:

(1) To the driver license administrator of any other state, or province or territory of Canada, requesting that information;

(2) To any employer or prospective employer upon request and payment of a fee of $4.00;

(3) To other persons, pursuant to § 305 of this title.

(67 Del. Laws, c. 157, § 1.)

§ 2617. Rulemaking authority.

The Department may adopt any rules and regulations necessary to carry out the provisions of this chapter.

(67 Del. Laws, c. 157, § 1.)

§ 2618. Authority to enter agreements.

The Department may enter into or make agreements, arrangements, or declarations to carry out the provisions of this chapter.

(67 Del. Laws, c. 157, § 1.)

§ 2619. Reciprocity.

(a) Notwithstanding any law to the contrary, a resident of another state who is issued a CDL/CLP or non-domiciled CDL/CLP issued by that state, or by the Canadian Provinces and Territories in conformity with the Canadian National Safety Code, or a Licencia Federal de Conductor issued by the United Mexican States, may drive a commercial motor vehicle in this State if the person has a valid CDL/CLP, or valid non-domiciled CDL/CLP issued by those jurisdictions in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver licenses, if the person is not suspended, revoked or canceled, and if the person is not disqualified from driving a commercial motor vehicle, or subject to an "out-of-service" order. A driver holding a commercial driver license issued under the Canadian National Safety Code or Licencia Federal de Conductor issued by Mexico is prohibited from obtaining non-domiciled CDL/CLP or any type of Delaware driver license unless the driver becomes a resident of this State and surrenders all driver licenses issued by Canada or Mexico.

(b) The Division of Motor Vehicles must give all out-of-state convictions full faith and credit and treat them for sanctioning purposes under this chapter as if they occurred in this State.

(67 Del. Laws, c. 157, § 1; 75 Del. Laws, c. 391, § 7; 79 Del. Laws, c. 214, § 10; 79 Del. Laws, c. 279, §§ 6, 7.)

§ 2620. False statements; incorrect or incomplete information.

(a) Whoever makes any false affidavit or knowingly swears or affirms falsely to any matter or thing required by the terms of this chapter to be sworn to or affirmed is guilty of perjury and shall be fined or imprisoned as are other persons committing perjury.

(b) Whoever provides information that is incorrect or incomplete when applying for a commercial driver's license is guilty of perjury and shall be fined or imprisoned as are other persons committing perjury.

(c) Any driver's license or driving privileges for a person guilty of this section shall be forthwith suspended or canceled.

(67 Del. Laws, c. 157, § 1.)

§ 2621. Waivers for commercial driver license provisions.

(a) The provisions of this chapter are waived for the following specific groups of drivers who operate:

(1) Farm vehicles which are:

a. Controlled and operated by a farmer;

b. Used to transport either agricultural products, farm machinery, farm supplies or both to or from a farm;

c. Not used in the operations of a common or contract motor carrier;

d. Used within 150 miles of the person's farm; and

e. Not used for hire.

(2) Firefighting equipment which is:

a. Used by any fire company in this State which is necessary for the preservation of life or property or the execution of emergency governmental functions, or other authorized uses by the fire company.

b. Being operated by firefighters and other persons qualified to operate the equipment under paragraph (a)(2)a. of this section when operating such equipment in other functions such as parades, special events, repair, service or other authorized movements.

(3) Commercial motor vehicles for military purposes. This exception is applicable to active duty military personnel; members of the military reserves; members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms); and active duty U.S. Coast Guard personnel. This exception is not applicable to U.S. Reserve technicians.

(4) Recreational vehicles or trailers as defined in Chapter 1 of this title, which provide temporary living quarters and are used solely for recreational purposes.

(5) Emergency mobile communication units operated in relation to a county emergency communication center, the State Police, or any municipality.

(6) Any other emergency vehicle, as defined by § 4106(e) of this title, used in the preservation of life or property or in the execution of emergency governmental functions and are equipped with audible and visual signals and are not subject to normal traffic regulation.

(b) When operating a commercial motor vehicle as defined by § 2603 of this title, under the waiver provisions of paragraphs (a)(1), (2), (5), and (6) of this section, operators are required to hold a non-CDL Class A or non-CDL Class B license. Those drivers holding non-CDL Class A or non-CDL Class B licenses are limited to operating commercial motor vehicles within the State of Delaware unless there is a reciprocity agreement with adjoining states. These licenses will be classified in accordance with § 2611(b)(1) of this title.

(67 Del. Laws, c. 157, § 1; 68 Del. Laws, c. 283, §§ 1, 2; 72 Del. Laws, c. 56, §§ 1, 2; 75 Del. Laws, c. 186, § 3; 75 Del. Laws, c. 391, § 8; 76 Del. Laws, c. 233, §§ 1-3, 5; 78 Del. Laws, c. 87, § 1.)

§ 2622. Penalties.

(a) Whoever violates §§ 2604, 2605(b)-(c), 2606, 2607, 2612 and 2613 of this title shall for the first offense be fined not less than $200 nor more than $2,500. For subsequent offense the person shall be fined not less than $500 nor more than $5,000 or imprisoned for a term not to exceed 90 days, or both.

(b) This section shall not apply to violations for which a specific penalty is set forth elsewhere in this chapter.

(67 Del. Laws, c. 157, § 1; 76 Del. Laws, c. 348, § 4.)

§ 2623. Other penalties.

(a) Whoever violates this chapter shall for the first offense be fined not less than $50 nor more than $100. For each subsequent like offense, the person shall be fined not less than $100 nor more than $200, or imprisoned not less than 10 days nor more than 30 days or both.

(b) This section shall not apply to violations for which a specific penalty is set forth elsewhere in this chapter.

(67 Del. Laws, c. 157, § 1.)

§ 2624. Jurisdiction.

Justices of the peace shall have jurisdiction over violations of this chapter.

(67 Del. Laws, c. 157, § 1.)

§ 2625. Masking violations.

The State shall not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL/CLP holder's and CMV driver's conviction for any violation, in any type of motor vehicle, of a state or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in this State or another state.

(75 Del. Laws, c. 184, § 2; 77 Del. Laws, c. 311, § 7; 79 Del. Laws, c. 214, § 11; 79 Del. Laws, c. 279, §§ 6, 7.)

§ 2626. CDL medical certification requirements.

(a) *CDL medical self-certification requirements.* — (1) Beginning January 30, 2012, any person applying for an initial CLP/CDL must self-certify to the Division that such person is operating commercial motor vehicles in a nonexcepted interstate commerce, excepted interstate commerce, nonexcepted intrastate commerce or excepted intrastate commerce status.

(2) Existing CDL holders must self-certify to the Division on or after January 30, 2012, but not later than January 30, 2014, that the CDL holder operates commercial motor vehicles in a nonexcepted interstate commerce, excepted interstate commerce, nonexcepted intrastate commerce or excepted intrastate commerce status.

(3) It is the responsibility of the CDL/CLP holder to immediately notify the Division if/when CDL/CLP holder medical certification status changes.

(b) *Medical certification documentation requirements for nonexcepted interstate commerce drivers after January 30, 2012.* — (1) Any person applying for an initial CLP/CDL who certifies that such person will operate CMVs in nonexcepted, interstate commerce must provide the Division with the current, original medical examiner's certificate prepared by a medical examiner who, on and after May 21, 2014, is currently certified by FMCSA and is listed on the National Registry of Certified Medical Examiners confirming the applicant meets the minimum physical qualifications for CMV operators in accordance with federal regulations.

(2) On or after January 30, 2012, but not later than January 30, 2014, existing CDL holders must provide the Division with the current original or copy of the medical examiner's certificate prepared by a medical examiner who, on and after May 21, 2014, is currently certified by FMCSA and is listed on the National Registry of Certified Medical Examiners confirming the CDL holder meets the minimum physical qualifications for CMV operators in accordance with federal regulations.

(3) In order to maintain a medical certification status of certified, the CDL/CLP holder who certifies that such CDL/CLP holder will operate CMVs in nonexcepted interstate commerce must provide the Division with a current original or copy of each subsequent medical examiner's certificate prepared by a medical examiner confirming the CDL/CLP holder meets the minimum physical qualifications for CMV operators in accordance with federal regulations.

(c) *CDL/CLP issuance procedures for drivers who after January 30, 2012, self-certify as operating in nonexcepted interstate commerce.* — (1) The Division must verify the driver has self-certified as a nonexcepted interstate commerce operator.

(2) The Division must verify the driver has a "certified" medical status on the medical examiner's certificate and on the CDLIS driver record.

(3) In the event that the driver has not self-certified or the medical certification status of the individual is "not-certified," the applicant will be denied a CDL/CLP issuance, renewal, upgrade or transfer, and the CDL will be downgraded.

(4) Approximately 60 days before a medical examiner's certificate expires, the Division will attempt to notify the CDL/CLP holder requiring such CDL/CLP holder to either submit a current medical certificate or self-certify that such CDL/CLP holder now operates a CMV in excepted interstate commerce, nonexcepted intrastate commerce or excepted intrastate commerce. The CDL/CLP will be downgraded no later than 60 days after the CDL/CLP holder's current medical certification expires or when determined to be "not-certified" if:

a. such CDL/CLP holder does not change such CDL/CLP holder self-certification to excepted interstate commerce, nonexcepted intrastate commerce, or excepted intrastate commerce;

b. such CDL/CLP holder does not present to the Division a current medical certificate;

c. such CDL/CLP holder FMCSA medical variance expires; or

d. The FMCSA notifies the Division that such CDL/CLP holder medical variance was removed or rescinded.

(5) Upon notification from the FMCSA that a medical variance has been issued to a CDL/CLP driver, the Division shall file, electronically or otherwise, medical variance information, the CDLIS driver record will be updated, and the CDL/CLP document will show a restricted code "V" indicating there is information about a medical variance on the CDLIS driver record. Within 10 calendar days of receiving information from the FMCSA regarding the issuance or renewal of a medical variance for a driver, the Division must update the CDLIS driver record to include the medical variance information provided by the FMCSA.

(d) *CDL driver physical qualifications and recordkeeping requirements for nonexcepted interstate commerce drivers.* — (1) A CDL/CLP holder who is subject to the physical requirements contained in 49 C.F.R. § 391.41 must not operate a commercial motor vehicle unless such CDL/CLP holder is medically certified as physically qualified to do so, and, except as provided in paragraph (b)(2) of this section, when on duty, has on such person the original or a copy of a current medical examiner's certificate that such person is physically qualified to drive a commercial motor vehicle.

(2) Beginning January 30, 2014, a CDL/CLP holder who has submitted a current medical examiner's certificate to the Division in accordance with 49 C.F.R. § 383.71(h) substantiating CDL/CLP holder is medically "certified," no longer needs to carry on such person the medical examiner's certificate once the medical certification information is posted on the CDLIS driver record. The Division will post the medical information in CDLIS within 10 days after the driver submits a current medical certificate. If there is no medical certification information on that driver's CDLIS driver record, a current medical examiner's certificate issued prior to January 30, 2012, will be accepted until January 30, 2014.

(3) A CDL/CLP driver who obtained a medical variance from the FMCSA must continue to have in CDL/CLP holder's possession the original or copy of that medical variance documentation at all times when driving a CMV.

(4) Canadian and Mexican CMV drivers are not required to have in their possession a medical examiner's certificate if the driver has been issued and possesses a valid commercial driver license issued by the United Mexican States or Canadian Province or Territory and whose license and medical status, including any waiver or exemption, can be electronically verified. Drivers from any of the countries who have received a medical authorization that deviates from the mutually accepted compatible medical standards of the resident country are not qualified to drive a CMV in the other countries. Canadian and Mexican drivers who do not meet the medical fitness provisions of their home country for motor carriers are not qualified to drive a CMV in the United States even if that driver has received a medical variance or waiver. In addition, United States drivers who receive a medical variance from the FMCSA are not qualified to drive a CMV in Canada or Mexico.

(e) CDL/CLP holders self-certifying that they operate or expect to operate CMVs in excepted interstate commerce must:

(1) Meet the minimum physical qualifications for CMV operators as determined in 49 C.F.R. § 390.3(f), § 391.2, § 391.68, or § 398.3; and

(2) Self-certify to the Division that that operate or expect to operate CMVs in excepted interstate commerce upon each renewal of their CDLs.

(f) CDL/CLP holders self-certifying that they operate or expect to operate CMVs in nonexcepted intrastate or excepted intrastate commerce must:

(1) Meet the minimum physical qualifications for CMV operators as determined in § 4704 of this title;

(2) Self-certify to the Division that they operate or expect to operate CMVs in nonexcepted intrastate or excepted intrastate commerce upon each renewal of their CDLs;

(3) Meet the minimum physical qualification requirements for CMV operators as determined in subsections (b) through (d) or subsection (e) of this section before the CDL holders may have the "K" restriction removed from their CDL/CLP.

(g) *Release of medical certification information in the CDLIS driver record.* — Except where prohibited by § 305 of this title or Division policies, the following authorized agents may receive CDLIS driver record information:

(1) *States.* — All information on all CDLIS driver records.

(2) *Secretary of Transportation.* — All information on all CDLIS driver records.

(3) *Driver.* — All information on that driver's CDLIS driver record obtained on the CDLIS motor vehicle record.

(4) *Motor carrier or prospective motor carrier.* — After the employer or prospective employer notifies the driver, all information on that driver's or prospective driver's CDLIS driver record obtained on the CDLIS motor vehicle record.

(78 Del. Laws, c. 87, § 3; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 214, § 12; 79 Del. Laws, c. 279, §§ 6, 7; 84 Del. Laws, c. 42, § 1.)

§ 2627. CDL Drug and Alcohol Clearinghouse requirements.

(a) The Division shall request information from the Clearinghouse, and if applicable, deny the issuance, renewal, upgrade, or transfer of a CDL or CLP as stated in § 2608(c)(2) of this title.

(b) The Division shall, upon receiving notification from FMCSA that a CDL or CLP holder is prohibited from operating a CMV due to a drug and alcohol program violation, downgrade the CDL or CLP by removing the commercial privilege from the driver license. The downgrade must be completed and recorded on the CDLIS driver record within 60 days of the Division's receipt of such notification.

(1) *Reinstatement after FMCSA notification that the driver is no longer prohibited.* —

If, after the Division completes and records the downgrade on the CDLIS driving record, FMCSA notifies the State that a driver is no longer prohibited from operating a commercial motor vehicle, the Division must make the driver eligible for reinstatement of the CDL or CLP privilege to the driver's license within 10 calendar days of receiving notification from FMCSA.

(2) *Reinstatement after Clearinghouse error correction.* —

If, after the Division completes and records the downgrade on the CDLIS driver record, FMCSA notifies the State the driver was erroneously identified as prohibited from operating a commercial motor vehicle, the Division shall:

a. Reinstate the CDL or CLP privilege to the driver's license within 5 business days of receiving notification of the correction from FMCSA; and

b. Expunge from the CDLIS driver record and, if applicable, the motor vehicle record, any reference related to the driver's erroneous prohibited status within 5 business days of receiving notification of the correction from FMCSA.

(84 Del. Laws, c. 285, § 3.)

Part II
Registration, Title and Licenses

Chapter 27
Driver's License

Subchapter I
General Provisions

§ 2701. Driving without a license; penalties.

(a) No person shall drive a motor vehicle on a public street or highway of this State without first having been licensed under this chapter, unless expressly exempt from the licensing requirements.

(1) Those students enrolled in an approved Delaware Department of Education driver education course can drive without a learner's permit when under the supervision of a certified driver education teacher.

(2) Failure to adhere to the Level 1 Learner's Permit restrictions under § 2710(c) of this title or temporary instruction permit restrictions under § 2712(a) of this title constitutes a violation of this section. Those motor vehicle operators holding a Level 1 Learner's Permit or temporary instruction permit who violate this section will be suspended for 2 months for the first offense and 4 months for any subsequent offenses.

(b) No person shall drive a motor vehicle on a public street or highway of this State after serving a period of suspension, revocation or license denial, without first having obtained a valid license through proper reinstatement procedures as prescribed by this title.

(c) No person shall drive on a public street or highway of this State a motor vehicle of a class or type for which the person has not been duly licensed.

(d) No person whose license has expired shall drive a motor vehicle on a public street or highway of this State.

(e) Whoever violates subsection (a) or (b) of this section shall for the first offense be fined not less than $50 nor more than $200. For each subsequent like offense, the person shall be fined not less than $100 nor more than $500 or imprisoned for a term not to exceed 6 months, or both.

(f) Whoever violates subsection (c) or (d) of this section shall for the first offense be fined not less than $25 nor more than $100. For each subsequent like offense, the person shall be fined not less than $50 nor more than $100.

(36 Del. Laws, c. 10, § 51; Code 1935, § 5589; 21 Del. C. 1953, § 2701; 55 Del. Laws, c. 313, § 1; 58 Del. Laws, c. 239, § 51; 61 Del. Laws, c. 343, § 1; 65 Del. Laws, c. 503, § 11; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 282, § 7.)

§ 2702. Driver's license classification, qualifications, fees; learner's permits; definitions.

(a) The Division upon issuing a driver's license shall indicate thereon, in a manner prescribed by the Division, the type or general class of vehicles the licensee may drive.

(b) The Division shall establish such qualifications as it believes reasonably necessary for the safe operation of the various types, sizes or combinations of vehicles and shall appropriately examine each applicant according to the type or general class of license applied for.

(c) (1) When the licensee desires to change the type or class of license which the licensee has been issued and such change requires another examination to be administered, a fee of $10 shall be assessed for such change.

(2) When the licensee desires to add an endorsement or endorsements to the licensee's license, and the endorsement requires additional testing, a fee of $5.00 shall be assessed.

(3) These fees shall not be imposed on motorcycle applicants for whom fees are required under § 2703 of this title.

(d) *Vehicles driven by minor permit holders.* — (1) A "Driver Education Learner's Permit" authorizes the holder to operate those vehicles that a holder of a Class D operator's license can operate.

(2) A "Level 1 Learner's Permit" authorizes the holder to operate those vehicles referenced under paragraph (d)(1) of this section.

(e) *Classifications, endorsements and restrictions.* — (1) *Class D operator's license.* — Authorizes the license holder to operate any single vehicle with a GVWR of less than 26,001 pounds or any such vehicle towing a vehicle with a GVWR not in excess of 10,000 pounds. The vehicle must be designed to transport 15 or fewer passengers, including the driver, and they shall not transport hazardous materials which require the vehicle to be placarded under federal law.

(2) *Temporary license.* — A temporary license may be issued to the holder of a valid Class D operator's license or commercial driver's license to extend the expiration date, to replace a lost license or in lieu of the Class D or CDL licensing document. A temporary license or temporary instruction permit may be issued to an unlicensed driver for specialized training.

(3) *Temporary instruction permit.* — Authorizes the holder to operate those vehicles defined under paragraph (e)(1) of this section.

(4) *Commercial driver's license.* — CDL Class A, CDL Class B and CDL Class C licenses are defined in § 2611(b) of this title.

(5) *Conditional license.* — Limited driving privileges granted under § 2607(b) or § 4177C of this title and § 4767 of Title 16.

(6) *Occupational license.* — Limited driving privileges granted under §§ 2118(r), 2607(b) and 2733(g) of this title.

(7) *Hardship license.* — Limited driving privileges granted under § 2751(s) of this title.

(8) *Endorsement and restriction codes.* — The Division is authorized to establish endorsement and restriction codes based upon this title.

(9) *Non-CDL Class A or non-CDL Class B license.* — Authorizes the holder to operate farm vehicles, fire-fighting equipment, and other authorized emergency vehicles under the commercial driver license waivers defined in § 2621 of this title.

(10) *IID license.* — Authorizes the holder to operate a vehicle with full Class D operators driving privileges only when the vehicle is equipped with an ignition interlock device.

(36 Del. Laws, c. 10, § 62; Code 1935, § 5600; 21 Del. C. 1953, § 2702; 58 Del. Laws, c. 485; 60 Del. Laws, c. 339, § 1; 67 Del. Laws, c. 157, § 2; 67 Del. Laws, c. 260, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 282, § 6; 71 Del. Laws, c. 375, § 1; 72 Del. Laws, c. 92, § 3; 73 Del. Laws, c. 414, § 1; 74 Del. Laws, c. 135, § 3; 74 Del. Laws, c. 273, § 1; 76 Del. Laws, c. 233, § 4; 78 Del. Laws, c. 13, §§ 60, 70; 79 Del. Laws, c. 295, § 1; 79 Del. Laws, c. 396, § 2; 82 Del. Laws, c. 91, § 2; 83 Del. Laws, c. 37, § 24.)

§ 2703. License to operate a motorcycle, motorbike, etc.

(a) No person shall operate a "motorcycle," as defined by § 101 of this title, motorbike or other 2-wheeled or 3-wheeled motor-driven vehicle upon a highway of this State without having been properly licensed and having passed, to the satisfaction of the Department, an examination testing the person's ability to operate such vehicle safely. The Department shall place a motorcycle endorsement on the driver license authorizing the operation of such vehicle. A person who passes an examination administered by the Department on a 3-wheeled motorcycle shall have a restriction placed on that person's driver license, in addition to the motorcycle endorsement, limiting that person to the operation of 3-wheeled motorcycles. A temporary motorcycle instruction permit can be issued to a person age 18 or older after passing a written motorcycle examination. This permit expires in 6 months. If for any reason whatsoever the applicant fails to pass the required road skills examination during the 6-month period granted by the permit, the permit shall be void, and the fee paid therefor shall be forfeited unless the applicant requests an extension thereof and pays the sum of $5.00. Upon payment of said sum the Division shall immediately issue 1 extension only of the permit for an additional 6 months. If the applicant fails to pass the required examination within the additional 6-month period, the permit shall become void. The following provisions shall apply to a person while operating a motorcycle with a temporary instruction permit for the operation of a motorcycle:

(1) No passengers shall be allowed on the motorcycle;

(2) Operating a motorcycle between sunset and sunrise is prohibited;

(3) A safety helmet and eye protection as approved by the Office of Highway Safety must be worn; and,

(4) Operation is not permitted on the federal interstate highway system.

(b) The initial and subsequent renewal fee for an authorization or endorsement under this section shall be $8.00 when the authorization or endorsement holder also holds a commercial motor vehicle driver license endorsed for the transport of hazardous materials. Otherwise, the fee for an initial authorization or endorsement under this section and each renewal shall be $12.

(c) Of each of the initial fees for authorization or endorsement collected pursuant to subsection (b) of this section the sum of $5.00 is appropriated to the Department of Transportation and shall be placed in a special account to be used only for expenses incurred in the administration of the motorcycle rider education program. For each fee collected for subsequent renewals pursuant to subsection (b) of this section, the total of such renewal fee shall also be appropriated to the Department of Transportation to be placed in said special account.

(d) The authorization or endorsement specified in subsection (a) of this section shall not be issued by the Division to any person under the age of 18 years unless the application therefor is signed both by the applicant and by the parent, guardian or court-ordered custodian of the applicant with whom the applicant resides in this State.

(1) Nevertheless, if the applicant has no parent, guardian or court-ordered custodian residing in the State to act as that applicant's sponsor, another responsible adult person who resides with the applicant in this State who is acceptable to the Secretary of Transportation may sign the application.

(2) The following sponsors are listed in order of priority:

a. Either parent of the minor, if both parents are living together within this State and the minor resides with both parents;

b. Father of the minor, if the father is living within this State, and the minor resides with the father only; mother of the minor, if the mother is living within this State, and the minor resides with the mother only; or either parent, if either parent lives within this State, and the minor resides with neither parent, and the minor has no legal guardian within this State;

c. Guardian or court-ordered custodian of the minor, duly appointed as such, under the laws of this State; or

d. Any suitable person acceptable to the Secretary of Transportation.

(3) The Department shall not require as a prerequisite to the issuance of a license to a minor under this section, that the parent, guardian or court ordered custodian who signs the minor's driver license application be present at the time the application is made by the minor, or sign the application at the offices of the Division of Motor Vehicles. The signing of the application and acknowledgment thereof by the natural parent, guardian, or court-ordered custodian before a notary public or other person authorized to administer oaths

shall be deemed sufficient to satisfy the requirements of this section. Sponsors designated in paragraph (d)(2)d. of this section shall sign the minor's license application in the presence of a Division representative.

(4) The sponsor who signs the motorcycle endorsement application on behalf of a minor can withdraw their sponsorship at any time until the minor reaches 18 years of age, thereby canceling the minor's authority to drive a motorcycle. If the court terminates the custody order and the minor subsequently resides with a parent in this State, then the parent may cancel the driving privileges of the minor under this section. Once canceled, the applicant can reapply for a motorcycle endorsement when they meet the provisions of this section and pay the endorsement fee.

(5) It shall be unlawful for any person to sign the application of a minor under this section when such application misstates the age of the minor or misrepresents themselves or their relationship to the minor. Any person who violates this provision shall be guilty of a class B misdemeanor. Both the minor applicant and the sponsor's driver's license will be suspended for 2 months under § 2733(a)(5) of this title.

(e) The authorization or endorsement specified in subsection (a) of this section shall not be issued by the Department to any person under the age of 18 years unless such person:

(1) Complies with subsection (d) of this section; and

(2) Completes a motorcycle rider education program, such program having been approved by the State Department of Transportation pursuant to this chapter.

(21 Del. C. 1953, § 2702A; 55 Del. Laws, c. 313, § 1; 59 Del. Laws, c. 373, §§ 1, 2; 62 Del. Laws, c. 237, §§ 2, 3; 65 Del. Laws, c. 27, § 2; 65 Del. Laws, c. 356, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 282, §§ 3, 4; 72 Del. Laws, c. 46, § 1; 72 Del. Laws, c. 225, §§ 1, 2; 72 Del. Laws, c. 344, §§ 3, 4; 74 Del. Laws, c. 110, §§ 51-55; 76 Del. Laws, c. 41, §§ 1, 2; 76 Del. Laws, c. 260, §§ 1-4; 78 Del. Laws, c. 8, §§ 5-7; 78 Del. Laws, c. 212, §§ 1-3; 80 Del. Laws, c. 136, § 1; 80 Del. Laws, c. 168, § 2; 82 Del. Laws, c. 93, § 1; 83 Del. Laws, c. 505, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 332, § 1; 85 Del. Laws, c. 40, § 1; 85 Del. Laws, c. 161, § 1.)

§ 2704. Licenses of new residents; penalty.

(a) Every person desiring to operate a motor vehicle shall, within 60 days after taking up residence in this State, apply to the Secretary and obtain the proper license.

(b) Whoever violates subsection (a) of this section shall for the first offense be fined not less than $25 nor more than $100. For each subsequent like offense, the violator shall be fined not less than $50 nor more than $200, or imprisoned not less than 10 nor more than 30 days, or both.

(c) The Division of Motor Vehicles shall provide notice of the obligation to register pursuant to § 4120 of Title 11 to each new resident applicant for a license to operate a motor vehicle. Every applicant for a driver's license shall sign an acknowledgment provided by the Division that the applicant has received notice that registration in compliance with § 4120 of Title 11 is mandatory for any person who has been convicted in any other state of any offense which, if committed or attempted in this State, would have been punishable as 1 or more of the offenses referenced in § 4120(a) of Title 11, and that such registration must occur within 7 days of coming into any county, city or town in which the applicant temporarily resides or is domiciled for that length of time.

All such signed acknowledgments shall be kept as permanent records by the Division in a format approved by the Director of Historical and Cultural Affairs, which may include storage on microfiche or other nonpaper forms of permanent retention.

(Code 1935, § 5546A; 48 Del. Laws, c. 293, § 1; 21 Del. C. 1953, § 2703; 57 Del. Laws, c. 670, § 11A; 62 Del. Laws, c. 237, § 4; 64 Del. Laws, c. 466, § 6; 65 Del. Laws, c. 503, § 12; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 397, §§ 20, 21.)

§ 2705. Persons exempt from licensing requirements.

The licensing requirements of this title do not apply to:

(1) An individual while driving or operating a road roller, road machinery or any farm tractor or implement of husbandry temporarily drawn, moved or propelled on the highways;

(2) A member of the armed forces of the United States who is serving on active duty and any dependent of the member, if:

a. The driver possesses a license to drive issued to the driver by the driver's state of domicile; and

b. The license authorizes the driver to drive in the driver's state of domicile vehicles of the class that the driver is driving in this State; or

(3) For not more than 30 days after the driver returns to the United States, a member of the armed forces of the United States who is returning from active duty outside the United States and any dependent of the member who is returning from residence with the member outside the United States, if:

a. The driver possesses a license to drive issued to the driver by the armed forces of the United States in a place outside the United States; and

b. The license authorizes the driver to drive vehicles of the class that the driver is driving in this State.

(36 Del. Laws, c. 10, § 52; Code 1935, § 5590; 21 Del. C. 1953, § 2704; 62 Del. Laws, c. 237, § 5; 64 Del. Laws, c. 468, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2706. Nonresident operators.

(a) A nonresident over the age of 16 years who has been duly licensed under a law requiring the licensing of operators in the nonresident's home state or country and who has in the nonresident's immediate possession a valid operator's license issued to the nonresident in the nonresident's home state or country shall be permitted without examination or license under this chapter to drive a motor vehicle upon the highways of this State.

(b) No nonresident whose home state or country does not require the licensing of operators and who has not been licensed as an operator in the nonresident's home state or country shall operate any motor vehicle upon any highway in this State without first making application for and obtaining a license as an operator as required under this chapter, except that any unlicensed nonresident who is over the age of 16 years and who is the owner of a motor vehicle which has been duly registered for the current registration year in the state or country of which the owner is a resident may operate such motor vehicle upon the highways of this State for a period of not more than 30 days in any 1 year without making application for or obtaining an operator's license under this chapter upon condition that the motor vehicle shall at all times display the license number plate or plates issued therefor in the home state or country of the owner and that the nonresident owner has in the nonresident's immediate possession a registration card evidencing such ownership and registration in the nonresident's home state or country.

(36 Del. Laws, c. 10, § 53; Code 1935, § 5591; 42 Del. Laws, c. 171, § 1; 21 Del. C. 1953, § 2705; 62 Del. Laws, c. 237, §§ 6-11; 70 Del. Laws, c. 186, § 1.)

§ 2707. License qualifications.

(a) (1) No Class D operator's license shall be issued to any person under the age of 16 years. A CDL Class A, CDL Class B or CDL Class C license shall not be issued to any person under 18 years of age nor to any person 18 years of age or older who has not had at least 1 year's experience as an operator of a motor vehicle.

(2) No endorsement for "L", "T", "P" or "N" shall be issued to any person under 18 years of age or to any person 18 years of age or older who has not had at least 1 year's experience as an operator of a motor vehicle. No endorsement of "H" or "X" shall be issued to any person under 21 years of age or to any person 21 years of age or older who has not had at least 1 year's experience as an operator of a motor vehicle.

(b) The Department shall not issue an operator's or chauffeur's license to any:

(1) Person whose license has been suspended, during the period for which license was suspended;

(2) Person whose license has been revoked under this chapter until the expiration of 1 year after such license was revoked;

(3) Person whom it has determined is an habitual drunkard or is addicted to the use of narcotic drugs;

(4) Person when in the opinion of the Department such person is a person with a physical or mental disability or disease as will serve to prevent such person from exercising reasonable and ordinary control over a motor vehicle while operating the same upon the highways;

(5) Person who is unable to understand highway warning or direction signs in the English language;

(6) Person who is subject to loss of consciousness, unless such person furnishes the Department with a certificate of the person's treating licensed practitioner. This certificate may be from:

a. A physician, duly licensed to practice medicine, who may certify that a driver is under sufficient control of loss of consciousness episode(s) and does not have an elevated risk to safely operate a motor vehicle.

b. A nonphysician licensed practitioner, who may certify a driver has not had a loss of consciousness episode(s) in the last 3 months and does not have an elevated risk to safely operate a motor vehicle.

The Department may find that the person need no longer submit annual certificates of competence to operate a motor vehicle and shall notify the person accordingly. The Department may at its discretion retain medical consultants to advise it. No licensed practitioner who examines a person and provides a certificate in good faith in accordance with this paragraph shall be subject to any civil or criminal liability on account of having provided the certificate.

(7) Person who has not reached the person's eighteenth birthday unless such person has either:

a. Completed a course in driver education in a public or private high school in this State, such course having been approved by the State Board of Education and meeting the standards for such courses described by that Board; or

b. Been licensed to operate motor vehicles in another state and has completed a course of instruction in driver education and the safe operation of motor vehicles in a public or private high school outside this State.

(8) Person who has not reached the person's eighteenth birthday upon notification by the Family Court of the State pursuant to § 1009 of Title 10, for a time set by the Court in its discretion.

(9) Person who has not reached the person's twenty-first birthday at the time of the offense, who has been convicted of or pleads guilty to, including a conviction or guilty plea pursuant to § 4767 of Title 16 and qualifying for first offender election under § 4177B of this title, any of the offenses listed hereinafter or who has been adjudicated delinquent as a result of acts which would constitute such offense if committed by an adult, for a period of 2 years from the date of sentencing, or until said person's eighteenth birthday, whichever is longer. The following shall constitute offenses under this paragraph:

a. Any drug offense under Title 16.

b. Any drug offense under Chapter 5 of Title 11.

c. Driving under the influence of alcohol or drugs as defined in § 4177 of this title.

d. Any offense punishable under the laws of the United States or any state of the United States substantially conforming to the provisions of the Delaware Code listed in paragraph (b)(9)a., b. or c. of this section.

Upon entry of conviction or adjudication of delinquency for any offense included in this paragraph, the Clerk of the Court or other person designated by the Court shall forthwith report such conviction or adjudication of delinquency to the Division of Motor Vehicles for action pursuant to the provisions of this paragraph.

(10) Person, other than those persons covered by paragraphs (b)(8) and (9) of this section, who has been convicted of or pleads guilty to any of the offenses listed in paragraph (b)(9)a., b., c. or d. of this section, including a conviction or guilty plea pursuant to § 4767 of Title 16 and qualifying for first offender election under § 4177B of this title, or who has been adjudicated delinquent as a result of acts which would constitute such an offense if committed by an adult, for a period of 6 months after the individual otherwise would have been eligible to have a driver's license issued if the individual does not have a driver's license or reinstated if the driver's license of the person has been suspended at the time the person is so convicted.

(11) Person who is the subject of an outstanding capias or bench warrant issued by the Family Court for failure to appear at any paternity or child support proceeding, or with respect to whom the Department has received notification from the Family Court as provided in § 516(g) of Title 13, or notice from the Director of the Division of Child Support Services as provided in § 2216 of Title 13 regarding the denial or suspension of a license because of such person's child support delinquency.

(12) [Repealed.]

(13) Person deemed "not eligible" by a Family Court Judge or Commissioner pursuant to entry into the Family Court Adjudicated Juvenile Drug Court Program until a further order of the Court permitting licensing.

(36 Del. Laws, c. 10, § 54; Code 1935, § 5592; 41 Del. Laws, c. 228, § 1; 43 Del. Laws, c. 246; 45 Del. Laws, c. 289; 21 Del. C. 1953, § 2706; 49 Del. Laws, c. 57, § 1; 55 Del. Laws, c. 361, §§ 1, 2; 56 Del. Laws, c. 390, § 1; 59 Del. Laws, c. 307, § 3; 59 Del. Laws, c. 327, § 1; 62 Del. Laws, c. 237, §§ 12-15; 64 Del. Laws, c. 183, § 1; 67 Del. Laws, c. 108, § 1; 67 Del. Laws, c. 157, § 3; 67 Del. Laws, c. 429, §§ 1, 2; 69 Del. Laws, c. 125, § 1; 70 Del. Laws, c. 18, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 452, § 3; 70 Del. Laws, c. 471, §§ 1, 2; 71 Del. Laws, c. 107, § 1; 71 Del. Laws, c. 216, § 82; 71 Del. Laws, c. 272, § 3; 72 Del. Laws, c. 57, § 1; 72 Del. Laws, c. 477, § 2; 73 Del. Laws, c. 34, § 3; 73 Del. Laws, c. 408, § 2; 74 Del. Laws, c. 135, § 4; 78 Del. Laws, c. 13, § 69; 78 Del. Laws, c. 179, § 270; 79 Del. Laws, c. 371, §§ 17, 18; 80 Del. Laws, c. 234, § 21; 81 Del. Laws, c. 434, § 2; 82 Del. Laws, c. 91, § 2; 83 Del. Laws, c. 37, § 25; 84 Del. Laws, c. 332, § 2.)

§ 2708. School bus driver's qualifications.

(a) No person shall drive, nor shall any contractor or public, parochial or private school, permit any person to drive a school bus within the State unless such driver has qualified for a commercial driver's license (CDL) under Chapter 26 of this title, and a school bus endorsement under this chapter, and other pertinent rules and regulations of the Department. Furthermore, except when in possession of a CDL permit and undergoing training or evaluation and accompanied by a certified Delaware School Bus Driver Trainer, school bus drivers shall at all times, while operating or in control of a school bus have in their immediate possession the following:

(1) A properly endorsed and classified Delaware CDL license, with a P (passenger) and S (school bus) endorsement. In exceptional circumstances, the Department of Education may request that the Department issue a 45-day temporary S endorsement to allow a driver to drive upon completion of all requirements except the 12 hours of classroom training. Out-of-state school bus drivers shall comply with § 2709 of this title.

(2) A physical examination certification indicating a valid and approved Department of Education physical exam completed within the last year.

(b) To qualify for an S (school bus) endorsement an applicant must meet all the following requirements:

(1) Be at least 18 years of age with 1 year of driving experience.

(2) Have qualified for a CDL license with P (passenger) endorsement.

(3) Show completion of a course of training with specific course content as determined by the Department of Education and including the knowledge specified in 49 C.F.R. § 383.123(a)(2).

(4) Pass a road test in a school bus administered by the Department and until September 30, 2005, has otherwise met the conditions of 49 C.F.R. § 383.123(b).

(5) Not have more than 5 points on the applicant's 3-year driving record at the time of application.

(6) Not have had the applicant's license suspended, revoked or disqualified in this State or any other jurisdiction for moving violations in the last 5 years.

(7) Never have been convicted of any of the following crimes under the laws of this State or of any other jurisdiction:

a. Any crime constituting the manufacture, delivery or possession of a controlled substance or a counterfeit controlled substance classified as such in Schedule I, II, III, IV or V of Chapter 47 of Title 16;

b. Any crime against a child;

c. Any crime constituting a class A or B felony;

d. Any crime constituting a felony homicide, including, but not limited to, murder, manslaughter and vehicular homicide;

e. Any crime constituting a felony sexual offense;

f. Any crime constituting a felony offense against public administration involving bribery, improper influence or abuse of office; or

g. Any crime, other than those listed in this paragraph, constituting a felony for which the person has not been pardoned or for which less than 5 years have passed since the person fully discharged all imposed sentences. As used herein, the term "sentence" includes, but is not limited to, all periods of modification of a sentence, probation, parole or suspension, and all forms of fines, restitution or community service.

(8) Submit to a drug test, to be administered pursuant to the rules and regulations of the Department of Education, the results of which must be negative for controlled substances as defined by 49 U.S.C. § 31306 and the implementing regulations issued by the Secretary of Transportation pursuant thereto unless the controlled substances have been ingested pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice. Anyone testing positive to the drug test required in this paragraph shall have the right to request and pay for further analysis of their split sample, pursuant to the rules and regulations of the Department of Education, to determine whether the result was a false positive or the controlled substance was ingested pursuant to a valid prescription or order of a practitioner wile acting in the course of the practitioner's practice. Refusal to submit to testing, which shall include the provision of a substituted or adulterated test sample, shall be deemed to be a positive test result under this subsection.

(c) Any time a license with a school bus endorsement is suspended, revoked or disqualified for moving violations, or the driver exceeds 8 points for moving violations, the school bus endorsement shall become invalid, and the endorsement shall be removed from the license.

(d) Renewal of the school bus endorsement shall be as required for other licenses.

(e) The Department shall provide school bus driver records at no charge to the Department of Education or to companies contracted to the Department of Education for school bus services.

(f) The Department shall conduct a criminal history background check for the purposes of issuing an S endorsement pursuant to this section. This check shall include a national criminal history background check, in addition to a review of the applicant's Delaware-based criminal history, a fingerprinting of applicants who are to be subjected to a national criminal history background check, and expressly authorizes the use of records of the Federal Bureau of Investigation for screening the applicants.

(36 Del. Laws, c. 10, § 55; Code 1935, § 5593; 21 Del. C. 1953, § 2707; 53 Del. Laws, c. 112; 56 Del. Laws, c. 400, § 1; 57 Del. Laws, c. 318; 57 Del. Laws, c. 670, § 11C; 58 Del. Laws, c. 160; 58 Del. Laws, c. 197; 58 Del. Laws, c. 511, § 43; 60 Del. Laws, c. 394, § 1; 62 Del. Laws, c. 237, §§ 16, 17; 65 Del. Laws, c. 464, §§ 1-3; 66 Del. Laws, c. 341, § 1; 67 Del. Laws, c. 75, § 1; 67 Del. Laws, c. 157, § 4; 67 Del. Laws, c. 378, §§ 1, 2; 68 Del. Laws, c. 192, § 1; 69 Del. Laws, c. 87, § 1; 69 Del. Laws, c. 236, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 65, §§ 21-23; 73 Del. Laws, c. 205, §§ 1-3; 73 Del. Laws, c. 252, § 9; 73 Del. Laws, c. 406, §§ 2, 3; 74 Del. Laws, c. 217, §§ 14, 15; 77 Del. Laws, c. 311, § 8; 77 Del. Laws, c. 312, § 2; 78 Del. Laws, c. 19, § 1; 79 Del. Laws, c. 214, § 13; 79 Del. Laws, c. 279, § 7; 80 Del. Laws, c. 275, § 1.)

§ 2709. Out-of-state school bus drivers; qualifications.

(a) Out-of-state school bus drivers shall meet the requirements of their home state for driving a school bus and supplemental Delaware Department of Education training as determined by the Department of Education.

(b) Out-of-state school bus drivers shall provide a Delaware Department of Education physical examination certification indicating a valid and approved Delaware Department of Education physical exam completed within the last year.

(c) Out-of-state school bus drivers shall upon first employment provide to their supervisor a current copy of their home state driving record. The driver's supervisors shall maintain on file a current copy of their state driving record. These records will be annually reviewed using the same qualification criteria as found in § 2708 of this title.

(1) An out-of-state school bus driver shall:

a. Upon first employment, and thereafter annually, provide to the bus driver's supervisor a current copy of the bus driver's home state driving record;

b. Inform the bus driver's supervisor any time the bus driver's license is suspended or revoked.

(2) The supervisor of an out-of-state school bus driver shall:

a. Maintain on file a current copy of the driver's driving records; and

b. Annually update and review the driver's driving records using the same qualification criteria as found in § 2708 of this title.

(21 Del. C. 1953, § 2707A; 58 Del. Laws, c. 197; 62 Del. Laws, c. 237, § 18; 67 Del. Laws, c. 157, § 5; 69 Del. Laws, c. 75, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 65, §§ 24, 25; 73 Del. Laws, c. 205, §§ 4, 5.)

§ 2710. Issuance of a Level 1 Learner's Permit and Class D operator's license to persons under 18 years of age.

(a) The Division, upon receiving from any person who is at least 16 years old but less than 18 years old or a person who is receiving special education services under an active Individualized Education Program who is at least 16 years old but less than 22 years old, an application for a Level 1 Learner's Permit, together with the fee required by law, may, in its discretion, issue such a permit entitling the

applicant, with such a permit in the applicant's immediate possession, to drive a motor vehicle upon the highways of this State provided they meet all requirements for the permit. Eye screening and medical examinations will be required in accordance with Division policies.

The Division may issue a distinctively designed Level 1 Learner's Permit document or issue the permit holder a Class D license encased in a packet which explains the driver's limited driving privileges. If the permit holder completes the 12-month driving experience and the sponsor does not withdraw their endorsement, the Division will notify the permit holder by mail that the permit holder is eligible for a Class D license. The time used to compute the 12 months of driving experience shall not include any period of time when the permit holder's driving privileges were suspended, revoked, canceled, denied or surrendered.

(b) *Level1 Learner's Permit.* — A person who is at least 16 years old but less than 18 years old, or a person who is receiving special education services under an active Individualized Education Program who is at least 16 years old but less than 22 years old, may obtain a Level 1 Learner's Permit if the person has:

(1) Successfully completed a course in driver education in a public or private high school in this State, which has been approved by the Department of Education and meets the standards for such courses described by that Department. If the applicant has completed a course of instruction in driver education in a public or private high school outside this State, the applicant must produce a certified copy of that applicant's high school transcript evidencing the completion of the driver education course;

(2) Passed a written test and road skills test administered by the Division or administered by a driver education teacher. Students who require specialized evaluation, training or equipment to operate a motor vehicle because they are persons with a physical or mental disability will be identified by the driver education teacher and tested by the Division;

(3) Been certified by the driver education teacher as qualified for licensing; and

(4) Submitted an application signed by a sponsor as required by subsection (e) of this section.

(c) *Restrictions pertaining to theLevel1 Learner's Permit.* — A learner's permit authorizes the permit holder to drive the specified type or class of motor vehicles as those defined under § 2702(d)(1) of this title for 12 months only under the conditions listed below. If the learner's permit expires, the applicant will pay the appropriate fees and pass a written and road skills examination conducted by the Division.

(1) The Level 1 Learner's Permit must be in possession of the permit holder.

(2) When the permit holder is under mandatory supervision, the permit holder must be supervised by a properly licensed parent, guardian or a licensed driver at least 25 years of age who has held a Class D license for at least 5 years. The supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.

(3) For the first 6 months after issuance, the permit holder may only drive supervised. In order for the permit holder to be able to drive unsupervised as called for in paragraph (c)(4) of this section, a parent or guardian shall certify that the permit holder has completed 50 hours of driving time, which shall include 10 hours of nighttime driving. This certification form shall be developed by the Division of Motor Vehicles, Department of Education and Department of Highway Safety and shall be signed by the parent or guardian and submitted to a Department of Education approved program at the end of this 6-month period.

(4) After the first 6 months from issuance, the permit holder may drive unsupervised between the hours of 6:00 a.m. and 10:00 p.m. Such a permit holder may drive only with supervision from 10:00 p.m. to 6:00 a.m. with the exception of times when the permit holder is traveling to and from church activities, work activities and the permit holder's school. For purposes of this section, the term "school" shall not include school-related activities that do not take place on school property.

(5) No passengers other than the adult supervisor and 1 or fewer other passengers can be in the vehicle during the first 12 months. However, the passenger restrictions of this paragraph shall not apply to immediate members of the driver's family provided the adult supervisor is in the car. During the second 6-month period of unsupervised driving, when a supervisor is not present, only 1 other passenger in addition to the driver can be in the vehicle.

(6) The restrictions of paragraph (c)(4) of this section shall not apply to those individuals who are Delaware volunteer fire fighters and ambulance attendants as long as they have permission from their fire chief or ambulance captain in writing with the permit referenced in paragraph (c)(1) of this section and are returning home from their company stations or place of education or training relating to their respective duties for the sole purpose of either an emergency response, an official fire or ambulatory meeting, or education or training relating to said duties.

(7) The permit holder and all passengers, under the age of 18, in the vehicle must wear a seat belt or be secured in a child safety seat or booster seat as required by § 4802 or § 4803 of this title when the vehicle is in motion.

(8) The permit holder shall not operate a motor vehicle while using a cellular telephone, text messager, or substantially similar electronic device. This paragraph shall not apply if the permit holder has stopped the vehicle at a location off of the lanes of travel. Any permit holder found to be in violation of this paragraph is deemed to be operating the vehicle in a negligent manner and is subject to the penalties set forth in subsection (j) of this section.

(d) *Class D license qualifications.* — A person who is at least 17 years old but less than 18 years old, or who is at least 17 years old but less than 22 years old and receiving special education services under an active Individual Education Program (IEP), may obtain a Class D operator's license if the person meets the following requirements:

(1) The person has held a Level 1 Learner's Permit issued by the Division for at least 12 months; and

(2) The person has an application signed by a sponsor as specified in subsection (e) of this section. The sponsor's signature on the Level 1 Learner's Permit application authorizes the minor to obtain the Class D operator's license when eligible unless the sponsor withdraws, in writing, their authorization for any such license or permit.

(e) The Division shall not grant the application of any minor between the ages of 16 years and 18 years or a person receiving special education services under an active Individual Education Program (IEP) between the ages of 16 and 22 for an operator's license or Level 1 Learner's Permit unless such application is signed both by the applicant and a sponsor who is the applicant's parent, guardian, Division of Family Services case worker or court-ordered custodian who resides in this State.

(1) Nevertheless, if the applicant has no parent, guardian, Division of Family Services case worker or court-ordered custodian residing in the State to act as the applicant's sponsor, another responsible adult person acceptable to the Secretary of Transportation who resides with the applicant in this State may sign the application.

(2) The following sponsors are listed in order of preference:

a. Either parent of the minor if both parents are living together within this State and the minor resides with both parents.

b. Father of the minor, if the father is living within this State, and the minor resides with the father only; mother of the minor, if the mother is living within this State, and the minor resides with the mother only; or either parent, if either parent lives within this State, and the minor resides with neither parent, and the minor has no legal guardian within this State;

c. Guardian, Division of Family Services case worker or court-ordered custodian of the minor, duly appointed, as such, under the laws of this State; or

d. Any suitable person acceptable to the Secretary of Transportation.

(3) The Department shall not require as a prerequisite to the issuance of a license to a minor under this section, that the parent, guardian, Division of Family Services case worker or court-ordered custodian who signs the minor's driver license application be present at the time the application is made by minor or sign the application at the offices of the Division of Motor Vehicle. The signing of the application and acknowledgment thereof, by the parent, guardian, Division of Family Services case worker or court-ordered custodian before a notary public or other person authorized to administer oaths shall be deemed sufficient to satisfy the requirements of this section. However, sponsors designated in paragraph (e)(2)d. of this section shall sign the minor's license application in the presence of a Division representative.

(4) The sponsor who signs the driver's license application on behalf of a minor has final authority to determine if the minor is capable of handling the responsibility of operating a motor vehicle and authority to designate who can supervise the minor driver per paragraph (c)(2) of this section. The sponsor who signed the application on behalf of the minor can withdraw their endorsement at any time until the minor reaches age 18, thereby canceling the minor's driving authority regardless of the type of permit or license held. If the court terminates the custody order and the minor subsequently resides with a parent in this State, then the parent may cancel the driving privileges of the minor under this section. To reinstate the canceled driving privileges, an approved sponsor must sign the application on behalf of the minor. When the minor turns 18, they can reinstate their previously held driving privileges without a sponsor's signature. The applicant can reinstate the driving privileges of a canceled license when they meet the license requirements and pay the appropriate license fee.

(5) It shall be unlawful for any person to sign the application of a minor under the provisions of this section when such application misstates the age of the minor or misrepresents the sponsor's relationship to the minor. Any person who violates this provision shall be guilty of a class B misdemeanor, and both the minor applicant and the sponsor's driving privileges shall be suspended for 2 months per § 2733(a)(5) of this title.

(6) It is unlawful for a sponsor to knowingly allow the holder of a Level 1 Learner's Permit to drive in violation of paragraph (c)(2) of this section. A sponsor who violates this provision is guilty of an unclassified misdemeanor.

(f) *Out-of-state driver license transfer.* — A person who is at least 16 years old but less than 18 years old, who was a resident of another state and has a driver's license issued by that state, and who becomes a resident of this State may obtain Delaware driving authority under the following conditions:

(1) If the applicant was issued the out-of-state driver's license for less than 12 months, they are eligible to apply for a Level 1 Learner's Permit when meeting the requirements under subsection (b) of this section and successfully completing a driver education training program approved by the Delaware Department of Education.

(2) If the applicant was issued the out-of-state driver's license for over 12 months, and has successfully completed a driver education training program approved by the Delaware Department of Education, that applicant is eligible to apply for a Class D operator's license after meeting the requirements of subsection (e) of this section. Additionally, such a minor applicant must pass a written and road skills examination conducted by the Division.

(3) If the applicant holds an out-of-state driver's license and that applicant is over 18 years old, that applicant can apply for a Delaware Class D operator's license under §§ 2712 and 2713 of this title.

(g) *Duration and fees.* —

(1) A Level 1 Learner's Permit expires 12 months after the date of issuance. If the applicant's learner's permit expires, the permit shall be void. The permit can be reissued when the applicant meets the permit requirements.

(2) Except as provided under paragraph (g)(3) of this section, the applicant must pay the $40 Class D license fee at the time of initial application.

(3) An applicant is not required to pay a license fee if the applicant is a child in the custody of the Department of Services for Children, Youth, and Their Families or meets the requirements under § 9011A(g) of Title 29.

(h) It is unlawful for the holder of a Level 1 Learner's Permit to operate a motor vehicle in violation of the restrictions that apply to the Level 1 Learner's Permit. Failure to comply with these restrictions constitutes operating a motor vehicle without a license under § 2701(a) of this title.

(i) The Division shall not issue an operator's license or Level 1 Learner's Permit to a person who has not reached the person's eighteenth birthday at the time of the offense if the person has been adjudicated delinquent as a result of acts which would constitute such an offense if committed by an adult as set forth in § 2732(a) of this title.

(j) The Department may immediately suspend a minor's permit, license and/or driving privileges whenever the Department has reason to believe that such person is a reckless or negligent driver of a motor vehicle or has committed a serious moving traffic violation. The Secretary may promulgate policy regulations more stringent than those that apply to other drivers when suspending minors. The suspension period will be for l month for the first suspension and 3 months for subsequent suspensions under this subsection. No suspension under this section shall be used by a motor vehicle insurance company licensed to sell insurance in this State as a basis for canceling a policy of insurance or to raise the premium cost to the insured.

(k) *Driver education learner's permit.* — The Division, upon receiving proper notice that a person is currently enrolled in a driver's education course and successfully completed the minimum class hours of actual driving experience and in-the-car observation as approved by the Department of Education, may issue a driver education learner's permit to such person after the person's sixteenth birthday, or before the person's twenty-second birthday if the person is enrolled in an active Individualized Education Program, provided the person meets all other Division requirements. The Division may issue a driver education learner's permit to those who meet the requirements of this section and need supervised driving experience before completing the road skill s test. The full driver license fee shall be collected at the time of the application. The permit is valid for 4 months. If for any reason whatsoever the applicant fails to pass the required examinations during the 4-month period granted by the permit, the permit shall be void and the driver license fee shall be forfeited. The application must be signed by the sponsor pursuant to subsection (e) of this section.

(1) Any person issued a driver education learner's permit pursuant to this subsection is entitled to drive a motor vehicle described in § 2702(d)(1) of this title upon the highways only when supervised by a properly licensed parent or guardian. If the parent(s) or guardian(s) is (are) not licensed to operate a motor vehicle or the permit holder is in the custody of the Department of Services for Children, Youth and their Families, the holder of the driver education learner's permit must be supervised by a licensed driver who is 25 years of age or older and have held a Class D driver's license for at least 5 years. The supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.

(2) The driver education learner's permit must be in the possession of the permit holder.

(3) No passengers other than the adult supervisor and 1 or fewer other passengers can be in the vehicle. However, this passenger limit does not apply to members of the driver's immediate family.

(4) Driving experience obtained while holding this permit will be counted towards and in conjunction with the driving experience restrictions contained in paragraph (c)(3) of this section.

(5) The permit holder shall not operate a motor vehicle while using a cellular telephone, text messager, or substantially similar electronic device. This paragraph shall not apply if the permit holder has stopped the vehicle at a location off of the lanes of travel. Any permit holder found to be in violation of this paragraph is deemed to be operating the vehicle in a negligent manner and is subject to the penalties set forth in subsection (j) of this section.

(36 Del. Laws, c. 10, § 56; 37 Del. Laws, c. 10, § 17; Code 1935, § 5594; 41 Del. Laws, c. 228, § 2; 44 Del. Laws, c. 192; 45 Del. Laws, c. 285; 21 Del. C. 1953, § 2708; 50 Del. Laws, c. 262, § 1; 53 Del. Laws, c. 221, § 20; 56 Del. Laws, c. 390, § 2; 58 Del. Laws, c. 511, § 44; 59 Del. Laws, c. 327, § 2; 62 Del. Laws, c. 156, § 1; 62 Del. Laws, c. 237, § 19; 64 Del. Laws, c. 355, § 1; 65 Del. Laws, c. 77, §§ 1, 2; 67 Del. Laws, c. 25, §§ 1, 2; 69 Del. Laws, c. 327, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 282, § 1; 72 Del. Laws, c. 344, §§ 1, 2; 72 Del. Laws, c. 477, §§ 1, 3, 4; 73 Del. Laws, c. 42, § 1; 74 Del. Laws, c. 110, §§ 56, 57; 74 Del. Laws, c. 324, § 1; 75 Del. Laws, c. 15, §§ 1, 2; 75 Del. Laws, c. 377, § 1-3; 76 Del. Laws, c. 76, § 21; 76 Del. Laws, c. 260, §§ 5, 6; 76 Del. Laws, c. 293, § 1; 76 Del. Laws, c. 415, §§ 1-5; 78 Del. Laws, c. 8, § 8; 79 Del. Laws, c. 371, § 19; 80 Del. Laws, c. 193, §§ 1-5; 83 Del. Laws, c. 453, §§ 4, 11; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 345, § 1.)

§ 2711. Application for license.

(a) Every application for an operator's license shall be made on an application form furnished by the Department. The original application shall be verified by the applicant before a person authorized to administer oaths.

(b) Every application shall state the name, social security number, if eligible, date of birth, sex and residence address of the applicant and whether or not the applicant has previously been licensed as an operator, and, if so, when and by what state and whether or not such license has ever been suspended or revoked and, if so, the date of and reason for such suspension or revocation.

(c) Regardless of the age of the applicant, the Division shall require documentary evidence satisfactory to the Division of the applicant's name, date of birth, legal presence in the United States, Social Security number (if eligible), sex, and Delaware residence address.

(d) Any applicant who is able to provide satisfactory documentary evidence of all information described in subsection (c) of this section except for legal presence in the United States, may be eligible for a class D license or a class D temporary instruction permit valid for driving privileges only, hereinafter referred to as a driving privilege card or permit. Federal law prohibits any person from being eligible for a commercial driver license without providing satisfactory documentary evidence of legal presence in the United States.

(1) A driving privilege card or permit applicant must also provide the Division with satisfactory documentary evidence that the applicant, for each of the preceding 2 years, has:

a. Filed a Delaware income tax return; or

b. Resided in Delaware and been claimed as a dependent by an individual who has filed a Delaware income tax return.

(2) A driving privilege card or permit applicant must have completed the procedures required under § 8595 of Title 11.

(3) A driving privilege card or permit shall not be considered a valid form of identification for any purpose.

(4) Every applicant for or holder of a driving privilege card or permit under this section shall be subject to all of the provisions of this and any other title that apply to applicants and holders of class D driver licenses, class D temporary instruction permits, and level 1 learner permits.

(5) Notwithstanding any provision to the contrary, to ensure the public trust of the Delaware undocumented population that will utilize the driving privilege card for its intended purposes, all personal identifiable information collected during the application process shall be kept confidential, except in connection with purposes or procedures that would equally apply to applicants under subsection (c) of this section.

(e) (1) Any male applicant who applies for an instruction permit or driver's license or a renewal of any such permit or license and who is at least 18 years of age but less than 26 years of age shall be registered in compliance with the requirements of § 3 of the "Military Selective Service Act," 50 U.S.C. App. § 453, as amended.

(2) The Department shall forward in an electronic format the necessary personal information of the applicants identified in this subsection to the selective service system. The applicant's signature on the application shall serve as an indication that the applicant either has already registered with the selective service system or that the applicant is authorizing the Department to forward to the selective service system the necessary information for such registration. The Department shall notify the applicant at the time of application that the applicant's signature constitutes consent to registration with the selective service system, if the applicant is not already registered.

(36 Del. Laws, c. 10, § 57; 37 Del. Laws, c. 10, § 15; Code 1935, § 5595; 48 Del. Laws, c. 238, § 1; 21 Del. C. 1953, § 2709; 62 Del. Laws, c. 237, § 20; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 216, § 57; 71 Del. Laws, c. 282, § 2; 72 Del. Laws, c. 335, § 1; 72 Del. Laws, c. 485, § 2; 80 Del. Laws, c. 67, § 1; 84 Del. Laws, c. 42, § 1.)

§ 2712. Application for temporary instruction permits and Class D operator's license for persons age 18 or older.

(a) A Class D temporary instruction permit may be issued to a person age 18 years or older. A temporary permit shall entitle the applicant to drive during a 12-month period only when the applicant is accompanied by a licensed operator over the age of 21 who is actually occupying a seat beside the driver and there are no more than 2 other persons in the vehicle.

(b) If for any reason the applicant fails to pass the required examination during the 12-month period granted by the permit, the permit shall be void, and the fee paid therefor shall be forfeited.

(c) The applicant must successfully pass a written examination before being issued a temporary instruction permit, and pass a practical road skills examination before being issued a Class D operator's license. Eye screening and medical examinations will be administered in accordance with Division policies.

(d) It is unlawful for the holder of a Class D temporary instruction permit to operate a motor vehicle when the applicant is not accompanied by a licensed operator over the age of 21 years who is seated beside the driver or if there are more than 2 other persons in the vehicle. Failure to comply with subsection (a) of this section restrictions constitutes operating a motor vehicle without a license under § 2701(a) of this title.

(e) Applicants who are receiving special education services under an active Individualized Education Program may waive the provisions of this section and obtain a Class D operator's license if the person meets the requirements of § 2710(d) of this title.

(f) An applicant is not required to pay a fee required by this section if the applicant is a child in the custody of the Department of Services for Children, Youth, and Their Families or meets the requirements under § 9011A(g) of Title 29.

(36 Del. Laws, c. 10, § 58; Code 1935, § 5596; 45 Del. Laws, c. 283, § 1; 46 Del. Laws, c. 125; 21 Del. C. 1953, § 2710; 57 Del. Laws, c. 495, §§ 1, 2; 57 Del. Laws, c. 670, § 11B; 60 Del. Laws, c. 626, § 1; 64 Del. Laws, c. 23, §§ 1-3; 67 Del. Laws, c. 346, § 1; 67 Del. Laws, c. 429, § 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 282, § 5; 78 Del. Laws, c. 8, §§ 9-11; 80 Del. Laws, c. 193, § 6; 83 Del. Laws, c. 453, §§ 5, 11; 84 Del. Laws, c. 78, § 1; 84 Del. Laws, c. 345, § 1.)

§ 2713. Examination of applicants; waiver of examination.

(a) The Department shall examine every applicant for an operator's license before issuing any such license, except as otherwise provided in subsections (b) and (c) of this section. The Department shall examine the applicant as to the applicant's physical and mental abilities to

operate a motor vehicle in such manner as not to jeopardize the safety of persons or property and as to whether any facts exist that would bar the issuance of a license under this chapter. Such examination may not include investigation of any facts other than those directly pertaining to the ability of the applicant to operate a motor vehicle with safety, or other than those facts declared to be prerequisite to the issuance of a license under this chapter.

(b) The Department may in its discretion waive the examination of any person applying for the renewal of an operator's license issued under this chapter.

(c) The Department may in its discretion issue an operator's license under this chapter without examination to every person applying therefor who is of sufficient age, as required by § 2707 of this title, to receive the license applied for and who at the time of such application has a valid unrevoked license of like nature issued to such person under any previous law of this State providing for the licensing of operators or to any person who at the time of such application has a valid unrevoked license of like nature issued to such person in another state under a law requiring the licensing and examination of operators.

(d) Written and road skill examinations for students duly enrolled in a driver education course, including students who are receiving special education services under an active Individualized Education Program until the age of 22, will be administered by driver education teachers certified by the Delaware Department of Education. Upon successful completion of the driver education course, the certified teacher must issue a "High School Driver Education Certificate" which will be accepted in lieu of the written and road skill examinations administered by the Division for a period of 6 months from the date of issue. No further testing by the Division is required unless the High School Driver Education Certificate has expired; in such event, full testing is required. Students identified in § 2710(b)(2) of this title as persons with a disability requiring specialized training shall be examined by the Division. All persons under age 18 who transfer their out-of-state license for a Delaware license must be given a written and road test by the Division. Any person who is suspended while operating a motor vehicle on a Level 1 Learner's Permit, Driver Education Learner's Permit or temporary instruction permit will be re-examined before reinstatement. Notwithstanding the preceding, the Division must administer written and road skills tests to applicants who are 18 years of age or older, except as otherwise provided in subsections (b) and (c) of this section.

(e) (1) In examining an application as required under subsection (a) of this section, the Department shall also examine an applicant regarding the applicant's knowledge related to traffic stops by a law-enforcement officer, including all of the following:

a. An individual's constitutional and other legal rights during a traffic stop, including rights related to searches and seizures, to remain silent, and to an attorney.

b. Laws regarding questioning and detention by a law-enforcement officer, including any laws requiring an individual to present proof of identity to a law-enforcement officer and the consequences for an individual's or officer's failure to comply with those laws.

c. The role of a law-enforcement officer in general and during a traffic stop and the procedures a law-enforcement officer must follow during a traffic stop.

d. How to interact with a law-enforcement officer during a traffic stop.

e. How and where to file a complaint against or compliment on behalf of a law-enforcement officer.

(2) The Department shall include in its examination of an applicant at least 2 questions to test an applicant's knowledge related to traffic stops by a law-enforcement officer.

(3) The Department of Education, the Department, the Department of Justice, and the Office of Defense Services shall collaborate to produce information to educate an applicant related to traffic stops by a law–enforcement officer, and may consult with any interested parties from the public safety and transportation communities to produce this information.

a. The information under this paragraph (e)(3) must include the topics contained in paragraph (e)(1) of this section.

b. The information produced under this paragraph (e)(3) may not be construed as legal advice in contravention of § 2504(2) or § 2515 of Title 29 and of § 4602 or § 4604 of Title 29.

(4) The Department shall include the information produced under paragraph (e)(3) of this section in any document designed to educate an applicant on the rules for driving a motor vehicle in this State.

(36 Del. Laws, c. 10, § 59; Code 1935, § 5597; 21 Del. C. 1953, § 2711; 62 Del. Laws, c. 237, § 21; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 282, § 10; 74 Del. Laws, c. 18, § 3; 79 Del. Laws, c. 371, § 20; 80 Del. Laws, c. 193, § 7; 81 Del. Laws, c. 79, § 35; 81 Del. Laws, c. 350, § 1.)

§ 2714. Special examination.

(a) As a prerequisite to the continuation of the operator's right to drive on the highways, the Department shall cause a special examination to be made of every person involved in a second accident resulting in personal injury, death or property damage to an apparent extent of $250 within any 24-month period, when such person has been adjudged responsible for causing such accidents by a court of competent jurisdiction, to determine whether such person is a person with a physical or mental disability which prevents the safe operation of a vehicle.

(b) The Department shall also cause to be examined any person whom the State Police Superintendent, State Police Troop Commanders or chief of police of any city, town or county in this State recommends for such examination.

(c) The Department may examine any person with mental or physical conditions which may interfere with safe operation of a motor vehicle when reported, in writing, to the Department by a physician, member of the immediate family, the court or other person acceptable

to the Secretary of Transportation. This examination is to determine the person's physical and mental abilities to operate a motor vehicle in such manner so as not to jeopardize the safety of person or property and whether any facts exist which would bar the continued issuance of a license under this chapter. Such examination shall not include investigation of any facts other than those directly pertaining to the ability of the applicant to operate a motor vehicle safely or other facts declared to be prerequisite to the continued issuance of a license under this chapter. Evaluation requested per subsections (b) and (c) of this section are confidential records used to determine a driver's ability to safely operate a motor vehicle and shall not be released except by court order.

(36 Del. Laws, c. 10, § 59; 37 Del. Laws, c. 13; 40 Del. Laws, c. 38, § 2; Code 1935, § 5597; 21 Del. C. 1953, § 2712; 50 Del. Laws, c. 395, § 1; 67 Del. Laws, c. 94, § 1; 72 Del. Laws, c. 365, § 1; 74 Del. Laws, c. 110, § 58; 79 Del. Laws, c. 371, § 21.)

§ 2715. Driver license renewal cycle; fees; photograph [For application of this section, see 85 Del. Laws, c. 40, § 15].

(a) Upon receipt of the application and a fee of $50 and after such examination as provided in this chapter, the Secretary may issue, at the Secretary's discretion, a motor vehicle driver's license which shall expire and be renewable on the eighth anniversary date of the birth of the applicant next following the date of its issuance unless the birth date is February 29, in which event the license shall expire and be renewable on February 28 every eighth year. A permanent resident foreign national may be issued a full 8-year driver's license. However, a driver's license issued to a temporary foreign national must be limited to the period of time that the temporary foreign national is authorized to be in the United States.

(b) Upon receipt of the application and a fee of $20 and after such examination as provided in this chapter, the Secretary may issue, at the Secretary's discretion, a driving privilege card issued in accordance with § 2711 of this title, which shall expire and be renewable on the fourth anniversary date of the birth of the applicant next following the date of its issuance unless the birth date is February 29, in which event the driving privilege card shall expire and be renewable on February 28 every fourth year.

(c) On or near the date of expiration of a motor vehicle driver's license, each licensee shall appear at 1 of the Department's offices and be photographed by the Department of Transportation. Upon approval by the Director of the Division of Motor Vehicles, in the Director's discretion, the requirement for this appearance may be waived if circumstances prevent the licensee from appearing on or near the time of renewal.

(d) A late fee of $10 shall be assessed in addition to the renewal fee for every person whose driver's license has expired.

(e) Notwithstanding subsections (a), (b), and (c) of this section, the Secretary may issue driver licenses for less than 8 years until December 12, 2016, so the number of renewals can be more evenly distributed over an 8-year period. If a driver license is issued for less than 8 years pursuant to this section, the fee shall be calculated at $5.00 per year.

(f) Notwithstanding the length of issuance and fees as stated in this section, the length of issuance and fees for commercial motor vehicle driver's licenses as required in Chapter 26 of this title shall be as required in § 2611 of this title.

(g) An individual who presents a valid, unexpired, Delaware personal credential card, issued under § 8915 of Title 29, is exempt from any fee charged under this section for a replacement license.

(h) An applicant is not required to pay a fee required by this section if the applicant is a child in the custody of the Department of Services for Children, Youth, and Their Families or meets the requirements under § 9011A(g) of Title 29.

(36 Del. Laws, c. 10, § 57; Code 1935, § 5595; 48 Del. Laws, c. 238, § 2; 21 Del. C. 1953, § 2713; 49 Del. Laws, c. 361, § 1; 57 Del. Laws, c. 218; 57 Del. Laws, c. 670, §§ 11A, 11C; 61 Del. Laws, c. 282, § 1; 65 Del. Laws, c. 77, § 3; 65 Del. Laws, c. 329, § 1; 67 Del. Laws, c. 157, § 6; 67 Del. Laws, c. 260, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 59; 75 Del. Laws, c. 183, § 2; 76 Del. Laws, c. 76, §§ 22, 23; 76 Del. Laws, c. 126, § 1; 78 Del. Laws, c. 8, §§ 12-15; 80 Del. Laws, c. 77, § 3; 80 Del. Laws, c. 67, § 2; 81 Del. Laws, c. 447, § 3; 83 Del. Laws, c. 453, §§ 6, 11; 84 Del. Laws, c. 233, § 47; 84 Del. Laws, c. 345, § 1; 85 Del. Laws, c. 40, § 6.)

§ 2716. Permanent license; fees; expiration.

(a) Upon receipt of the application and a fee of $35, and upon proof that such applicant has been licensed by the Department for a period of 3 consecutive years and that such applicant is qualified under this chapter, the Secretary may issue, at the Secretary's discretion, a permanent driver's license which shall not become ineffective until or unless otherwise revoked, canceled or suspended as provided by law or until such license expires.

(b) Each holder of a permanent driver's license shall pay an additional fee of $24 every 8 years to the Department in payment of the cost of a photograph which will be taken by the Department. Nonpayment of this fee by the date indicated shall automatically render the license expired.

(c) A late fee of $10 shall be assessed in addition to the renewal fee for every person whose driver's license has expired.

(d) Effective April 1, 1990, no more permanent licenses as permitted under this section shall be issued to applicants applying for commercial motor vehicle driver licenses pursuant to Chapter 26 of this title.

(e) Effective August 1, 2007, no more permanent licenses shall be issued pursuant to this section, except for renewals of permanent licenses issued prior to that date.

(36 Del. Laws, c. 10, §§ 57, 65; 37 Del. Laws, c. 10, § 16; Code 1935, §§ 5595, 5603; 45 Del. Laws, c. 282, § 1; 45 Del. Laws, c. 288, § 1; 21 Del. C. 1953, § 2714; 49 Del. Laws, c. 361, § 2; 57 Del. Laws, c. 670, § 11A; 57 Del. Laws, c. 720; 58 Del. Laws, c.

79; 58 Del. Laws, c. 511, § 45; 61 Del. Laws, c. 282, § 2; 65 Del. Laws, c. 329, § 2; 67 Del. Laws, c. 157, § 7; 67 Del. Laws, c. 260, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 76, §§ 24, 25; 78 Del. Laws, c. 8, §§ 16-18; 80 Del. Laws, c. 77, § 4.)

§ 2717. Refusal to issue license; appeal.

The Department, for sufficient reasons, may refuse to issue any form of license or permit to any applicant. Upon such refusal, such applicant may appeal to the Court of Common Pleas of the county in which the applicant resides. An appeal of a denial of a license pursuant to § 516(g) or § 2216 of Title 13 shall be only as provided in Title 13.

(36 Del. Laws, c. 10, § 59; 40 Del. Laws, c. 38, § 3; Code 1935, § 5597; 21 Del. C. 1953, § 2715; 69 Del. Laws, c. 333, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 452, § 4; 71 Del. Laws, c. 216, § 83.)

§ 2718. Information on licenses [For application of this section, see 85 Del. Laws, c. 40, § 15].

(a) Every license shall bear thereon the distinguishing number assigned to the licensee and shall contain the name, age, residential address and a brief description of the licensee for the purpose of identification and shall have a space for the signature of the licensee. Every license shall also bear thereon a photograph of the licensee. Upon approval by the Director of the Division of Motor Vehicles, in the Director's discretion, the requirement for a photograph may be waived, if circumstances prevent the licensee from appearing on or near the time of renewal. The licensee's Social Security number is used for identification purposes and shall be maintained in the Division of Motor Vehicle's record system. In addition to the information described in this section, a driving privilege card or permit issued in accordance with § 2711 of this title shall be unique in design and bear on its face the phrase "Driving Privilege Only," and the phrase "Not Valid For Identification."

(b) The Division of Motor Vehicles shall provide a method for permitting a person making application for a license or identification card, or for renewal thereof, to have designated thereon that such person is a donor pursuant to subchapter II, Chapter 27 of Title 16, the Uniform Anatomical Gift Act.

(1) Upon such designation, the Division of Motor Vehicles shall in a manner prescribed by the Division make a suitable notation upon the license or identification card indicating that the person is a donor.

(2) The designation shall constitute sufficient legal authority for the removal of a body or part thereof upon the person's death and the designation shall be removed only upon written notice to the Division by the donor.

(3) At the time the donor authorizes the designation to appear on the donor's license or identification card, the donor shall be notified that the designation can be removed only upon written notice to the Division.

(4) For purposes of this section, license shall not include any temporary license.

(c) The Division of Motor Vehicles shall provide a method for permitting a person applying for a license or identification card, or for renewal thereof, to have designated thereon that such person has a medical condition which may require special attention.

(1) Upon such designation, the Division of Motor Vehicles shall in a manner prescribed by the Division make a suitable notation upon the license or identification card indicating that such person has a medical condition which may require special attention.

(2) At the time the licensee authorizes the designation to appear on the licensee's license or identification card, the licensee shall be notified that the designation can be removed only upon written notice to the Division.

(3) For purposes of this subsection, license shall not include any temporary license.

(4) No designation shall be noted upon the license or identification card of any person under 18 years of age unless written permission of the parents or guardian is granted.

(5) For the purposes of this subsection "medical condition" includes the execution of a pre-hospital advance care directive under Chapter 25 of Title 16 or Delaware Medical Orders for Scope of Treatment under Chapter 25A of Title 16, and those orders from other states, which have become effective under Chapter 25A of Title 16.

(d) A driver's license applicant or holder of a driver's license shall provide the Division with the applicant's or holder's social security number if eligible. This shall take place at the time of renewal of such driver's license or at the time a new license is issued to the applicant for any reason.

(e) If an applicant is required to register as a sex offender pursuant to Section 4120 of Title 11, as amended, for a felony conviction the sentencing court shall take possession of the driver's license and shall tender to the person being sentenced a temporary license, directing that the person report to the Division of Motor Vehicle for a replacement driver's license with the following code under restrictions: Y indicating sex offender. The person shall tender to the Division of Motor Vehicle a fee of $10 for the replacement license. Upon a person being removed from the registration requirement, the Division of Motor Vehicle shall issue a license without the sex offender code printed upon the license at no charge. The sentencing court shall forward to the Division all licenses that it receives, along with a copy of the sentencing order.

(f) Failure to comply with subsection (e) of this section within 30 days of a qualifying felony conviction pursuant to § 4120 of Title 11 will result in the suspension of driving privileges by the Division of Motor Vehicles.

(g) The Division of Motor Vehicles shall upon submission of satisfactory proof, designate on a driver license that the holder is a veteran of the uniformed services of the United States. As used in this section, "uniformed services of the United States" means any of the

following service branches:United States Army, United States Marine Corps, United States Navy, United States Air Force, United States Space Force, United States Coast Guard, United States Public Health Service Commissioned Corps, National Oceanic and Atmospheric Administration, a reserve component of any of the service branches, or the National Guard.

(1) An applicant qualifies to have designation that the holder is a veteran added to their driver license if the applicant served in the uniformed services of the United States and was discharged or released from service under conditions other than dishonorable.

(2) Satisfactory proof that the applicant is a veteran includes any of the following:

a. Form DD-214, Certificate of Release or Discharge from Active Duty.

b. Form DD-256, Discharge Certificate that states “General Under Honorable Conditions”.

c. Form NGB-22, Report of Separation and Record of Service, Departments of the Army and the Airforce, National Guard Bureau.

d. Valid military ID card including any of the following:

1. White Common Access Card.

2. Department of Defense Blue ID.

3. Department of Defense Red ID.

e. A valid driver license issued by a state other than Delaware with designation that the holder is a veteran.

f. PHS Form 1867, Statement of Service — Verification of Status of Commissioned Officers of the U.S. Public Health Service; also referred by the short title, “Statement of Service.”

g. NOAA Form 56-16, Report of Transfer or Discharge.

(3) When the licensee desires to add designation that the holder is a veteran as part of an initial application, renewal, or duplicate of a license, no fee in addition to the standard application or renewal fee may be charged for adding designation that the holder is a veteran.

(4) When the licensee desires to add designation that the holder is a veteran before license renewal, a fee of $10 may be assessed for such change.

(5) The Division shall coordinate with the Delaware Office of Veterans Services to establish a method of authenticating unclear military documentation.

(36 Del. Laws, c. 10, § 62; Code 1935, § 5600; 21 Del. C. 1953, § 2716; 60 Del. Laws, c. 344, § 1; 62 Del. Laws, c. 237, § 22; 64 Del. Laws, c. 286, § 1; 65 Del. Laws, c. 77, § 4; 67 Del. Laws, c. 157, § 8; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 133, §§ 1, 2; 71 Del. Laws, c. 261, § 1; 71 Del. Laws, c. 453, § 11; 72 Del. Laws, c. 32, § 1; 72 Del. Laws, c. 335, §§ 2, 6; 75 Del. Laws, c. 185, §§ 1, 2; 75 Del. Laws, c. 194, § 2; 77 Del. Laws, c. 182, § 1; 80 Del. Laws, c. 67, § 3; 83 Del. Laws, c. 489, § 1; 85 Del. Laws, c. 36, § 1; 85 Del. Laws, c. 40, § 7; 85 Del. Laws, c. 91, § 9.)

§ 2719. Records.

The Department shall file every application for an operator’s license and index the application by name and number and maintain suitable records of all licenses issued and all applications for licenses denied, as well as a record of all licenses which have been suspended or revoked.

(36 Del. Laws, c. 10, § 61; Code 1935, § 5599; 21 Del. C. 1953, § 2717; 62 Del. Laws, c. 237, § 23.)

§ 2720. Replacement licenses; requirements; fee [For application of this section, see 85 Del. Laws, c. 40, § 15].

(a) In the event that any operator’s license issued under this chapter is lost or destroyed, the person to whom it was issued may apply to the Department for the issuance of a duplicate or substitute license upon executing such forms as may be required by the Department and upon furnishing proof satisfactory to the Department that such license has been lost or destroyed. Each application for the issuance of a duplicate or substitute license under this subsection must be accompanied by a fee of $20.

(b) In the event a name change is requested for any operator’s license issued under this chapter, the person to whom it was issued may apply to the Division for the issuance of an updated license upon submitting such documentation as may be required by the Division. Each application for the issuance of a replacement license must be accompanied by a fee of $10.

(c) Upon receipt of the application and the required fee, the Secretary of Transportation of this State may, at the Secretary’s discretion, require an examination of such applicant in accordance with this chapter.

(d) Each application for the issuance of a duplicate license certificate must be accompanied by a fee of $20.

(e) An individual who presents a valid, unexpired, Delaware personal credential card, issued under § 8915 of Title 29, is exempt from any fee charged under this section for a replacement license.

(f) An applicant is not required to pay a fee required by this section if the applicant is a child in the custody of the Department of Services for Children, Youth, and Their Families or meets the requirements under § 9011A(g) of Title 29.

(36 Del. Laws, c. 10, § 63; Code 1935, § 5601; 45 Del. Laws, c. 284; 21 Del. C. 1953, § 2718; 53 Del. Laws, c. 221, § 21; 57 Del. Laws, c. 670, § 11B; 62 Del. Laws, c. 237, § 24; 63 Del. Laws, c. 440, § 1; 67 Del. Laws, c. 157, § 9; 67 Del. Laws, c. 260, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 60; 80 Del. Laws, c. 77, § 9; 81 Del. Laws, c. 447, § 4; 83 Del. Laws, c. 453, §§ 7, 11; 84 Del. Laws, c. 345, § 1; 85 Del. Laws, c. 40, § 9.)

§ 2721. Duty to sign and carry license.

(a) Every person licensed as an operator shall write the person's usual signature, in a manner acceptable to the Department, in the spaces provided for that purpose on the license certificate and such license shall not be valid until the certificated is so signed.

(b) The licensee shall have such license in the licensee's immediate possession at all times when driving a motor vehicle and shall display the same upon demand of a uniformed police officer, justice of the peace, peace officer or motor vehicle inspector. It shall be a defense to any charge under this subsection if the person so charged produces in court an operator's license theretofore issued to such person and valid at the time of the arrest.

(36 Del. Laws, c. 10, § 64; Code 1935, § 5602; 46 Del. Laws, c. 64; 21 Del. C. 1953, § 2719; 62 Del. Laws, c. 237, § 25; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 183, § 2.)

§ 2722. Restricted licenses based on driver's physical limitations.

(a) The Department upon issuing an operator's license may, whenever good cause appears, impose restrictions suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee's driving ability arising out of or caused by the licensee's physical defects or infirmities as the Department determines to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(b) The Department may either issue a special restricted license or may set forth such restrictions upon the usual license form.

(c) The Department may, upon receiving satisfactory evidence of any violation of the restrictions of such license, suspend or revoke the same but the licensee shall be entitled to a hearing as upon a suspension or revocation under this title.

(d) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to that person.

(Code 1935, § 5589A; 48 Del. Laws, c. 286; 21 Del. C. 1953, § 2720; 62 Del. Laws, c. 237, § 26; 70 Del. Laws, c. 186, § 1.)

§ 2723. Medical Advisory Board.

(a) There shall be a Medical Advisory Board consisting of a minimum of 3 members nominated by the Board of Medical Licensure and Discipline or the Chairperson of the Board and appointed by the Secretary. The Chairperson of the Board shall be the Medical Director of the Division of Public Health. The Board shall consult an ophthalmologist or an optometrist in all cases where a vision problem exists. The ophthalmological consultant shall be nominated by the Board of Medical Licensure and Discipline or the Chairperson of the Board, and the optometric consultant shall be nominated by the Delaware Board of Examiners in Optometry or the Chairperson of the Board. Both vision consultants shall be appointed by the Secretary.

(b) The Board shall advise the Secretary on medical criteria and vision standards relating to the licensing of drivers under this chapter.

(c) The identities of the members of the Board and its vision consultants shall be kept confidential. To maintain confidential their identities, they shall not be required to appear in court. If the qualifications of the members or consultants are challenged in court, the Secretary shall give the court brief professional biographies outlining the training and experience of each member and of each vision consultant.

(d) Reports received or made by the Board, or its members, or its vision consultants for the purpose of assisting the Secretary in determining whether a person is qualified to be licensed are for the confidential use of the Board or the Secretary and may not be divulged to any person or used as evidence in any trial except that the reports may be admitted in proceedings under §§ 2717 and 2734 of this title.

(e) Members of the Board and its vision consultants shall receive compensation in the amount of $40 per meeting attended.

(21 Del. C. 1953, § 2721; 57 Del. Laws, c. 366, § 1; 57 Del. Laws, c. 558, §§ 1, 5-8; 70 Del. Laws, c. 147, § 27; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 29, § 1; 84 Del. Laws, c. 332, § 3.)

§ 2724. Medical evaluation of drivers; suspension; review.

(a) Upon the determination of the Secretary that a licensed driver or applicant for a license may not be physically, visually or mentally qualified to be licensed, the Secretary will mail to the licensed driver or applicant for a license a registered letter with return receipt requested stating the need for a medical or optometric evaluation along with instructions. Attached to this letter will be a physical or visual examination report. The individual so notified shall be required within 30 days from the date of notification to have this report completed. The individual so notified shall make arrangements to be examined by a private physician or private optometrist of the individual's choice at the individual's expense, or, if it is determined by the Secretary that the individual is unable to pay for this examination, the Secretary shall arrange with a deputy health officer of the State to have this examination performed. The completed report shall be forwarded by the examining physician or optometrist to the Secretary.

(b) If this report is not received within the 30 days or if a reasonable explanation for the delay is not received, the Secretary shall notify the individual that the individual's driving privilege has been suspended until such report is received and evaluated.

(c) The Secretary shall review the report to determine if the case warrants submission to the Medical Advisory Board. If the report gives no medical or optometric information indicating impairment of any degree, the report shall be returned to the Secretary with the indication that there is no apparent need for action based on medical impairment. If the information in the medical or optometric report

warrants review by the Board, a copy of the report shall be forwarded to each member of the Board for evaluation. In case of a vision problem the report shall also be forwarded to the optometric or ophthalmological consultants.

(d) After review, each member of the Medical Advisory Board and the vision consultants shall report their recommendations to the Secretary. The members of the Board and the vision consultants shall not meet as a group unless such a meeting is called by the Chairperson, but rather each member and consultant shall arrive at an opinion independently and shall inform the Secretary of the member's or consultant's recommendations. These recommendations may involve any of the following by way of illustration but not of limitation:

(1) No action against driver or applicant;

(2) Periodic medical or optometric evaluation;

(3) Specific license restrictions;

(4) Further medical or optometric evaluation;

(5) Driver improvement activity, including retesting;

(6) License suspension.

(e) The Secretary shall make the final decision on whether the driver or applicant for a license should be licensed, refused, issued a restricted license or have the license suspended.

(f) Upon the decision of the Secretary, the Department shall notify the driver or applicant and shall afford the driver or applicant an opportunity of a hearing before the Department in the county where the driver or applicant resides. Upon such hearing, the Secretary may rescind the order upon a showing of good cause.

(g) Members of the Board and vision consultants and other persons making or evaluating examinations shall not be held liable for their opinions and recommendations.

(21 Del. C. 1953, § 2721A; 57 Del. Laws, c. 366, § 1; 57 Del. Laws, c. 558, §§ 2-4; 70 Del. Laws, c. 149, §§ 206, 207; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 332, § 4.)

§ 2725. Standards.

The Secretary shall have the authority to promulgate standards which may be applied by the Medical Advisory Board. Such standards shall also apply to the final determination of the Secretary upon the physical, visual or mental abilities of a driver or applicant.

(21 Del. C. 1953, § 2722; 57 Del. Laws, c. 366, § 2; 79 Del. Laws, c. 371, § 22.)

§ 2726. Motorcycle rider education program — Established.

(a) The Department of Transportation shall implement a motorcycle rider education program meeting the requirements of this section and § 2727 of this title and any rules or regulations promulgated by the Department.

(b) Adequate courses shall be provided to meet the reasonably anticipated needs of all persons in the State who are eligible and who desire to participate in such a program.

(c) Courses shall be open to all residents of the State who either hold a current valid driver's license or who are eligible for a motorcycle learner's permit. The course shall be open to all persons in the military service stationed in Delaware and their families.

(d) State assisted or private instructional services may offer courses in motorcycle rider education; provided, however, such course offerings meet the requirements of this section and § 2727 of this title. Such course offerings by State assisted or private instructional services may be reimbursed under this section and § 2727 of this title. The Secretary may also enter into contracts for needed services related to the courses.

(e) The Department of Transportation shall adopt the Motorcycle Safety Foundation Motorcycle Rider Course curricula or establish other equivalent minimum course requirements, designed to develop and instill the knowledge, attitudes, habits and skills necessary for the safe operation of a motorcycle.

(f) The Department shall adopt rules and regulations which are necessary to carry out the provisions of the motor rider education program.

(g) For any person who successfully completes the motorcycle rider education program, the Department's motorcycle written examination and road test shall be waived.

(h) The total budget for the motorcycle rider education program shall be based on the revenue available or estimated to be available in the special account established for the motorcycle rider education program.

(65 Del. Laws, c. 27, § 1; 74 Del. Laws, c. 110, §§ 61, 62.)

§ 2727. Motorcycle rider education program — Requirements for instructors.

The Department shall establish minimum requirements for the qualification for a motorcycle rider education instructor. The minimum requirements shall include, but not be limited to, the following:

(1) The instructor shall have a high school diploma or its equivalent.

(2) The instructor must be at least 18 years of age and must hold a valid driver's license and a valid motorcycle endorsement.

(3) The instructor must hold a valid motorcycle endorsement and must have had at least 2 years of motorcycle riding experience.

(4) The instructor's driver's license shall not have been suspended or revoked any time during the immediately preceding 2 years.

(5) The instructor shall have no convictions for driving under the influence of alcohol or drugs during the immediately preceding 5 years nor shall the instructor have been subject to § 4177B of this title during the immediately preceding 5 years.

(6) The instructor shall not have any convictions for moving traffic violations with a total of 4 points during the immediately preceding 2 years.

(7) Instructors who are licensed in other states must furnish certified copies of their driving records to the Division of Motor Vehicles. An applicant shall not be eligible for instructor status until the instructor's driving record for the immediately preceding 5 years is furnished.

(8) The instructor must have a Motorcycle Safety Foundation certification as an instructor.

(65 Del. Laws, c. 27, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2728. Motorcycle Rider Education Advisory Committee.

(a) The Motorcycle Rider Education Advisory Committee ("Committee") is established to do all of the following:

(1) Monitor the Motorcycle Rider Education Program ("Program") established under § 2726 (21 Del. C. § 2726) of this title.

(2) Receive input from Delaware agencies and the general public regarding the Program.

(3) Assess the future needs of and recommend improvements to the Program.

(4) Review pending legislation related to the Program or owning or operating a motorcycle.

(5) Review statistical data with regard to motorcycle accidents in the State and make relevant recommendations to the Office of Highway Safety.

(b) The Committee is comprised of the following members:

(1) One member of the House of Representatives, appointed by the Speaker of the House of Representatives.

(2) One member of the Senate, appointed by the President Pro Tempore of the Senate.

(3) The Controller General, or a designee selected by the Controller General.

(4) One employee of the Department of Transportation and 1 employee of the Office of Highway Safety, appointed by the President Pro Tempore of the Senate.

(5) Nine members of the public, 6 of whom are appointed by the Speaker of the House of Representatives and 3 of whom are appointed by the President Pro Tempore of the Senate.

(c) (1) The appointed members of the Committee serve at the pleasure of the appointing authority.

(2) A vacancy on the Committee is to be filled in the same manner as the original appointment.

(d) The member of the House of Representatives appointed by the Speaker is the Chair of the Committee and the member of the Senate appointed by the President Pro Tempore is the Vice-Chair of the Committee.

(e) The Chair shall guide the administration of the Committee by doing, at a minimum, all of the following:

(1) Supervising the preparation and distribution of meeting notices, agendas, minutes, correspondence, and other records of the Committee.

(2) Notifying an appointing authority of a vacancy on the Committee to be filled by the appointing authority.

(f) (1) The Committee must meet at least quarterly. The Committee may meet at the call of the Chair.

(2) A quorum of the Committee is a majority of the Committee's members.

(3) Official action by the Committee requires the approval of majority of the Committee's members.

(4) The Committee may adopt rules necessary for its operations.

(g) The General Assembly shall provide reasonable and necessary support staff and materials for the Committee to carry out the Committee's purposes under subsection (a) of this section.

(84 Del. Laws, c. 253, § 1.)

Subchapter II

Suspension or Revocation

§ 2731. Duty of courts and police officers.

(a) Every court and police officer having jurisdiction over offenses committed under any law of this State regulating the operation of motor vehicles on highways shall forward to the Department a record of the conviction of any person in any court for a violation of any of such laws within 30 days of the disposition of the case and may recommend the suspension of the driver's license of the person so convicted. The Department shall thereupon consider and act upon such recommendation in such manner as it deems best.

(b) The Justice of the Peace Court and the Court of Common Pleas shall forward to the Department a record of the name and address of a person convicted of a motor vehicle offense that originated in the voluntary assessment center under § 709 of this title who has been

sentenced to pay a fine, fee, cost, assessment, or restitution and who has failed to pay the fine, fee, cost, assessment, or restitution at the time sentence was imposed or in accordance with an order of the court. The Justice of the Peace Court and the Court of Common Pleas shall include in the record the amount of the fine, fee, cost, assessment, or restitution owed by the convicted person. When the convicted person pays the fine, fee, cost, assessment, or restitution in full, the clerk or prothonotary shall provide the convicted person with a receipt confirming that the fine, fee, cost, assessment, or restitution has been paid in full.

(c) The voluntary assessment center shall forward to the Department a record of the name and address of each person who has been given a Uniform Traffic Complaint and Summons on which a voluntary assessment was permitted pursuant to § 709 of this title and who has failed to do any of the following:

(1) Pay the voluntary assessment within 30 days from the date of arrest.

(2) Notify the court or voluntary assessment center with 30 days from the date of arrest, in writing, that the person wishes to have a hearing on the charge stated in the Uniform Traffic Complaint and Summons.

(3) Appear at trial on the charge stated in the Uniform Traffic Complaint and Summons on the date and time required by the court.

(4) Pay the fine on the charge stated in the Uniform Traffic Complaint and Summons in accordance with a deferred payment order.

(36 Del. Laws, c. 10, § 66; Code 1935, § 5604; 21 Del. C. 1953, § 2731; 57 Del. Laws, c. 512, § 1; 65 Del. Laws, c. 77, § 9; 68 Del. Laws, c. 388, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 458, § 1; 73 Del. Laws, c. 234, § 4; 80 Del. Laws, c. 137, § 3; 80 Del. Laws, c. 201, § 1; 83 Del. Laws, c. 441, § 10.)

§ 2732. Mandatory revocation or suspension of license or refusal to renew or issue a duplicate license.

(a) The Department shall forthwith revoke the license or driving privileges or both of any person upon receiving a record of the conviction, or adjudication of delinquency by Family Court for acts which would constitute such an offense if committed by an adult, of such person of any of the following crimes:

(1) a. Upon a conviction of manslaughter, under § 632 of Title 11, if the manslaughter resulted directly from the use of a motor vehicle, or upon conviction of vehicular homicide first degree, pursuant to § 630A of Title 11, the license or driving privileges or both of the person so convicted shall be revoked for a period of 4 years.

b. Upon a conviction of vehicular homicide second degree, pursuant to § 630 of Title 11, or upon a conviction for criminally negligent homicide if the homicide resulted directly from the use of a motor vehicle, the license or driving privileges or both of any person so convicted shall be revoked for a period of 3 years.

(2) a. Upon conviction for assault first degree, pursuant to § 613 of Title 11 or assault second degree, pursuant to § 612 of Title 11, if the assault resulted directly from the use of a motor vehicle or upon a conviction of vehicular assault first degree, pursuant to § 629 of Title 11, the license or driving privileges or both of any person so convicted shall be revoked for a period of 2 years.

b. Upon conviction for vehicular assault second degree, pursuant to § 628A of Title 11, the license or driving privileges or both of any person so convicted shall be revoked for a period of 1 year.

(3) Driving a vehicle while under the influence of intoxicating liquor or narcotic drug; provided that upon successful graduation from the Superior Court's Veterans' Treatment Court or upon successful completion of the Court of Common Pleas Driving Under the Influence Treatment Program the revocation may be rescinded.

(4) Perjury or the making of a false affidavit to the Department under this chapter or any other law of this State requiring the registration of motor vehicles or regulating their operation on highways.

(5) Any crime punishable as a felony under the motor vehicle laws of this State or any other felony in the commission of which a motor vehicle is used.

(6) Conviction or forfeiture of bail upon 3 charges of reckless driving all within the preceding 12 months; but no license shall be revoked by reason of any conviction or convictions upon the charge of overloading any vehicle as provided in § 4502 of this title.

(7) A conviction of a driver of a motor vehicle involved in an accident resulting in the death or injury of another person upon a charge of failing to stop and disclose the driver's identity at the scene of the accident.

(8) A conviction of attempting to flee or elude a police officer after having received a visual or audible signal from the officer as provided in § 4103(b) of this title.

(b) On receiving a record of the failure to timely complete a course of instruction under § 4175A or § 4177D of this title, the Department or its successor, shall do all of the following:

(1) If the convicted person is a resident of this State, forthwith suspend the convicted person's license until the court finds that the person has completed the necessary course of instruction and paid all applicable course fees.

(2) If the convicted person is a nonresident of this State, forthwith suspend the convicted person's driving privileges in this State and immediately advise the Motor Vehicle Administrator of the state wherein the convicted person is a resident that the convicted person has failed to timely complete a course of instruction under § 4175A or § 4177D of this title, and requesting that the convicted person's license to drive be suspended until the court finds that the person has completed the necessary course of instruction and paid all applicable course fees.

(c) The Division shall forthwith revoke the license or driving privileges, or both, of any child upon notification by the Family Court of the State pursuant to § 1009 of Title 10.

(d) Upon receipt of notification from the Family Court pursuant to § 516(g) of Title 13, or notice from the Director of the Division of Child Support Services pursuant to § 2216 of Title 13 regarding the suspension of a license because of such person's child support delinquency, the Department shall forthwith suspend such person's commercial driver license or license to operate a motor vehicle. The provisions of §§ 516(g) and 2216 of Title 13 shall supersede any provisions of this title to the contrary with respect to any matter relating to the denial or suspension of a license under § 516(g) or § 2216 of Title 13. The Department shall create and maintain a record showing a suspended driving status for a person whose license is suspended pursuant to this subsection. A license so suspended shall remain suspended until the person obtains written certification from the Family Court or the Director of the Division of Child Support Services or the Director's designee that the grounds for suspension of the license under § 516(g) or § 2216 of Title 13 no longer exist. No occupational license may be issued in any case in which a license has been suspended pursuant to § 516(g) or § 2216 of Title 13.

(e) [Repealed.]

(f) The convictions included in subsections (a) and (b) of this section shall be deemed to include convictions for any violation of this title or a local ordinance or regulation substantially conforming to a state statutory provision.

(g) (1) When the name and address of a resident of this State has been forwarded to the Department under § 2731(b) of this title, the Department shall refuse to renew the person's license or issue any duplicate license to the person until the person provides evidence to the Department that the person has paid in full the fine, fee, cost, assessment, or restitution stated in the record under § 2731(b) of this title. The person shall present the Department with the receipt provided by the clerk or prothonotary under § 2731(b) of this title.

(2) When the name and address of a resident of this State has been forwarded to the Department under § 2731(c) of this title, the Department shall refuse to renew the person's license or issue any duplicate license to the person until the person provides evidence to the Department that any of the following has occurred:

a. The fine on the charge stated in the Uniform Traffic Complaint and Summons has been paid.

b. The person has appeared before the court and made arrangements to take care of the charge stated in the Uniform Traffic Complaint and Summons.

c. The person has been adjudicated not guilty of the charge stated in the Uniform Traffic Complaint and Summons.

(36 Del. Laws, c. 10, § 67; Code 1935, § 5605; 46 Del. Laws, c. 53; 46 Del. Laws, c. 187; 47 Del. Laws, c. 145; 47 Del. Laws, c. 393, § 1; 21 Del. C. 1953, § 2732; 57 Del. Laws, c. 225, §§ 1, 2; 57 Del. Laws, c. 512, § 2; 59 Del. Laws, c. 307, § 2; 60 Del. Laws, c. 702, § 3; 63 Del. Laws, c. 429, § 1; 63 Del. Laws, c. 449, § 2; 67 Del. Laws, c. 429, § 5; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 259, § 4; 70 Del. Laws, c. 452, §§ 5, 6; 71 Del. Laws, c. 216, § 84; 71 Del. Laws, c. 272, § 5; 72 Del. Laws, c. 458, § 2; 73 Del. Laws, c. 234, § 5; 74 Del. Laws, c. 285, § 2; 78 Del. Laws, c. 168, § 9; 79 Del. Laws, c. 378, § 6; 80 Del. Laws, c. 137, § 4; 80 Del. Laws, c. 201, § 1; 80 Del. Laws, c. 234, § 22; 82 Del. Laws, c. 228, § 1; 83 Del. Laws, c. 441, § 11; 84 Del. Laws, c. 292, § 1.)

§ 2733. Discretionary suspension or revocation of license or driving privileges.

(a) The Department may immediately suspend the license and driving privileges or both of any person without hearing and without receiving a record of conviction of such person of crime whenever the Department has reason to believe that such person:

(1) Has committed any offense for the conviction of which mandatory revocation of license and driving privileges or both is provided in § 2732 of this title, but no license shall be suspended by reason of any conviction or convictions upon the charge of overloading any vehicle as provided in § 4502 of this title;

(2) Has, by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in death or injury to any other person or serious property damage;

(3) Is incompetent to drive a motor vehicle or is a person with mental or physical disabilities rendering it unsafe for such person to drive a motor vehicle upon the highways;

(4) Is an habitual reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws of this State;

(5) Has violated § 2751(a) or (b) of this title;

(6) Has violated § 6702 of this title;

(7) Has violated § 2118A of this title; or

(8) Has violated § 4129 of this title based upon notification of such violation provided by the Department of Transportation to the Department. However, no suspension of driving privileges shall take place if the toll(s), administrative fee and civil penalty has been paid prior to the hearing required under subsection (b) of this section.

(b) Whenever the Department suspends the license of any person for any reason set forth in subsection (a) of this section, the Department shall immediately notify the licensee and afford the licensee an opportunity of a hearing before the Department in the county wherein the licensee resides. Upon such hearing the Department shall either rescind its order of suspension or, good cause appearing therefor, may suspend the license of such person for a further period or revoke the license.

(c) The Department may suspend or revoke the right of any nonresident to operate a motor vehicle in this State for any cause for which the license of a resident operator or chauffeur may be suspended or revoked, and any nonresident who operates a motor vehicle upon a highway when the right to operate has been suspended or revoked by the Department shall be punished as provided in § 2756 of this title.

(d) (1) The Department may suspend or revoke the license of any resident of this State upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this State, would be grounds for the suspension or revocation of the license of an operator or chauffeur. The Department may, upon receiving a record of the conviction in this State of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this State, forward a certified copy of such record to the Motor Vehicle Administrator in the state wherein the person so convicted is a resident.

(2) If the Department takes action pursuant to this subsection because of the receipt of notice of the conviction in another state of a resident of this State for operating a vehicle without insurance, it shall provide the resident with the opportunity to produce for the Department sufficient proof of insurance as determined by the Department showing such insurance to have been in full force and effect at all pertinent times on the day of the occurrence of the offense. If the Department determines that such insurance was in full force and effect at all pertinent times on the day of the occurrence of the offense, the resident's driver's license shall be reinstated without a fee and the notation relating to the Department's action shall be removed from the resident's driving record.

(e) The Department shall not suspend a license for a period of more than 1 year, and upon suspending or revoking any license shall require that such license so suspended or revoked be surrendered to the Department to be retained by it, except that at the end of a period of suspension the license so surrendered shall be returned to the licensee upon payment of the reinstatement fee as provided in § 2737 of this title.

(f) The Department, upon receiving a record of the conviction of any person upon a charge of operating a motor vehicle while the license and driving privileges or both of such person is suspended or revoked, shall immediately extend the period of such first suspension or revocation for an additional like period.

(g) In the event of a suspension of a driver's license pursuant to this section, the Department may issue an occupational license during a period of suspension upon application by the applicant upon a form prescribed by the Department and sworn to by the applicant; provided, that the applicant sets forth in said application that the suspension of such license has created an extreme hardship in the conduct of the business usually transacted by the applicant, and that there have been no more than 2 such prior suspensions; provided, however, that no such occupational license shall be issued if the license of the applicant has been suspended for physical and/or mental disability or if the license of the applicant has been revoked for conviction of any of the crimes specified in § 2732 of this title, even though the revocation has created an extreme hardship.

(h) The Department, upon receiving a record of convictions of any person upon a charge of operating a motor vehicle in violation of the restriction imposed upon said occupational license during the period of such occupational license, shall immediately extend the period of such suspension for an additional like period and shall forthwith direct such person to surrender said occupational license to the Department.

(i) Any person whose operator's or chauffeur's license has been suspended and to whom an occupational license has been issued, who drives any motor vehicle upon the highways of this State contrary to the restrictions placed upon such occupational license during the period of such occupational license, upon conviction thereof, shall be fined not less than $25 nor more than $200.

(j) The Department ordinarily may not suspend a license based upon a driving record prior to 2 years before the date of the intended suspension. If at the discretion of the Secretary a longer record period should be considered, a suspension may be based upon such longer driving record period.

(k) The Division shall forthwith suspend the license or driving privileges, or both, of any child upon notification by the Family Court of the State pursuant to § 1009 of Title 10.

(*l*) Except when the name and address of a resident of this State has been forwarded to the Department under § 2731(c) of this title, the Department may, upon receiving a record, notice, or certification of noncompliance by a person for a citation, summons, ticket, or other document issued by an arresting officer for violation of a traffic law, ordinance, rule, or regulation ordering the arrested motorist to appear, suspend the driver's license or driving privileges of the person who failed to comply. The Department shall not have this power of suspension in cases of parking violations.

(m) When the name and address of a nonresident of this State has been forwarded to the Department under § 2731(c) of this title, the Department may suspend the person's driving privileges in this State and immediately advise the motor vehicle administrator of the state in which the person is a resident that the person's license to drive be suspended until the person provides evidence that any of the following has occurred:

(1) The fine on the charge stated in the Uniform Traffic Complaint and Summons has been paid.

(2) The person has appeared before the court and made arrangements to take care of the charge stated in the Uniform Traffic Complaint and Summons.

(3) The person has been adjudicated not guilty of the charge stated in the Uniform Traffic Complaint and Summons.

(36 Del. Laws, c. 10, § 68; 37 Del. Laws, c. 10, § 21; Code 1935, § 5606; 43 Del. Laws, c. 247; 46 Del. Laws, c. 121, §§ 1, 2; 47 Del. Laws, c. 393, § 2; 21 Del. C. 1953, § 2733; 53 Del. Laws, c. 89; 54 Del. Laws, c. 261; 54 Del. Laws, c. 273; 57 Del. Laws,

c. 126, §§ 1-3; 57 Del. Laws, c. 167; 57 Del. Laws, c. 670, § 11A; 59 Del. Laws, c. 307, § 6; 60 Del. Laws, c. 615, § 1; 62 Del. Laws, c. 261, §§ 1-3; 65 Del. Laws, c. 77, § 5; 68 Del. Laws, c. 406, § 2; 70 Del. Laws, c. 37, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 259, § 5; 71 Del. Laws, c. 13, § 1; 74 Del. Laws, c. 235, § 1; 79 Del. Laws, c. 371, § 23; 80 Del. Laws, c. 137, § 5; 80 Del. Laws, c. 201, § 1.)

§ 2734. Appeal.

Any person denied a license or whose license has been revoked by the Department, except where such revocation is mandatory under this chapter, may appeal to the Court of Common Pleas in the county wherein such person resides. In the case of revocation, such appeal shall not operate as a stay. An appeal of a suspension of a license pursuant to § 516(g) or § 2216 of Title 13 shall be only as provided in Title 13.

(36 Del. Laws, c. 10, §§ 59, 69; 40 Del. Laws, c. 38, § 3; Code 1935, §§ 5597, 5607; 21 Del. C. 1953, § 2734; 69 Del. Laws, c. 333, § 2; 70 Del. Laws, c. 452, § 7; 71 Del. Laws, c. 216, § 85.)

§ 2735. New license after revocation; exception.

Except as otherwise provided in § 2732 of this title, a person whose license is revoked under this chapter shall not be entitled to apply for or receive a new license to drive until the expiration of 1 year from the date such former license was revoked.

(21 Del. C. 1953, § 2735; 50 Del. Laws, c. 572, § 1; 60 Del. Laws, c. 701, § 70; 63 Del. Laws, c. 429, § 2.)

§ 2736. Notice; evidence of motor vehicle records.

(a) Whenever a license is suspended or revoked under this subchapter notice shall be given to the holder of such license.

(b) Such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit of such notice in the United States mail in an envelope with postage prepaid, addressed to such person at the person's address as shown by the records of the Department. The giving of notice by mail is complete upon the expiration of 4 days after such deposit of such notice.

(c) In any prosecution under this chapter, proof of the giving of notice of suspension or revocation in a manner provided for by subsection (b) of this section may be made by:

(1) The certificate of any officer or employee of the Department;

(2) An affidavit of any person over 18 years of age, naming the person to whom such notice was given and specifying the time, place and manner of the giving thereof; or

(3) A computer generated list of those persons whose suspension and/or revocation notices have been electronically processed through a computer interface system of the Department and a court, such list having been generated electronically at the same time the notice is processed by the computer system.

(d) In the event that 1 of the means of proof of the giving of notice enumerated in subsection (c) of this section is utilized, then it shall be unnecessary for any employee or agent of the Department to appear personally in court.

(e) In any prosecution under this Code, a conviction record as maintained in the Division of Motor Vehicles, which has been certified by the Director of the Division of Motor Vehicles, may be admitted into evidence and shall be competent evidence that the person named therein was duly convicted of each offense enumerated therein and of the status of that person's driving license and/or privileges. It shall be unnecessary for any employee or agent of the Department to personally appear for the admission into evidence of such conviction record in any proceeding under this Code.

(21 Del. C. 1953, § 2736; 50 Del. Laws, c. 411, § 1; 58 Del. Laws, c. 511, § 46; 69 Del. Laws, c. 368, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 416, §§ 1-3.)

§ 2737. Fee for return of suspended license and/or driving privileges.

Any person whose license and/or driving privileges has been suspended or disqualified shall pay a fee of $50 at the end of such suspension or disqualification for the return of the person's license and/or the reinstatement of the person's driving privileges.

(21 Del. C. 1953, § 2737; 57 Del. Laws, c. 94; 60 Del. Laws, c. 387, § 1; 62 Del. Laws, c. 238, § 1; 63 Del. Laws, c. 430, § 9; 64 Del. Laws, c. 13, § 9; 67 Del. Laws, c. 157, § 10; 67 Del. Laws, c. 260, § 1; 67 Del. Laws, c. 270, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 77, § 7.)

§ 2738. Fee for return of revoked license or driving privileges.

(a) Except as otherwise provided in subsection (b) of this section, an individual whose license or driving privileges have been revoked must pay a fee of $200 at the end of the revocation for the reinstatement of the individual's license or driving privileges. The reinstatement fee described in this subsection does not include the fee for the issuance of a new license.

(b) An individual eligible for reinstatement of the individual's license or driving privileges who applies for reinstatement within 1 year of being released from the custody of the Department of Correction may not be charged the reinstatement fee described in subsection (a) of this section. For purposes of this subsection, "custody of the Department of Correction" has the same meaning as "Accountability Level V sanction" as defined in § 4204(c) of Title 11.

(63 Del. Laws, c. 430, § 10; 64 Del. Laws, c. 13, § 10; 67 Del. Laws, c. 260, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 77, § 8; 83 Del. Laws, c. 18, § 1.)

§ 2739. Fee for occupational and conditional license.

Any person whose license and/or driving privileges has been suspended or revoked pursuant to this title and who applies for an occupational license or conditional license shall pay a fee of $10 for such occupational or conditional license.

(67 Del. Laws, c. 239, § 1.)

§ 2739A. Suspension resulting from active military duty; reinstatement.

(a) In any case in this or any other jurisdiction in which an operator is charged with an initial driving offense for which a mandatory court appearance is scheduled, and the operator's driving license is suspended in this State by the Division of Motor Vehicles for failure to appear at the scheduled hearing, the operator shall not be convicted of a subsequent violation of § 2701(b) or § 2756 of this title if, prior to conviction on the subsequent offense, the operator shall produce to the court in which the subsequent offense is to be tried military orders establishing that the operator was on active military duty, without authorized leave, at a location that precluded attendance at the hearing of the initial offense, and proof positive of payment or other complete disposition of the initial offense.

(b) In the event of dismissal or withdrawal of the charge under § 2701(b) or § 2756 of this title under the circumstances set forth in subsection (a) of this section, the Division of Motor Vehicles shall reinstate or lift the suspension on the license of the operator upon receipt of proof of such dismissal or withdrawal of the charges. Such proof may be in the form of notice from the court or prosecuting official or other information satisfactory to the Division. Any fee that would otherwise be required for such reinstatement shall be waived.

(c) In the event that no subsequent charge has resulted from the suspension, upon presentation to the Division of Motor Vehicles of the same material set forth in subsection (a) of this section, the Division shall reinstate or lift the suspension on the license of the operator. Any fee that would otherwise be required for such reinstatement shall be waived.

(74 Del. Laws, c. 30, § 1.)

Subchapter III

Suspension and Revocation of License for Refusal to Submit to Chemical Test

§ 2740. Consent to submit to chemical test; probable cause; test required.

(a) Any person who drives, operates or has in actual physical control a vehicle, an off-highway vehicle, or a moped within this State shall be deemed to have given consent, subject to this section and §§ 4177 and 4177L of this title to a chemical test or tests of that person's blood, breath and/or urine for the purpose of determining the presence of alcohol or a drug or drugs. The testing may be required of a person when an officer has probable cause to believe the person was driving, operating or in physical control of a vehicle in violation of §§ 4177 and 4177L or § 2742 of this title, or a local ordinance substantially conforming thereto.

(b) The testing shall be required of a person when an officer has probable cause to believe the person was driving, operating or in physical control of a vehicle in violation of § 4177 or § 2742 of this title or a local ordinance substantially conforming thereto and was involved in an accident which resulted in a person's death. In the event of a fatal accident if the officer does not believe that probable cause exists to require testing, then the officer shall file a written report outlining the reasons for that determination.

(21 Del. C. 1953, § 2740; 57 Del. Laws, c. 52; 61 Del. Laws, c. 474, § 1; 63 Del. Laws, c. 430, § 1; 64 Del. Laws, c. 13, § 1; 70 Del. Laws, c. 36, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 236, § 1; 70 Del. Laws, c. 265, § 1.)

§ 2741. Administration of test; refusal to take test.

(a) At the time a chemical test specimen is required, the person may be informed that if testing is refused, the person's driver's license and/or driving privilege shall be:

(1) Revoked for a period of at least 1 year if a violation of § 4177 is alleged; or

(2) Revoked for a period of at least 2 months if a violation of § 4177L is alleged.

The test(s) shall be administered by qualified personnel, as defined in § 2746 of this title, at the direction of the police officer who shall designate which of the tests shall be administered.

(b) If there are reasonable grounds to believe that there is impairment by a drug or drugs which are not readily subject to detection by a breath test, a blood and/or urine test may be required even after a breath test has been administered.

(c) The fact that the police officer offered or required a person to submit to a preliminary screening test of the person's breath in order to estimate the alcohol concentration of the person's blood, at the scene of the stop or other initial encounter between the officer and the person, shall have no bearing upon the implied consent provisions of this chapter. Refusal to take such a preliminary screening test shall not be deemed an implied consent violation nor shall the taking of such a test satisfy the requirements of the implied consent law.

(21 Del. C. 1953, § 2740A; 57 Del. Laws, c. 52; 61 Del. Laws, c. 474, § 1; 63 Del. Laws, c. 430, § 2; 64 Del. Laws, c. 13, § 2; 70 Del. Laws, c. 36, § 12; 70 Del. Laws, c. 186, § 1.)

§ 2742. Revocation; notice; hearing [Effective until fulfillment of the contingency in 81 Del. Laws, c. 155, § 2].

(a) If a person refuses to permit chemical testing, after being informed of the penalty of revocation for such refusal, the test shall not be given but the police officer shall report the refusal to the Department. The police officer may, however, take reasonable steps to conduct

such chemical testing even without the consent of the person if the officer seeks to conduct such test or tests without informing the person of the penalty of revocation for such refusal and thereby invoking the implied consent law.

(b) (1) Upon certification by the police officer that there existed probable cause to believe that the person had been acting in violation of § 4177 of this title or a local ordinance substantially conforming thereto and that the person refused to submit to a chemical test after being informed of the penalty of revocation for such refusal, the Secretary shall revoke the person's driver's license and/or driving privilege for a period of 1 year for a person with no previous violation of § 4177 of this title or this section or a similar statute of any state or the District of Columbia or local government, within 5 years of the date of the charge in question; 18 months' revocation for a person with 1 previous violation of such statutes as described above; and 24 months' revocation for a person with 2 or more previous violations of such statutes as described above.

(2) Upon certification by the police officer that there existed probable cause to believe that the person had been acting in violation of § 4177L of this title or a local ordinance substantially conforming thereto and that the person refused to submit to a chemical test after being informed of the penalty of revocation for such refusal, the Secretary shall revoke the person's driver's license and/or driving privilege for a period of 2 months for a person with no previous violation of § 4177L of this title or this section or a similar statute of any state or the District of Columbia or local government; 6 months for a person with a previous violation of such statutes as described above; and 12 months revocation for a person with 2 or more previous violations of such statutes as described above.

(c) Except in those cases wherein the police officer acts pursuant to subsection (b) of this section:

(1) Upon certification by the police officer that there existed probable cause to believe that the person was in violation of § 4177 of this title or a local ordinance substantially conforming thereto and the person was arrested on that occasion for a violation of § 4177 of this title or a local ordinance substantially conforming thereto or for violation of a criminal statute dealing with injury or death caused to another person by the person's driving or operation of the vehicle, if driving under the influence is included as an element of such charge, the Secretary shall revoke the person's driver's license and/or driving privilege for a period of 3 months for a first time DUI offender, 1 year for a second DUI offender, or 18 months for more than 2 DUI offenses. For purposes of this subsection, a DUI offender shall include anyone who has previously committed a first offense as defined in § 4177B(e) or lost their license pursuant to this section and any person convicted of a violation of § 4177 of this title or similar statutes of any state or the District of Columbia or local government within 5 years of the date of the charge in question, a revocation within 5 years of said date for an implied consent violation or a revocation within 5 years of said date under this subsection.

(2) Upon certification by the police officer that there existed probable cause to believe that the person was in violation of § 4177L of this title or a local ordinance substantially conforming thereto, and the person was arrested on that occasion for a violation of § 4177L of this title or a local ordinance substantially conforming thereto, the Secretary shall revoke the person's driver's license and/or driving privileges for a period of 2 months for the first offense under said section or from 6 to 12 months for each subsequent offense pursuant to said section.

(d) No revocation under subsection (b) or (c) of this section is effective until the Secretary or a police officer or other person acting on the Secretary's behalf notifies the person of the revocation and allows the person a 15-day period to request of the Secretary in writing a hearing as herein provided. If no request is filed in writing with the Division of Motor Vehicles within the 15-day period, the order of revocation becomes effective. If a request for a hearing is filed, a revocation is not effective until the final decision of the hearing officer resulting in a decision adverse to the person.

(e) On behalf of the Secretary, the police officer offering a chemical test or directing the administration of a chemical test shall serve immediate notice of revocation on a person who refuses to permit chemical testing after being informed of the penalty of revocation for such refusal, or on a person who is arrested on that occasion, either for a violation of § 4177 or § 4177L of this title or a local ordinance substantially conforming thereto or for violation of a criminal statute dealing with injury or death caused to another person by the person's driving or operation of the vehicle, if driving under the influence is included as an element of such charge. The officer shall take the Delaware license or permit of the driver in any such case and issue a temporary license effective only for 15 days with a provision for an additional period if a written request for a hearing is received by the Division of Motor Vehicles within the 15-day period. The police officer shall send the person's driver's license or permit to the Secretary along with the certificate required by subsection (b) or (c) of this section.

(f) The hearing under this section shall be before the Secretary or the Secretary's designee. The scope of the hearing shall cover the issues of:

(1) With respect to subsections (b) and (c) of this section, whether the police officer had probable cause to believe the person was in violation of § 4177 or § 4177L of this title or a local ordinance substantially conforming thereto.

(2) With respect to paragraph (c)(1) of this section, whether by a preponderance of the evidence it appears that the person was in violation of § 4177 of this title or a local ordinance substantially conforming thereto. For purposes of this subsection an alcohol concentration of .08 or more pursuant to testing provided for in this section, or § 4177 of this title, or a positive indication of the presence of drugs, shall be conclusive evidence of said violation.

(3) With respect to paragraph (c)(2) of this section, whether by a preponderance of the evidence it appears that the person was in violation of § 4177L of this title or a local ordinance substantially conforming thereto. For purposes of this subsection an alcohol concentration of .02 or more pursuant to the testing referred to in this section shall be conclusive evidence of said violation.

(4) With respect to subsection (b) of this section, whether the person refused to permit the test after being informed of the penalty of revocation for such refusal.

(g) The hearing specified in this section shall be scheduled within 60 days following the filing of the request for a hearing.

(h) In addition to the revocation authorized by this section, the Secretary shall require attendance of the person whose license is revoked at a course of instruction or rehabilitation program established under § 4177D of this title.

(21 Del. C. 1953, § 2740B; 57 Del. Laws, c. 52; 57 Del. Laws, c. 620, § 12A; 61 Del. Laws, c. 474, § 1; 63 Del. Laws, c. 307, § 1; 63 Del. Laws, c. 430, § 3; 64 Del. Laws, c. 13, § 3; 70 Del. Laws, c. 26, § 11; 70 Del. Laws, c. 36, §§ 3, 5-7, 13-15; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 92, § 13; 74 Del. Laws, c. 333, § 4; 75 Del. Laws, c. 397, § 14; 79 Del. Laws, c. 396, § 1.)

§ 2742. Revocation; notice; hearing [Effective upon fulfillment of the contingency in 81 Del. Laws, c. 155, § 2].

(a) If a person refuses to permit chemical testing, after being informed of the penalty of revocation for such refusal, the test shall not be given but the police officer shall report the refusal to the Department. The police officer may, however, take reasonable steps to conduct such chemical testing even without the consent of the person if the officer seeks to conduct such test or tests without informing the person of the penalty of revocation for such refusal and thereby invoking the implied consent law.

(b) (1) Upon certification by the police officer that there existed probable cause to believe that the person had been acting in violation of § 4177 of this title or a local ordinance substantially conforming thereto and that the person refused to submit to a chemical test after being informed of the penalty of revocation for such refusal, the Secretary shall revoke the person's driver's license and/or driving privilege for a period of 1 year for a person with no previous violation of § 4177 of this title or this section or a similar statute of any state or the District of Columbia or local government, within 5 years of the date of the charge in question; 18 months' revocation for a person with 1 previous violation of such statutes as described above; and 24 months' revocation for a person with 2 or more previous violations of such statutes as described above.

(2) Upon certification by the police officer that there existed probable cause to believe that the person had been acting in violation of § 4177L of this title or a local ordinance substantially conforming thereto and that the person refused to submit to a chemical test after being informed of the penalty of revocation for such refusal, the Secretary shall revoke the person's driver's license and/or driving privilege for a period of 2 months for a person with no previous violation of § 4177L of this title or this section or a similar statute of any state or the District of Columbia or local government; 6 months for a person with a previous violation of such statutes as described above; and 12 months revocation for a person with 2 or more previous violations of such statutes as described above.

(c) Except in those cases wherein the police officer acts pursuant to subsection (b) of this section:

(1) Upon certification by the police officer that there existed probable cause to believe that the person was in violation of § 4177 of this title or a local ordinance substantially conforming thereto and the person was arrested on that occasion for a violation of § 4177 of this title or a local ordinance substantially conforming thereto or for violation of a criminal statute dealing with injury or death caused to another person by the person's driving or operation of the vehicle, if driving under the influence is included as an element of such charge, the Secretary shall revoke the person's driver's license and/or driving privilege for a period of 3 months for a first time DUI offender, 1 year for a second DUI offender, or 18 months for more than 2 DUI offenses. For purposes of this subsection, a DUI offender shall include anyone who has previously committed a first offense as defined in § 4177B(e) or lost their license pursuant to this section and any person convicted of a violation of § 4177 of this title or similar statutes of any state or the District of Columbia or local government within 5 years of the date of the charge in question, a revocation within 5 years of said date for an implied consent violation or a revocation within 5 years of said date under this subsection.

(2) Upon certification by the police officer that there existed probable cause to believe that the person was in violation of § 4177L of this title or a local ordinance substantially conforming thereto, and the person was arrested on that occasion for a violation of § 4177L of this title or a local ordinance substantially conforming thereto, the Secretary shall revoke the person's driver's license and/or driving privileges for a period of 2 months for the first offense under said section or from 6 to 12 months for each subsequent offense pursuant to said section.

(d) No revocation under subsection (b) or (c) of this section is effective until the Secretary or a police officer or other person acting on the Secretary's behalf notifies the person of the revocation and allows the person a 15-day period to request of the Secretary in writing a hearing as herein provided. If no request is filed in writing with the Division of Motor Vehicles within the 15-day period, the order of revocation becomes effective. If a request for a hearing is filed, a revocation is not effective until the final decision of the hearing officer resulting in a decision adverse to the person.

(e) On behalf of the Secretary, the police officer offering a chemical test or directing the administration of a chemical test shall serve immediate notice of revocation on a person who refuses to permit chemical testing after being informed of the penalty of revocation for such refusal, or on a person who is arrested on that occasion, either for a violation of § 4177 or § 4177L of this title or a local ordinance substantially conforming thereto or for violation of a criminal statute dealing with injury or death caused to another person by the person's driving or operation of the vehicle, if driving under the influence is included as an element of such charge. The officer shall take the Delaware license or permit of the driver in any such case and issue a temporary license effective only for 15 days with a provision for an additional period if a written request for a hearing is received by the Division of Motor Vehicles within the 15-day period. The police

officer shall send the person's driver's license or permit to the Secretary along with the certificate required by subsection (b) or (c) of this section.

(f) The hearing under this section shall be before the Secretary or the Secretary's designee. The scope of the hearing shall cover the issues of:

(1) With respect to subsections (b) and (c) of this section, whether the police officer had probable cause to believe the person was in violation of § 4177 or § 4177L of this title or a local ordinance substantially conforming thereto.

(2) With respect to paragraph (c)(1) of this section, whether by a preponderance of the evidence it appears that the person was in violation of § 4177 of this title or a local ordinance substantially conforming thereto. For purposes of this subsection an alcohol concentration of .08 or more pursuant to testing provided for in this section, or § 4177 of this title, or a positive indication of the presence of drugs, shall be conclusive evidence of said violation.

(3) With respect to paragraph (c)(2) of this section, whether by a preponderance of the evidence it appears that the person was in violation of § 4177L of this title or a local ordinance substantially conforming thereto. For purposes of this subsection an alcohol concentration of .02 or more pursuant to the testing referred to in this section shall be conclusive evidence of said violation.

(4) With respect to subsection (b) of this section, whether the person refused to permit the test after being informed of the penalty of revocation for such refusal.

(g) The hearing specified in this section shall be scheduled within 60 days following the filing of the request for a hearing.

(h) In addition to the revocation authorized by this section, the Secretary shall require attendance of the person whose license is revoked at a course of instruction or rehabilitation program established under § 4177D of this title.

(i) If a person's driver's license is revoked pursuant to subsections (b) or (c) of this section and the person has not yet been adjudicated guilty and sentenced to the charge of driving under the influence, the Justice of the Peace Court may request in writing that the Division of Motor Vehicles issue a conditional license to the revoked driver as a condition of pretrial release pursuant to § 2108 or § 2112 of Title 11 if the person is subject to continuous sobriety monitoring.

(1) When the Division of Motor Vehicles receives a request from the Justice of the Peace Court to issue a conditional license to a revoked driver, the Division may issue a conditional license during the period of revocation provided the person's driver's license is not suspended, revoked, denied, or otherwise unavailable for any other violation of the law of any jurisdiction that would prohibit the issuance of the conditional license unless it is determined by the Secretary of Transportation or the Secretary's designee that the individual is eligible for reinstatement. This conditional license only permits the driver to operate a motor vehicle to travel to and from work, school, medical appointments, any Court, or any appointments related to the driver's continuous sobriety monitoring.

(2) If at any point the revoked driver ceases to be subject to continuous sobriety monitoring, the Justice of the Peace Court must promptly notify the Division of Motor Vehicles of the change in the revoked driver's status. The Division of Motor Vehicles must direct such person to surrender said conditional license to the Division of Motor Vehicles and the Division of Motor Vehicles will restore the full revocation of the driver's license for the remainder of the term of the revocation.

(3) If at any point the Justice of the Peace Court determines, in its discretion, that the revoked driver is no longer entitled to a conditional license, the Justice of the Peace Court must promptly notify the Division of Motor Vehicles of that determination. The Division of Motor Vehicles must direct such person to surrender said conditional license to the Division of Motor Vehicles and must restore the full revocation of the driver's license for the remainder of the term of the revocation.

(4) Any person whose driver's license has been revoked and to whom a conditional license has been issued under this chapter, and who drives any motor vehicle upon the highways of this State contrary to the conditions placed upon such conditional license during the period of such conditional license, is guilty of an unclassified misdemeanor, and, upon conviction thereof, shall be fined not less than $28.75 or more than $230. The Division, upon receiving a record of conviction of any person operating a motor vehicle in violation of the conditions imposed upon said conditional license, must forthwith direct such person to surrender said conditional license to the Division of Motor Vehicles and must notify the Justice of the Peace Court of the cancellation of the conditional license.

(21 Del. C. 1953, § 2740B; 57 Del. Laws, c. 52; 57 Del. Laws, c. 620, § 12A; 61 Del. Laws, c. 474, § 1; 63 Del. Laws, c. 307, § 1; 63 Del. Laws, c. 430, § 3; 64 Del. Laws, c. 13, § 3; 70 Del. Laws, c. 26, § 11; 70 Del. Laws, c. 36, §§ 3, 5-7, 13-15; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 92, § 13; 74 Del. Laws, c. 333, § 4; 75 Del. Laws, c. 397, § 14; 79 Del. Laws, c. 396, § 1; 81 Del. Laws, c. 155, § 1.)

§ 2743. Duration of revocation.

(a) Any revocation pursuant to § 2742(b)(1) of this title shall be for a period of 1 year, 18 months or 24 months as appropriate, from the effective date of the revocation.

(b) Any revocation pursuant to § 2742(c)(1) of this title shall be for a period of 3 months, 1 year or 18 months, as appropriate, from the effective date of the revocation.

(c) The Secretary shall not issue a driver's license to anyone who has been found in violation of § 2742(b)(1) or (c)(1) of this title until:

(1) They have satisfactorily completed a program established under § 4177D of this title; and

(2) Have paid all fees under the schedule adopted by the Secretary; and

(3) The individual has had a favorable character investigation conducted by the Division of Motor Vehicles.

(d) Any revocation pursuant to § 2742(b)(2) of this title shall be for a period of 2 months, 6 months or 12 months as appropriate, from the effective date of the revocation.

(e) Any revocation pursuant to § 2742(c)(2) of this title shall be for a period of 2 months, 6 months or 12 months as appropriate, from the effective date of the revocation.

(f) If, after expiration of the period of revocation and upon compliance with subsection (c) of this section, the Secretary refuses to issue a driver's license, the applicant may appeal the Secretary's denial to the Court of Common Pleas in the county wherein the applicant resides.

(g) Notwithstanding subsection (a) of this section, upon satisfactory completion of a program established under § 4177D of this title a person who is a first offender and meets the criteria specified in § 4177B(a) and whose license has been revoked pursuant to § 2742(b) of this title shall be permitted to apply for a driver's license under the following terms:

(1) Payment of all fees under the schedule adopted by the Secretary;

(2) At least 4 months have elapsed since the date of ignition interlock device (IID) installation and ignition interlock license issuance;

(3) The individual has had a favorable character investigation conducted by the Division of Motor Vehicles.

(h) Notwithstanding subsections (a) and (b) of this section, any person who meets the criteria specified in § 4177C of this title may be permitted to apply for the ignition interlock device [IID] to be installed on a vehicle to be driven by the applicant and may be issued an IID license upon meeting the requirements specified in § 4177C of this title.

(21 Del. C. 1953, § 2740C; 57 Del. Laws, c. 52; 61 Del. Laws, c. 474, § 1; 63 Del. Laws, c. 307, § 3; 63 Del. Laws, c. 430, § 4; 64 Del. Laws, c. 13, § 4; 69 Del. Laws, c. 333, § 3; 70 Del. Laws, c. 36, §§ 10, 11, 16, 17; 75 Del. Laws, c. 397, § 10; 81 Del. Laws, c. 204, § 1.)

§ 2744. Appeal.

The decision of the Secretary shall be final and not subject to judicial review or appeal, unless the Secretary rules against the person at a hearing requested by such person in which event the person may appeal to the Court of Common Pleas, but the appeal shall not operate as a stay of the revocation of that person's license, permit or privilege to drive.

(21 Del. C. 1953, § 2740D; 57 Del. Laws, c. 52; 63 Del. Laws, c. 430, § 5; 64 Del. Laws, c. 13, § 5; 69 Del. Laws, c. 333, § 4; 70 Del. Laws, c. 186, § 1.)

§ 2745. Results of test available upon request.

Upon request of any person submitting to a chemical test under this subchapter the result of such test shall be made available to that person, unless that person has entered a plea of guilty to the charge made against that person.

(21 Del. C. 1953, § 2740E; 57 Del. Laws, c. 52; 70 Del. Laws, c. 186, § 1.)

§ 2746. Persons qualified to administer tests.

Only duly licensed physicians, registered nurses, licensed practical nurses or other persons trained in medically accepted procedures for the drawing of blood and employed by a hospital or other health-care facility, acting at the request of a police officer, may withdraw blood from a person submitting to a chemical test under this subchapter. This limitation shall not apply to obtaining a specimen of breath or urine as to which qualified personnel shall include a police officer as well as the above personnel. Notwithstanding any other provision of law to the contrary, it shall not be necessary in any proceeding under this Code to produce evidence that a person who has withdrawn blood from a person submitting to a chemical test under this title was qualified to do so as defined in this section. Notwithstanding any other provision of law to the contrary, it shall not be necessary to present the testimony of, or certification by, a person who has withdrawn blood from a person pursuant to this section in order to establish chain of physical custody of such evidence.

(21 Del. C. 1953, § 2740F; 57 Del. Laws, c. 52; 66 Del. Laws, c. 160, § 1; 71 Del. Laws, c. 222, § 1.)

§ 2747. Alternate tests; physical incapacity.

If for any reason a person is physically unable to supply enough breath or complete the chemical test, that person shall submit to such other chemical tests as authorized by this subchapter as the police officer shall elect, subject to the requirements of § 2746 of this title. Any person who is unconscious or who is otherwise in a condition rendering that person incapable of refusal shall be deemed not to have withdrawn the consent provided in § 2740 of this title and any test may be performed as provided in § 2746 of this title.

(21 Del. C. 1953, § 2740G; 57 Del. Laws, c. 52; 63 Del. Laws, c. 430, § 6; 64 Del. Laws, c. 13, § 6; 70 Del. Laws, c. 186, § 1.)

§ 2748. Civil liability.

A duly licensed physician, medical technician or registered nurse withdrawing a blood sample under this subchapter and a hospital employing such physician, technician or nurse shall not be liable for civil damages for any acts or omissions arising out of the taking of such sample, provided, however, this section shall not relieve such person from civil liability for any malicious act or gross negligence perpetrated in taking the blood.

(21 Del. C. 1953, § 2740H; 57 Del. Laws, c. 52.)

§ 2749. Refusal to submit as admissible in evidence.

Upon the trial of any action or proceeding arising out of the acts alleged to have been committed by any person while in violation of § 4177 or § 4177L of this title or local ordinance substantially conforming thereto, the court may admit evidence of the refusal of such person to submit to a chemical test of breath, blood or urine under this subchapter.

(21 Del. C. 1953, § 2740I; 57 Del. Laws, c. 52; 63 Del. Laws, c. 430, § 7; 64 Del. Laws, c. 13, § 7; 70 Del. Laws, c. 36, § 8; 70 Del. Laws, c. 186, § 1.)

§ 2750. Admissibility in evidence of results of chemical test.

(a) Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any person while under the influence of alcohol, a drug or drugs, with respect to any chemical test taken by or at the request of the State, the court shall admit the results of a chemical test of the person's breath, blood or urine according to normal rules of search and seizure law. The informing or failure to inform the accused concerning the implied consent law shall not affect the admissibility of such results in any case, including a prosecution for a violation of § 4177 of this title. The informing of an accused concerning the implied consent law shall only have application and be relevant at a hearing concerning revocation of the driver's license of said person for a violation of the implied consent law. Nothing contained in this section shall be deemed to preclude the admissibility of such evidence when such evidence would otherwise be admissible under the law relative to search and seizure law such as when such evidence has been obtained by valid consent or other means making the obtaining of the evidence legal under the Fourth Amendment.

(b) The doctor-patient privilege shall not apply to the disclosure to law-enforcement personnel nor the admissibility into evidence in any criminal proceeding of the results of a chemical test of a person's blood, breath or urine for the purpose of determining the alcohol or drug content of that person's blood irrespective of whether such test was done at the request of a treating physician, other medical personnel or a peace officer.

(63 Del. Laws, c. 86, § 1; 63 Del. Laws, c. 430, § 8; 64 Del. Laws, c. 13, § 8; 70 Del. Laws, c. 186, § 1.)

Subchapter IV

Penalties

§ 2751. Unlawful application for or use of license or identification card.

(a) *Fraud in obtaining or attempting to obtain driver's license or identification card.* — A person shall not fraudulently obtain or attempt to obtain a driver's license or an identification card by misrepresentation.

(b) *Fraud in application for license or identification card.* — A person shall not in any application for a driver's license or identification card:

(1) Use a false or fictitious name;

(2) Make a false statement;

(3) Conceal a material fact; or

(4) Otherwise commit a fraud.

(c) *Display of canceled licenses.* — A person shall not display, cause or permit to be displayed, any canceled license.

(d) *Display of revoked licenses.* — A person shall not display, cause or permit to be displayed, any revoked license.

(e) *Display of suspended licenses.* — A person shall not display, cause or permit to be displayed, any suspended license.

(f) *Display of fictitious licenses or identification cards.* — A person shall not display, cause or permit to be displayed, any fictitious license or identification card.

(g) *Display of fraudulently altered license or identification card.* — A person shall not display, cause or permit to be displayed, any fraudulently altered license or identification card.

(h) *Possession of canceled license.* — A person shall not possess any canceled license.

(i) *Possession of revoked license.* — A person shall not possess any revoked license.

(j) *Possession of suspended license.* — A person shall not possess any suspended license.

(k) *Possession of fictitious license or identification card.* — A person shall not possess any fictitious license or identification card.

(*l*) *Possession of fraudulently altered license or identification card.* — A person shall not possess any fraudulently altered license or identification card.

(m) *Loaning license.* — A person shall not lend that person's license to any other person or permit the use of license by another.

(n) *Display or representation of license or identification card not one's own.* — A person shall not display or represent as that person's own any license or identification card not issued to that person.

(o) *Failure or refusal to surrender license or identification card.* — A person shall not fail or refuse to surrender to the Department on its lawful demand any license or identification card that has been suspended, revoked, canceled, altered or otherwise fraudulently obtained.

(p) *Permitting unlawful use of license or identification card.* — A person shall not permit any unlawful use of a license or identification card issued to that person.

(q) *Prohibited acts.* — A person shall not do any act forbidden or fail to perform any act required by this title.

(r) *Penalty.* — Unless otherwise specifically provided for in Chapter 31 of this title, an individual who violates this section shall be guilty of a class B misdemeanor and shall have that individual's driver's license or driving privileges suspended for a period to be set by the Court, not to exceed 6 months. The foregoing sentence notwithstanding, an individual who violates subsection (d), (e), (i), or (j) of this section by possessing or displaying a driver's license that has been suspended or revoked by application of the following statutes shall be guilty of a violation only, provided that the judicial officer adjudicating the charge or charges brought under subsections (d), (e), (i), or (j) of this section has made a factual finding that the defendant was reasonably unaware the driver's license that defendant possessed or displayed had been suspended or revoked:

Title 4, § 904(f)

Title 11, § 2106(c)

Section 314(b) of this title

Section 709(j)(1) of this title

Section 2118(n)(1) of this title

Section 2703(d)(5) of this title

Section 2710(e)(5) of this title

Section 2724(b) of this title.

(s) *Hardship license.* — When a driver's license and/or driving privileges is suspended pursuant to this section, the applicant shall not be eligible for a conditional license, occupational license, work license or any other type of hardship license during the period of suspension, except that after 60 days of suspension the applicant may be eligible for a work license which shall be strictly limited to commuting to or from the applicant's place of employment and such driving as is a necessary part of the duties of said employment.

(36 Del. Laws, c. 10, § 73; 37 Del. Laws, c. 10, § 22; Code 1935, § 5611; 21 Del. C. 1953, § 2741; 62 Del. Laws, c. 237, § 27; 66 Del. Laws, c. 416, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 318, § 1; 81 Del. Laws, c. 404, § 1; 81 Del. Laws, c. 434, § 1; 83 Del. Laws, c. 283, § 34; 83 Del. Laws, c. 441, § 12.)

§ 2752. False statements.

Whoever makes any false affidavit or knowingly swears or affirms falsely to any matter or thing required by the terms of this chapter to be sworn to or affirmed is guilty of perjury and shall be fined or imprisoned as are other persons committing perjury.

(36 Del. Laws, c. 10, § 74; Code 1935, § 5612; 21 Del. C. 1953, § 2742.)

§ 2753. Operation of vehicle by unlicensed minor.

No person shall cause or knowingly permit any minor operator, unless such minor has first obtained a license, to drive a motor vehicle under this chapter.

(36 Del. Laws, c. 10, § 75; Code 1935, § 5613; 21 Del. C. 1953, § 2743.)

§ 2754. Employment of unlicensed person.

No person shall employ any person to operate a motor vehicle who is not licensed as provided in this chapter.

(36 Del. Laws, c. 10, § 76; Code 1935, § 5614; 21 Del. C. 1953, § 2744; 62 Del. Laws, c. 237, § 28.)

§ 2755. Authorizing or permitting the operation of a motor vehicle by another.

No person shall authorize or permit a motor vehicle owned by that person or under that person's control to be driven by any person knowing that said person has no legal right to do so or shall authorize or permit said motor vehicle to be driven in violation of this title.

(36 Del. Laws, c. 10, § 77; Code 1935, § 5615; 21 Del. C. 1953, § 2745; 50 Del. Laws, c. 570, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2756. Driving vehicle while license is suspended or revoked; penalty.

(a) Any person whose driver's license or driving privileges have been suspended or revoked and who drives any motor vehicle upon the highways of this State during the period of suspension or revocation shall for the first offense be fined not less than $500 nor more than $1,000 and be imprisoned not less than 30 days nor more than 6 months. For each subsequent like offense, such person shall be fined not less than $1,000 nor more than $4,000 and in addition be imprisoned not less than 60 days nor more than 1 year. However, for a first offense under this section, if the suspension or revocation resulted from a prior or previous driving under the influence-related conviction or offense as defined in § 4177B(e)(1)a.-d. of this title, the minimum fine shall be $600. For purposes of this section a subsequent offense shall be defined as one occurring within 3 years of a former offense.

(b) The minimum fine for a first or subsequent offense shall not be subject to suspension. The minimum period of imprisonment for a subsequent offense shall not be subject to suspension. In addition, for any offense under this section, if the suspension or revocation resulted from a violation of any criminal statute pertaining to injury or death caused to another person by the person's driving or operation of a vehicle or a driving under the influence-related conviction or offense as defined in § 4177B(e)(1)a.-d. of this title, the minimum fine

shall be $2,000 and shall not be subject to suspension and the minimum period of imprisonment shall not be subject to suspension but shall, notwithstanding any provision of this section or title to the contrary, be served subject to the provisions of § 4205A(b) of this title.

(c) (1) With respect to any vehicle used in connection with a violation of this section, while the permit or license of the operator was revoked for violation of § 2742 or § 4177 of this title or pursuant to § 2732 of this title, the court, at the time of sentencing the operator for violating this section, may, upon motion by the State, order the said vehicle be impounded for at least 90 days for the first violation of this section, and for at least 1 year for a subsequent violation, provided that a public or private secure storage area may be obtained by the arresting police agency for said vehicle. The court shall permit any party with a legal or equitable interest in the vehicle an opportunity to show cause why the impoundment of such vehicle should cease. Prior to release of said vehicle, the person to whom the vehicle is released shall pay all reasonable towing and storage fees connected therewith. The State and the arresting police agency shall not be liable for any expenses incurred in connection with the towing and storage of said vehicle.

(2) In lieu of impoundment, the number plate or registration plate of any vehicle used in connection with a violation of this section, while the permit or license of the operator was revoked for violation of § 4177 or § 2742 of this title or pursuant to § 2732 of this title, shall be surrendered to the Department for at least 90 days for the first violation of this section, and for at least 1 year for a subsequent violation. The court shall permit any party with a legal or equitable interest in the vehicle an opportunity to show cause why the surrender of said plate should cease.

(d) Notwithstanding the foregoing, if the judge determines that the sole reason that an individual's license was suspended is failure to pay a fine for a traffic offense which is eligible for voluntary assessment (whether or not the voluntary assessment procedure was offered or used), the provisions of subsections (a) to (c) of this section shall not apply and the penalties of § 2701(e) of this title shall apply, which penalties may be suspended.

(36 Del. Laws, c. 10, §§ 78, 80; Code 1935, § 5616; 21 Del. C. 1953, § 2746; 56 Del. Laws, c. 387, § 1; 57 Del. Laws, c. 125; 60 Del. Laws, c. 603, § 1; 63 Del. Laws, c. 430, § 11; 64 Del. Laws, c. 13, § 11; 68 Del. Laws, c. 9, §§ 15, 16; 70 Del. Laws, c. 369, § 1; 72 Del. Laws, c. 231, § 1; 74 Del. Laws, c. 106, §§ 30, 31; 74 Del. Laws, c. 285, § 3.)

§ 2757. Penalties.

(a) Whoever violates this chapter shall for the first offense be fined not less than $25 nor more than $115. For each subsequent like offense, such person shall be fined not less than $50 nor more than $230, or imprisoned not less than 10 nor more than 30 days, or both.

(b) This section shall not apply to violations for which a specific punishment is set forth elsewhere in this chapter.

(36 Del. Laws, c. 10, § 79; Code 1935,§ 5617; 46 Del. Laws, c. 81; 21 Del. C. 1953, § 2747; 65 Del. Laws, c. 503, § 13; 68 Del. Laws, c. 9, § 17; 70 Del. Laws, c. 186, § 1.)

§ 2758. Driving during period of denial; penalties.

(a) Any person not licensed to drive a motor vehicle who is arrested and convicted of an offense for which the penalty is a mandatory suspension or revocation of driver's license or driving privileges shall be ineligible for licensing for a time equivalent to the time that person's license would have been suspended or revoked if that person had been licensed.

(b) Any person not licensed as a driver who is convicted of driving a motor vehicle during a license denial period shall be punished as provided in § 2756 of this title.

(21 Del. C. 1953, § 2748; 57 Del. Laws, c. 226.)

§ 2759. Liability for towing expenses.

Whenever a motor vehicle is towed in connection with the enforcement of § 4177 of this title or a criminal offense for which violation of § 4177 of this title is an element, the person to whom the vehicle is released shall be liable for the towing and storage costs, except that the police agency ordering such towing shall be liable for such costs if the driver was not actually arrested for driving in violation of § 4177 of this title or another criminal offense as a result of that incident and no other existing situation reasonably necessitated such towing.

(64 Del. Laws, c. 13, § 12.)

§ 2760. Duplication, reproduction, manufacture and sale, altering, or counterfeiting of driver licenses or identification cards; presenting fraudulent identification and driving authority source documents.

(a) A person or company shall not duplicate, reproduce, alter or counterfeit a Delaware driver license or identification card or a driver license or identification card issued by an authorized issuing agency from another state.

(b) A person or company shall not sell, offer for sale, manufacture or distribute a driver license or identification card document that is similar in design, shape, size or color to any driver license or identification card issued by the Delaware Division of Motor Vehicles or by an authorized driver license and/or identification card issuing agency from another state. This includes any driver license or identification card that uses the word "Delaware" or any other state name or has the words "not issued by a government agency" or similar words.

(c) It shall be unlawful to present fraudulent personal identification source documents, state issued driver licenses or state issued identification cards when applying for a Delaware driver license or identification card. If the Division of Motor Vehicles has reason to believe the documents provided by an applicant are fraudulent after physically examining the documents and/or by using an electronic

verification process, the Division shall confiscate the documents, deny the transaction, and provide the documents to a law-enforcement officer or Division investigator. The investigator may recommend prosecution, deny issuance of the document, return the confiscated documents to the applicant, or take any other action deemed appropriate. The applicant may request an administrative hearing to challenge the Division's decision to retain the confiscated documents or to continue denial of the driver license or identification card based on the presentation of the questioned documents.

(d) Identification documents produced by other State of Delaware agencies are exempt from this section.

(e) (1) Any person convicted of a violation of subsection (a) or (c) of this section shall be fined not less than $500, nor more than $1,500 or imprisoned not less than 30 days, nor more than 60 days. In addition, the person shall have that person's driver license and/or driving privileges suspended for a period of 1 year.

(2) Any person convicted of a violation of subsection (b) of this section shall be guilty of a class G felony as the same is defined in Chapter 42 of Title 11 and shall be sentenced in accordance therewith.

(f) When a driver license and/or driving privileges is/are suspended pursuant to this section, the applicant shall not be eligible for a conditional license, work license or any other type of hardship license during the suspension period.

(66 Del. Laws, c. 410, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 172, § 1.)

Subchapter V

Taxicab and Limousine Driver

§ 2761. Licensing of taxicab and limousine operators.

No person shall drive any taxicab or limousine as defined under Chapter 18 of Title 2 upon any highway of this State unless such person, upon application, has been licensed as a taxicab or limousine operator by the Department under this chapter.

(Code 1935, § 5719r; 46 Del. Laws, c. 270, § 1; 21 Del. C. 1953, § 2761; 78 Del. Laws, c. 287, § 1.)

§ 2762. License endorsed for taxicab and limousine.

The Department shall endorse on the driver's license of the applicant an authorization to operate a taxicab and limousine.

(Code 1935, § 5719s; 46 Del. Laws, c. 270, § 1; 21 Del. C. 1953, § 2762; 49 Del. Laws, c. 57, § 1; 58 Del. Laws, c. 511, § 47; 61 Del. Laws, c. 60, §§ 1, 2; 78 Del. Laws, c. 287, § 1.)

§ 2763. Qualifications for taxicab and limousine license.

(a) To qualify for a taxicab and limousine endorsement an applicant must meet all of the following requirements:

(1) Be at least 18 years of age with 1 year of driving experience;

(2) Meet the requirements of § 2707 of this title;

(3) Never have been convicted of any of the following crimes under the laws of this State or any other jurisdiction:

a. Any crime against a child;

b. Any crime constituting a class A or B felony;

c. Any crime constituting a felony homicide, including, but not limited to, murder, manslaughter and vehicular homicide; or

d. Any crime constituting a felony sexual offense.

f., g. [Repealed.]

(4) Has not been convicted or pled guilty, within the last 7 years, to any of the following offenses, either under Delaware law or a substantially similar law of another state or of the United States:

a. Driving under the influence under § 4177, § 4177J, § 4177L, or § 4177M of this title;

b. Any crime constituting a felony offense, including any crime constituting a felony offense against public administration involving bribery, improper influence or abuse of office;

c. A hit and run offense under Chapter 42 of this title;

d. Driving over 100 mph; or

e. Reckless driving under § 4175 of this title; or

(5) Has not had that person's driver's license suspended, revoked, or disqualified in this State or any other jurisdiction for moving violations during the immediate preceding 3 years.

(b) Any taxicab and limousine and endorsement issued shall automatically be rescinded by the Director of the Division of Motor Vehicles if the applicant has not shown evidence of having satisfactorily completed, within 30 days of the date of endorsement, a motor vehicle accident prevention course approved by the Director of the Division of Motor Vehicles.

(c) The Department may conduct a criminal history background check for the purposes of issuing a taxicab and limousine endorsement pursuant to this section. This check shall include a national criminal history background check, in addition to a review of the applicant's

Delaware-based criminal history, a fingerprinting of applicants who are to be subjected to a national criminal history background check, and expressly authorizes the use of records of the Federal Bureau of Investigation for screening the applicants.

(Code 1935, § 5719t; 46 Del. Laws, c. 270, § 1; 21 Del. C. 1953, § 2763; 61 Del. Laws, c. 60, §§ 1, 3; 64 Del. Laws, c. 411, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 252, § 10; 78 Del. Laws, c. 287, § 1; 79 Del. Laws, c. 250, § 2; 80 Del. Laws, c. 121, § 1; 80 Del. Laws, c. 275, § 2.)

§ 2764. Fee for taxicab authorization [For application of this section, see 85 Del. Laws, c. 40, § 15].

The fee for the authorization specified in § 2762 of this title is $10. The fee for renewals is also $10.

(Code 1935, § 5719u; 46 Del. Laws, c. 270, § 1; 21 Del. C. 1953, § 2764; 61 Del. Laws, c. 60, §§ 1, 4; 67 Del. Laws, c. 260, § 1; 85 Del. Laws, c. 40, § 10.)

§ 2765. Out-of-state taxi and limousine drivers; qualifications.

Out-of-state taxi and limousine drivers shall meet the requirements of their home state for driving a taxi or limousine and meet the qualification requirements as defined in § 2763 of this title before operating a taxi or limousine upon the highways of this State.

(1) An out-of-state taxi or limousine driver shall:

a. Upon first employment, and thereafter annually, provide to the driver's employer a current copy of the driver's home state driving record;

b. Upon first employment, and upon re-employment following separation, provide to the driver's employer a current copy of the driver's criminal history background check; and

c. Inform the driver's employer any time the driver's driver license is suspended or revoked.

(2) The employer of an out-of-state taxi or limousine driver shall:

a. Maintain on file a current copy of the driver's driving records;

b. Annually update and review the driver's driving records using the same qualification criteria as found in § 2763 of this title; and

c. Maintain on file a current copy of the driver's criminal history background check.

(3) An employer of an out-of-state taxi or limousine driver shall not knowingly permit a driver to operate a taxi or limousine upon the highways of this State when the employer is aware of any disqualifying crimes or motor vehicle violations as defined in § 2763 of this title.

(78 Del. Laws, c. 287, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1.)

§§ 2766-2781. Taxicab drivers' licenses; special examinations; issuance; refusal or revocation; appeal; records; duplicate certificates; duty to sign, carry and display; term and renewal; report of convictions; mandatory revocation; discretionary suspension or revocation; duration; appeal; violations; false statements; driving while suspended; penalties [Repealed].

Repealed by 61 Del. Laws, c. 60, § 1, eff. May 24, 1977.

Part II
Registration, Title and Licenses
Chapter 28
Habitual Offenders

§ 2801. Declaration of policy.

It is hereby declared to be the policy of this State to:

(1) Provide maximum safety for all persons who travel or otherwise use the public highways of this State; and

(2) Deny the privilege of operating motor vehicles on our highways to persons who by their conduct and record have demonstrated their indifference to the safety and welfare of others and their disrespect for the laws of this State, the orders of its courts and the statutorily required acts of its administrative agencies; and

(3) Discourage repetition of criminal acts by individuals against the peace and dignity of this State and the State's political subdivisions and to impose increased and added deprivation of the privilege to operate motor vehicles upon habitual offenders who have been convicted repeatedly of violations of the motor vehicle laws.

(21 Del. C. 1953, § 2801; 58 Del. Laws, c. 416; 70 Del. Laws, c. 186, § 1.)

§ 2802. "Habitual offender" defined.

An "habitual offender" shall be any person, resident or nonresident, whose driving record, as maintained in the office of the Division of Motor Vehicles, shows that such person has accumulated convictions for separate and distinct offenses described in paragraph (1) of this section during a 5-year period or paragraph (2) of this section during a 3-year period, provided, that where more than 1 included offense shall be committed within a 24-hour period, such multiple offenses shall be treated for the purposes of this chapter as 1 offense:

(1) *Three or more convictions.* — Three or more convictions, singularly or in combination of any of the following separate and distinct offenses arising out of separate acts:

a. Manslaughter resulting from the operation of a motor vehicle;

b. Using a motor vehicle during the commission of a felony;

c. Driving or having actual physical control of a motor vehicle while under the influence of intoxicating liquor or of any drug, in violation of § 4177 of this title;

d. Driving a motor vehicle without a license to do so, in violation of § 2701(a), (b) or (c) of this title. Notwithstanding the foregoing, if the judge determines that the sole reason that an individual was convicted of a violation of § 2701(b) of this title was because the individual's driver's license was suspended, revoked or denied for a failure to pay a fine for a traffic offense which is eligible for voluntary assessment (whether or not the voluntary assessment procedure was offered or used), then that violation of § 2701(b) of this title may not be considered to establish habitual offense status pursuant to this paragraph (1)d.;

e. Driving a motor vehicle during a period of suspension or revocation, in violation of § 2756 of this title. Notwithstanding the foregoing, if the judge determines that the sole reason that an individual was convicted of a violation of § 2756 of this title was because the individual's driver's license was suspended or revoked for a failure to pay a fine for a traffic offense which is eligible for voluntary assessment (whether or not the voluntary assessment procedure was offered or used), then such violation of § 2756 of this title may not be considered to establish habitual offense status pursuant to this paragraph (1)e.;

f. Driving a motor vehicle in wilful or wanton disregard for the safety of persons or property, in violation of § 4175 of this title;

g. Failure of the driver of a motor vehicle involved in an accident resulting in apparent damage to property to stop at the scene of such accident and report the driver's identity in violation of § 4201 of this title or otherwise report such accident, in violation of § 4203 of this title;

h. Failure of the driver of a motor vehicle involved in any accident resulting in injury or death to any person to stop at the scene of such accident and report the driver's identity in violation of § 4202 of this title;

i. Knowingly making any false affidavit or swearing or affirming falsely to any manner or thing required by the motor vehicle laws or as to information required in the administration of such laws;

j. Attempting to flee or elude a police officer after having received a visual or audible signal from the police officer as provided in § 4103(b) of this title;

k. Driving any motor vehicle upon the highways of this State contrary to the restrictions placed upon an occupational license during the period of such occupational license as provided in § 2733(i) of this title.

(2) *Ten or more convictions.* — Ten or more convictions of separate and distinct offenses involving moving violations singularly or in combination, in the operation of a motor vehicle which are required to be reported to the Department and the commission whereof authorizes the Division or the court to suspend or revoke the privilege to operate motor vehicles on the highways of this State for a period of 30 days or more for each offense and such convictions shall include those offenses enumerated in paragraph (1) of this section when taken with and added to those offenses described.

(3) *Inclusions.* — The offenses included in paragraphs (1) and (2) of this section shall be deemed to include offenses under any federal law, any law of another state or any valid town, city or county ordinance of another state substantially conforming to a state statutory provision.

(4) *Conviction.* — For the purpose of this chapter, the term "conviction" shall mean a final conviction, a plea of guilty or a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated.

(21 Del. C. 1953, § 2802; 58 Del. Laws, c. 416; 61 Del. Laws, c. 285, § 1; 66 Del. Laws, c. 231, § 1; 69 Del. Laws, c. 390, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 134, § 1; 77 Del. Laws, c. 19, § 1.)

§ 2803. Certification of record to Attorney General.

The Director of the Division of Motor Vehicles shall certify the conviction record, as maintained in the Division of Motor Vehicles, of any person whose record brings that person within the definition of an habitual offender, as defined in § 2802 of this title, to the Attorney General of the State. The certified conviction record or abstract may be admitted in evidence and shall be competent evidence that the person named therein was duly convicted of each offense enumerated therein.

(21 Del. C. 1953, § 2803; 58 Del. Laws, c. 416; 66 Del. Laws, c. 231, §§ 2, 3; 70 Del. Laws, c. 186, § 1.)

§ 2804. Attorney General to initiate court proceeding; petition.

The Attorney General, upon receiving the abstract from the Director of the Division of Motor Vehicles, shall forthwith file a petition against the person named therein in the Court of Common Pleas in and for the county wherein such person resides or, in the case of a nonresident, in the Court of Common Pleas in and for New Castle County. The petition shall request the Court to determine whether or not the person named therein is an habitual offender.

(21 Del. C. 1953, § 2804; 58 Del. Laws, c. 416; 66 Del. Laws, c. 231, § 4; 69 Del. Laws, c. 333, § 5.)

§ 2805. Service of petition; order to show cause.

Upon the filing of the petition, the Court of Common Pleas shall enter an order incorporating by attachment the aforesaid abstract and direct the person named therein to appear at a time scheduled by the Court and show cause why the person should not be barred from operating or driving a motor vehicle on the highways of this State. A copy of the petition, the show cause order and the abstract shall be served upon the person named therein either by personal delivery thereof or by deposit of such in the United States mail in an envelope with postage prepaid, addressed to such person at that person's address as shown by the records of the Division of Motor Vehicles. The service of the petition, order and abstract by mail is complete upon the expiration of 4 days after such deposit of those documents. Service thereof on any nonresident of this State may be made pursuant to § 3112 of Title 10 [repealed], except that any fee for such service shall be taxed against the person named in the petition as a part of the cost of such proceeding.

(21 Del. C. 1953, § 2805; 58 Del. Laws, c. 416; 69 Del. Laws, c. 333, § 6; 70 Del. Laws, c. 136, § 2; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 121, § 1.)

§ 2806. Hearing; procedure.

The matter shall be heard by the Court without a jury. If such person denies that that person was convicted of any offense shown in the abstract necessary for a holding that that person is an habitual offender, and if the Court cannot, on the evidence available to it, determine the issue, the Court may require of the Department certified copies of such records respecting the matter as it may have in its possession. If, upon an examination of such records, the Court is still unable to make such determination it shall certify the decision of such issue to the Court in which such conviction was reportedly made. The Court to which such certification is made shall forthwith conduct a hearing to determine the issue and send a certified copy of its final order determining the issue to the Court of Common Pleas. The Court, at its discretion, may rely upon certified copies of convictions adjudged by courts outside of this State or federal courts or may request such a court to make a determination.

(21 Del. C. 1953, § 2806; 58 Del. Laws, c. 416; 69 Del. Laws, c. 333, § 7; 70 Del. Laws, c. 186, § 1.)

§ 2807. Court's findings; judgment; prothonotary to submit copy.

If the court finds that the person is not the same person named in the abstract, or that the person is not an habitual offender under this chapter, the proceeding shall be dismissed. If the court finds that the person is the same person named in the abstract and that the person is an habitual offender, the court shall by appropriate judgment direct that such person not drive or operate a motor vehicle on the highways of this State and to surrender to the court all licenses or permits to operate a motor vehicle upon the highways of this State. The prothonotary shall forthwith transmit a copy of such judgment together with any licenses or permits surrendered to the Department.

(21 Del. C. 1953, § 2807; 58 Del. Laws, c. 416; 70 Del. Laws, c. 186, § 1.)

§ 2808. Appeals.

An appeal may be taken from any final action or judgment entered under this chapter in the same manner and form as appeals in civil or criminal actions.

(21 Del. C. 1953, § 2808; 58 Del. Laws, c. 416.)

§ 2809. Prohibition against issuance of driver's license or operation of motor vehicle; restoration of privilege.

No license to operate a motor vehicle in this State shall be issued to an habitual offender nor shall a nonresident habitual offender operate a motor vehicle in this State:

(1) For a period of 5 years from the date of the order of the court finding such person to be an habitual offender as defined in § 2802(1) of this title and for a period of 3 years from the date of the order of the court finding such person to be an habitual offender as defined in § 2802(2) of this title;

(2) Until such time as financial responsibility requirements are met; and

(3) Until, upon petition and for good cause shown, the court, at its discretion, restores to such person the privilege to operate a motor vehicle in this State upon such terms and conditions as the court may prescribe, subject to other provisions of law relating to the issuance of operators' licenses.

(4) Unless the Attorney General moves the court for restoration of the privilege to operate a motor vehicle in this State of any person declared to be an habitual offender as defined in § 2802(1) of this title after 3 years from the date of the order of the court declaring the person to be a habitual offender. In the event of such a motion by the Attorney General, the court may in its discretion restore the driving privileges of the person in whole or in part only if the person also meets the obligation set forth in paragraphs (2) and (3) of this section.

(21 Del. C. 1953, § 2809; 58 Del. Laws, c. 416; 70 Del. Laws, c. 136, § 3.)

§ 2810. Driving after judgment prohibited; penalty; jurisdiction.

(a) It shall be unlawful for any person to operate any motor vehicle in this State while the judgment of the Court prohibiting the operation remains in effect. Any person found to be an habitual offender under this chapter who is thereafter convicted of operating a motor vehicle in this State while the judgment of the Court prohibiting such operation is in effect shall for the first offense be fined not more than $1,150 and imprisoned not less than 90 days nor more than 30 months. For each subsequent like offense, be fined not more than $2,300 and imprisonment not less than 180 days nor more than 5 years. The periods of imprisonment required under this section shall not be subject to suspension and if the judgment of the Court prohibiting the operation of a motor vehicle was based in whole or in part upon a conviction of the person for a prior or previous driving under the influence-related conviction or offense as defined in § 4177B(e)(1)a.-d. of this title, or in whole or in part upon a conviction under any criminal statute pertaining to injury or death caused to another person by the person's driving or operation of a vehicle, the period of imprisonment shall, notwithstanding any provision of this section or title to the contrary, be served subject to the provisions of § 4205(c)(2) [repealed] of this title. The Court of Common Pleas shall have original jurisdiction of violations created by this section.

(b) Notwithstanding any other provision of law to the contrary, any offense, other than a felony, which is within the exclusive or original jurisdiction of another court and which may be joined properly with violations created by this section, shall be deemed to be within the original jurisdiction of the Court of Common Pleas.

(21 Del. C. 1953, § 2810; 58 Del. Laws, c. 416; 69 Del. Laws, c. 333, § 8; 70 Del. Laws, c. 136, §§ 4, 5; 70 Del. Laws, c. 528, §§ 1, 2; 74 Del. Laws, c. 106, § 32.)

§ 2811. Determination by the Attorney General.

In any case in which a person is charged with driving a motor vehicle while that person's license, permit or privilege to drive is suspended or revoked or is charged with driving without a license, the court shall require the Attorney General to determine whether such person has been adjudged an habitual offender and, by reason of such judgment, is barred from operating a motor vehicle on the highways of this State. If the Attorney General determines that the person has been so adjudged, the Attorney General shall cause the appropriate criminal charges to be lodged.

(21 Del. C. 1953, § 2811; 58 Del. Laws, c. 416; 70 Del. Laws, c. 186, § 1.)

§ 2812. No existing law modified.

Nothing in this chapter shall be construed as amending, modifying or repealing any existing law of this State or any existing ordinance of any political subdivision relating to the operation of motor vehicles, the licensing of persons to operate motor vehicles or providing penalties for the violation thereof or shall be construed so as to preclude the exercise of the regulatory powers of any division, agency, department or political subdivision of this State having the statutory authority to regulate such operation and licensing.

(21 Del. C. 1953, § 2812; 58 Del. Laws, c. 416.)

§ 2813. Computation of number of convictions.

In computing the number of convictions, all convictions must result from offenses occurring subsequent to June 8, 1972, except that convictions for offenses designated in § 2802(1)j. and k. of this title shall only be computed if the offenses giving rise thereto occur subsequent to July 1, 1977.

(21 Del. C. 1953, § 2813; 58 Del. Laws, c. 416; 61 Del. Laws, c. 285, § 2.)

§ 2814. Additional penalty when convicted of an offense which would render an individual an habitual offender.

If any person shall be convicted in this State of an offense which would render that individual an habitual offender as defined in this chapter, the person shall, in addition to the penalty otherwise prescribed by law for such offense, be fined not less than $115 nor more than $1,150 and confined in jail not less than 30 days nor more than 12 months, provided, that no such sentence shall be executed until the individual is finally adjudged an habitual offender.

(21 Del. C. 1953, § 2814; 58 Del. Laws, c. 416; 68 Del. Laws, c. 9, § 18; 70 Del. Laws, c. 186, § 1.)

Part II
Registration, Title and Licenses

Chapter 29
Motor Vehicle Safety—Responsibility

Subchapter I
General Provisions

§ 2901. Motor vehicles exempted.

This chapter shall not apply with respect to any motor vehicle owned by the United States, this State or any political subdivision of this State or any municipality therein or with respect to any motor vehicle which is subject to the requirements of §§ 6101 and 6102 of this title; however, § 2904 of this title shall apply to motor vehicles owned by this State.

(61 Del. Laws, c. 292, § 5; 79 Del. Laws, c. 394, § 1.)

§ 2902. Motor vehicle liability policy. [For application of this section, see 81 Del. Laws, c. 39, § 2].

(a) A "motor vehicle liability policy," as said term is used in this chapter, shall mean an owner's or an operator's policy of liability insurance, certified, as provided in § 2948 or § 2949 of this title, as proof of financial responsibility and issued, except as otherwise provided in § 2949 of this title, by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance shall:

(1) Designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and

(2) Insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: $25,000, because of bodily injury to or death of 1 person in any 1 accident and, subject to said limit for 1 person $50,000, because of bodily injury to or death of 2 or more persons in any 1 accident, and $10,000, because of injury to or destruction of property of others in any 1 accident.

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon the operator by law for damages arising out of the use by the operator of any motor vehicle not owned by the operator, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

(e) Such motor vehicle liability policy need not insure any liability under any workers' compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured or while engaged in the operation, maintenance or repair of any such motor vehicle, nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(1) The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; such policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on the insured's behalf and no violation of such policy shall defeat or void such policy;

(2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;

(3) The insurance carrier shall have the right to settle any claim covered by the policy, and, if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in paragraph (b)(2) of this section;

(4) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the chapter shall constitute the entire contract between the parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to this chapter. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for this chapter.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of 1 or more insurance carriers which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

(61 Del. Laws, c. 292, § 5; 64 Del. Laws, c. 198, § 8; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 39, § 1.)

§ 2903. Certain policies unaffected by chapter.

(a) This chapter shall not apply to or affect policies of automobile insurance against liability required by any other law of this State, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this chapter, may be certified as proof of financial responsibility under this chapter.

(b) This chapter shall not apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on the insured's behalf of motor vehicles not owned by the insured.

(61 Del. Laws, c. 292, § 5; 70 Del. Laws, c. 186, § 1.)

§ 2904. Self-insurers.

(a) Upon condition of providing the same benefits available under a required vehicle insurance policy, any person in whose name more than 15 motor vehicles are registered in this State may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Secretary of Transportation as provided in subsection (b) of this section.

(b) The Secretary of Transportation may, in the Secretary's discretion, approve an application for self-insurance from such a person provided the following is submitted in satisfactory form:

(1) A continuing undertaking by the owner or other appropriate person to pay tort liabilities or basic reparation benefits, or both, and to perform all other obligations imposed by § 2118 of this title;

(2) Evidence that appropriate provisions exist for prompt and efficient administration of all claims, benefits and obligations required by § 2118 of this title; and

(3) Evidence that reliable financial arrangements, deposits or commitments exist providing assurance for payment of tort liabilities or basic reparation benefits, or both, and all other obligations imposed by this chapter substantially equivalent to those afforded by a policy of insurance complying with § 2118 of this title.

(c) Upon not less than 5 days' notice and a hearing pursuant to such notice, the Secretary of Transportation may, upon reasonable grounds, withdraw this approval of self-insurance. Failure to pay any valid claim within 60 days of its submission or any judgment within 30 days after such judgment shall have become final shall constitute a reasonable ground for the immediate withdrawal of approval of self-insurance.

(61 Del. Laws, c. 292, § 5; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, §§ 63, 64, 65.)

§ 2905. Assigned risks.

(a) Any applicant for registration who in good faith has applied to 2 insurance companies for a policy of insurance or surety bond under this chapter but who is unable to procure such insurance from said companies shall thereupon notify the Insurance Commissioner, in writing, and the Insurance Commissioner upon receipt of said notice shall thereupon assign said application to 1 of the insurance companies handling such insurance and doing business in this State. Such insurance company shall promptly issue a policy at the rate then prevailing for such policies, adding an automatic surcharge of 10 percent over and above such rate then in force and effect, for similar policies of insurance. Surcharges of 50 percent and 25 percent shall be added to the then prevailing rate for such policies under the following circumstances:

(1) *Fifty percent surcharge.* — If the certificate is required for a conviction of:

a. Driving a motor vehicle while intoxicated;

b. Failing to stop and report when involved in an accident; or

c. Homicide or assault arising out of the operation of a motor vehicle.

(2) *Twenty-five percent surcharge.* — If the certificate is required for a conviction of:

a. Driving a motor vehicle at an excessive rate of speed where an injury to person or damage to property actually results therefrom; or

b. Driving a motor vehicle in a reckless manner where an injury to person or damage to property actually results therefrom.

(b) All such assignments may carry an expense charge of 5 percent.

(c) No assignment may be made or surcharge added solely because a driver license is denied or suspended in accordance with § 516(g) or § 2216 of Title 13.

(d) The surcharges specified in this section shall be limited for 3 years. The Insurance Commissioner shall notify the Secretary of Transportation of such assignments and the rate at which such assignments are made and the registration shall then be issued.

(61 Del. Laws, c. 292, § 5; 70 Del. Laws, c. 452, § 8; 71 Del. Laws, c. 216, § 86; 74 Del. Laws, c. 110, § 66.)

§ 2906. Cancellation or termination of insurance policy.

(a) Any insurance company may cancel any motor vehicle liability policy or bond, except such risks as may be assigned to it as provided in § 2905 of this title, for any reason it may deem proper. Such insurance company shall refund to its insured the unearned portion of the premium paid by the insured.

(b) Any insurance company may cancel any motor vehicle liability policy or bond issued to any person under § 2905 of this title by giving 30 days' notice thereof to the Secretary of Transportation provided the insured:

(1) Is not licensed to operate a motor vehicle under the laws of this State;

(2) Is a person with mental or physical disabilities rendering it unsafe for the insured to operate a motor vehicle upon the highways;

(3) Is, in the opinion of the Secretary of Transportation, an habitually reckless or negligent driver of a motor vehicle;

(4) Is an habitual drunkard;

(5) Is addicted to the use of narcotic drugs;

(6) Is engaged in an unlawful or illegal occupation;

(7) Has refused or failed to pay the premiums due on such motor vehicle policy or bond; or

(8) Has refused or failed to cooperate with the insurance company as stated in such insurance policy or bond.

(61 Del. Laws, c. 292, § 5; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, §§ 67, 68; 79 Del. Laws, c. 371, § 24.)

§ 2907. Disclosure of information relating to insurance.

(a) A Delaware attorney who represents an injured person, or an individual injured in a motor vehicle accident who is not represented by an attorney, may, prior to the filing of a civil action for bodily injuries sustained as a result of a motor vehicle accident, request in writing that the insurer disclose the bodily injury limits of liability of any motor vehicle liability policy, as defined by § 2902(a) of this title, that may be applicable to the claim.

(b) The requesting party shall provide the insurer with the date of the motor vehicle accident, the name and last known address of the alleged liable party if it has been reported to the requesting party, a copy of the police report, if any, and the claim number, if available.

(c) When requesting the bodily injury limits of liability, the requesting party shall also submit to the insurer the injured person's medical records, medical bills, and wage-loss documentation, pertaining to the claimed injury and supporting the damages referenced in subsection (d) of this section.

(d) If the total of the medical bills and wage losses submitted equals or exceeds $12,500, the insurer shall respond in writing within 30 days of receipt of the request, and shall disclose the bodily injury limits of liability at the time of the accident of all its motor vehicle liability policies, regardless of whether the insurer contests the applicability of the policy to the injured person's claim.

(e) Disclosure of the bodily injury policy limits under this section shall not constitute an admission that the alleged injury or damage is subject to the policy.

(f) Information concerning the insurance policy is not by reason of disclosure pursuant to this subsection admissible as evidence at trial.

(g) The disclosure shall be confidential and available only to the individual injured and the attorney representing the injured person and personnel in the office of the attorney.

(81 Del. Laws, c. 421, § 1.)

§ 2908. Administration and enforcement.

The Secretaries of Safety and Homeland Security and/or Transportation, in keeping with their respective responsibilities, shall administer and enforce this chapter. The State Police shall assist the Secretary of Safety and Homeland Security in enforcing this chapter.

(61 Del. Laws, c. 292, § 5; 74 Del. Laws, c. 110, § 69.)

§ 2909. Availability of other remedies.

Nothing in this chapter shall prevent the plaintiff in any action at law from relying for relief upon the other processes provided by law.

(61 Del. Laws, c. 292, § 5.)

§ 2910. Rights of bona fide transferees and lienors unaffected.

This chapter shall not prevent the owner of a motor vehicle, the registration of which has been suspended hereunder, from effecting a bona fide sale of such motor vehicle to another person whose rights or privileges are not suspended under this chapter or prevent the registration of such motor vehicle by such transferee. This chapter shall not in any way affect the rights of any conditional vendor, chattel mortgagee or lessor of a motor vehicle registered in the name of another as owner who becomes subject to this chapter.

(61 Del. Laws, c. 292, § 5.)

§ 2911. Construction with other laws.

This chapter shall in no respect be considered as a repeal of the state motor vehicle laws but shall be construed as supplemental thereto.

(61 Del. Laws, c. 292, § 5.)

§ 2912. Uniformity of interpretation.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

(61 Del. Laws, c. 292, § 5.)

§ 2913. Insurance for automobile transports.

All automobile transports, interstate or intrastate, shall be insured against personal injury loss and property damage loss in keeping with requirements of the Interstate Commerce Commission relating to intrastate automobile transport carriers.

(64 Del. Laws, c. 207, § 4.)

Subchapter II

Deposit of Security

§§ 2921-2926. Deposit of security following accident; suspension of license and registration; exceptions; form, amount, custody, disposition and return of security; policy or bond as security; duration of suspension of license and registration [Repealed].

Repealed by 60 Del. Laws, c. 433, § 4, eff. May 28, 1976.

§ 2927. Security required of nonresidents involved in accidents in this State.

(a) Any nonresident of this State who is involved in any accident through the operation of a motor vehicle wherein there is a damage to property or person shall be liable to damages and shall be required to furnish sufficient security for the payment of damages sustained by any person, firm or corporation before the motor vehicle of the nonresident or the contents thereof are removed from out of the State.

(b) The security required under subsection (a) of this section shall be double the estimated amount of the damages as determined by any reputable automobile repair person of the State, and shall be posted with any justice of the peace in the State.

(41 Del. Laws, c. 224, §§ 1, 2; 21 Del. C. 1953, § 2927; 70 Del. Laws, c. 186, § 1.)

Subchapter III

Proof of Future Responsibility

§ 2941. Court reports on nonpayment of judgments.

(a) Whenever any person fails to satisfy any judgment within 60 days of its issuance, the court that issued the judgment shall, upon motion of the holder of the judgment, forward a certified copy of such judgment to the Secretary of Transportation.

(b) If the defendant named in any certified copy of a judgment reported to the Secretary of Transportation is a nonresident, the Secretary of Transportation shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses of the state of which the defendant is a resident.

(c) For purposes of this subchapter “judgment” shall mean any civil judgment for money damages arising out of an event or transaction involving motor vehicle accident.

(Code 1935, § 5712B; 48 Del. Laws, c. 359, § 2; 21 Del. C. 1953, § 2941; 57 Del. Laws, c. 670, § 12A; 60 Del. Laws, c. 433, § 5; 66 Del. Laws, c. 274, § 1; 74 Del. Laws, c. 110, § 70; 76 Del. Laws, c. 265, §§ 1, 2.)

§ 2942. Suspension of license for nonpayment of judgments.

(a) The Secretary of Transportation, upon receipt of a certified copy of a judgment, shall forthwith suspend the license and any nonresident’s operating privilege of any person against whom such judgment was rendered, except as otherwise provided in this section and in § 2945 of this title.

(b) The Secretary of Transportation may allow license or nonresident operating privileges to a judgment debtor, providing there is no default in the payment of such judgment or that installments thereof prescribed in § 2945 of this title are not in default, and providing the judgment debtor has furnished proof of financial responsibility.

(c) Any person whose license or nonresident’s operating privilege has been suspended or is about to be suspended or becomes subject to suspension under this chapter may be relieved from the effect of such judgment as prescribed in this chapter, by filing with the Secretary of Transportation an affidavit stating that at the time of the accident upon which such judgment has been rendered the affiant was insured, that the insurer is liable to pay such judgment and the reason, if known, why such insurance company has not paid such judgment. Such person shall also file the original policy of insurance or a certified copy thereof, if available, and such other documents as the Secretary of

Transportation may require to show that the loss, injury or damage, for which such judgment was rendered, was covered by such policy of insurance. If the Secretary of Transportation is satisfied from such papers that such insurer was authorized to issue such policy of insurance at the time and place of issuing such policy and that such insurer is liable to pay such judgment, at least to the extent and for the amounts required in this chapter, the Secretary of Transportation shall not suspend such license or nonresident's operating privilege, or, if already suspended, shall reinstate them.

(d) In the event that a person has had that person's license suspended for nonpayment of a judgment under this section, the Department after the lapse of 10 years from the entry of the judgment may issue a new license provided that such person shall have produced proof of liability insurance coverage or other evidence of financial responsibility, in an amount and of such character as shall be satisfactory to the Secretary of Transportation.

(Code 1935, § 5712C; 48 Del. Laws, c. 359, § 2; 21 Del. C. 1953, § 2942; 55 Del. Laws, c. 406; 57 Del. Laws, c. 89; 57 Del. Laws, c. 670, § 12A; 60 Del. Laws, c. 433, §§ 6-8; 66 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, §§ 71-74.)

§ 2943. Duration of suspension of license.

The license and nonresident's operating privilege suspended pursuant to § 2942 of this title shall remain suspended and shall not be renewed nor shall any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is satisfied in full or to the extent provided in this subchapter, and until such person gives proof of financial responsibility subject to the exemptions stated in §§ 2942 and 2945 of this title.

(Code 1935, § 5712D; 48 Del. Laws, c. 359, § 2; 21 Del. C. 1953, § 2943; 60 Del. Laws, c. 433, § 9; 66 Del. Laws, c. 274, § 1.)

§ 2944. Satisfaction of judgments.

The judgments referred to in this subchapter shall, for the purposes of this chapter only, be deemed satisfied:

(1) When $15,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of 1 person as the result of any 1 accident; or

(2) When, subject to such limit of $15,000 because of bodily injury to or death of 1 person, the sum of $30,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of 2 or more persons as the result of any 1 accident; or

(3) When $10,000 has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any 1 accident.

Payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section.

(Code 1935, § 5712E; 48 Del. Laws, c. 359, § 2; 21 Del. C. 1953, § 2944; 50 Del. Laws, c. 456, § 3; 61 Del. Laws, c. 292, § 6; 64 Del. Laws, c. 198, §§ 4-6.)

§ 2945. Installment payment of judgments; default.

(a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, at its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(b) The Secretary of Transportation shall not suspend a license or a nonresident's operating privilege for nonpayment of a judgment when the judgment debtor gives proof of financial responsibility and obtains an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

(c) In the event the judgment debtor fails to pay any installment as specified by such order, the Secretary of Transportation, upon notice of such default, shall forthwith suspend the license or nonresident's operating privilege of the judgment debtor until such judgment is satisfied as provided in this subchapter.

(Code 1935, § 5712F; 48 Del. Laws, c. 359, § 2; 21 Del. C. 1953,§ 2945; 57 Del. Laws, c. 670, § 12A; 66 Del. Laws, c. 274, § 1; 74 Del. Laws, c. 110, §§ 75, 76.)

§ 2946. [Reserved.]

§ 2947. Methods of giving proof.

Proof of financial responsibility when required under this chapter, may be given by filing a:

(1) Certificate of insurance as provided in § 2948 or § 2949 of this title; or

(2) Bond as provided in § 2950 of this title; or

(3) Certificate of deposit of money or securities as provided in § 2951 of this title; or

(4) Statement from an insurance carrier certifying that there is in effect a motor vehicle liability policy covering the operator or vehicle as required by this chapter.

(Code 1935, § 5712H; 48 Del. Laws, c. 359, § 2; 21 Del. C. 1953, § 2947; 62 Del. Laws, c. 77, § 2.)

§ 2948. Certificate of insurance as proof.

(a) Proof of financial responsibility may be furnished by filing with the Secretary the written certificate of any insurance carrier duly authorized to do business in this State certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle.

(b) No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such motor vehicle is so designated in such certificate.

(Code 1935, § 5712I; 48 Del. Laws, c. 359, § 2; 21 Del. C. 1953, § 2948.)

§ 2949. Certificate furnished by nonresident as proof.

(a) The nonresident owner of a motor vehicle not registered in this State may give proof of financial responsibility by filing with the Secretary a written certificate or certificate of an insurance carrier authorized to transact business in the state in which the motor vehicle or motor vehicles described in such certificate is registered, or, if such nonresident does not own a motor vehicle, then in the state in which the insured resides, provided such certificate otherwise conforms to this chapter, and the Secretary shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

(1) Such insurance carrier shall execute a power of attorney authorizing the Secretary to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this State;

(2) Such insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this State relating to the terms of motor vehicle liability policies issued herein.

(b) If any insurance carrier not authorized to transact business in this State, and which has qualified to furnish proof of financial responsibility, defaults in any said undertakings or agreements, the Secretary shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues.

(Code 1935, § 5712J; 48 Del. Laws, c. 359, § 2; 21 Del. C. 1953, § 2949; 57 Del. Laws, c. 670, § 12A.)

§ 2950. Bond as proof.

(a) Proof of financial responsibility may be evidenced by the bond of a surety company authorized to transact business within this State or a bond with at least 2 individual sureties each owning real estate within this State and together having equities equal in value to at least twice the amount of such bond. The real estate shall be scheduled in the bond approved by a judge of a court of record, and the bond shall be conditioned for payment of the amounts specified in the definition of "proof of financial responsibility" contained in § 101 of this title. Such bond shall be filed with the Secretary of Transportation and shall not be cancellable except after 10 days' written notice to the Secretary of Transportation. Such bond shall constitute a lien in favor of the State upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such bond, for damages, including damages for care and loss of services because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle after such bond was filed, upon the filing of notice to that effect by the Secretary of Transportation in the office of the prothonotary of any county in the State wherein any such real estate is located. The prothonotary shall enter such lien in an appropriate docket kept by the prothonotary for that purpose.

(b) If such judgment rendered against the principal on such bond is not satisfied within 60 days after it has become final, the judgment creditor may, for the judgment creditor's own use and benefit and at the judgment creditor's sole expense, bring an action or actions in the name of the State against the company or persons executing such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond in accordance with Chapter 75 of Title 10.

(Code 1935, § 5712N; 48 Del. Laws, c. 359, § 2; 21 Del. C. 1953, § 2950; 57 Del. Laws, c. 670, § 12A; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 77.)

§ 2951. Money or securities as proof.

(a) Proof of financial responsibility may be evidenced by the certificate of the State Treasurer that the person named therein has deposited with the State Treasurer $40,000 in cash or securities such as may legally be purchased by savings banks or for trust funds of a market value of $40,000. The State Treasurer shall not accept any such deposit nor issue a certificate therefor and the Secretary of Transportation shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(b) Such deposit shall be held by the State Treasurer to satisfy, in accordance with this chapter, any execution on a judgment issued against such person making the deposit for damages, including damages for care and loss of services, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid.

(Code 1935, § 5712O; 48 Del. Laws, c. 359, § 2; 21 Del. C. 1953, § 2951; 50 Del. Laws, c. 456, § 4; 57 Del. Laws, c. 670, § 12A; 64 Del. Laws, c. 198, § 7; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 78.)

§ 2952. [Reserved.]

§ 2953. Substitution of proof.

The Secretary of Transportation shall consent to the cancellation of any bond or certificate of insurance or the Secretary of Transportation shall direct the return of, and the State Treasurer shall return, any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter.

(Code 1935, § 5712Q; 48 Del. Laws, c. 359, § 2; 21 Del. C. 1953, § 2953; 57 Del. Laws, c. 670, § 12A; 74 Del. Laws, c. 110, § 79.)

§ 2954. Requirement of other proof.

Whenever any proof of financial responsibility filed under this chapter no longer fulfills the purposes for which it is required, the Secretary of Transportation shall, for the purpose of this chapter, require other proof as required by this chapter and shall suspend the license or the nonresident's operating privilege pending the filing of such other proof.

(Code 1935, § 5712R; 48 Del. Laws, c. 359, § 2; 21 Del. C. 1953, § 2954; 57 Del. Laws, c. 670, § 12A; 66 Del. Laws, c. 274, § 1; 74 Del. Laws, c. 110, § 80.)

§ 2955. [Reserved.]

Subchapter IV

Penalties

§ 2971. Penalties.

(a) A person whose license or nonresident's operating privilege suspended or revoked under this chapter drives during such suspension or revocation any motor vehicle upon any highway, except as permitted under this chapter, shall be fined not more than $575, or imprisoned not more than 6 months or both.

(b) Whoever wilfully fails to return the license as required in § 2972 of this title shall be fined not more than $575, or imprisoned not more than 30 days or both.

(c) Whoever violates any provision of this chapter for which no penalty is otherwise provided shall be fined not more than $575, or imprisoned not more than 90 days or both.

(Code 1935, § 5712V; 48 Del. Laws, c. 359, § 2; 21 Del. C. 1953, § 2971; 62 Del. Laws, c. 77, § 5; 66 Del. Laws, c. 274, §§ 1, 2; 68 Del. Laws, c. 9, § 19; 70 Del. Laws, c. 186, § 1.)

§ 2972. Surrender of license.

Any person whose license is suspended as provided in this chapter or whose policy of insurance or bond when required under this chapter is canceled or terminated or who neglects to furnish other proof upon request of the Secretary of Transportation shall immediately return the person's license to the Secretary of Transportation. If any person fails to return to the Secretary of Transportation the license as provided herein, the Secretary of Transportation shall forthwith direct any peace officer to secure possession thereof and to return the same to the Secretary of Transportation.

(Code 1935, § 5712U; 48 Del. Laws, c. 359, § 2; 21 Del. C. 1953, § 2972; 57 Del. Laws, c. 670, § 12A; 66 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 81.)

Part II
Registration, Title and Licenses

Chapter 31
Nondriver Identification Cards

§ 3101. Identification cards.

Every person residing in the State who desires to obtain an identification card shall apply to the Division of Motor Vehicles.

(21 Del. C. 1953, § 3101; 58 Del. Laws, c. 516; 65 Del. Laws, c. 37, § 1.)

§ 3102. Application.

(a) Every application for an identification card shall be made on an application form furnished by the Division. The original application shall be verified by the applicant before a person authorized to administer oaths.

(b) Every application shall state the name, Social Security number, if eligible, except as otherwise provided in § 2711 of this title, date of birth, sex and residence address of the applicant and whether or not the applicant is licensed by the State to operate a motor vehicle.

(c) The Division of Motor Vehicles shall provide notice of the obligation to register pursuant to § 4120 of Title 11 to each new resident applicant for an identification card. Every applicant for a state identification card shall sign an acknowledgment provided by the Division that the applicant has received notice that registration in compliance with § 4120 of Title 11 is mandatory for any person who has been convicted in any other state of any offense which, if committed or attempted in this State, would have been punishable as 1 or more of the offenses referenced in § 4120(a) of Title 11, and that such registration must occur within 7 days of coming into any county, city or town in which the applicant temporarily resides or is domiciled for that length of time.

All such acknowledgments shall be kept as permanent records by the Division in a format approved by the Director of Historical and Cultural Affairs which may include storage on microfiche or other nonpaper forms of permanent retention.

(d) (1) Any male applicant who applies for an identification card or a renewal of any such document and who is at least 18 years of age but less than 26 years of age shall be registered in compliance with the requirements of § 3 of the "Military Selective Service Act," 50 U.S.C. App. sec. 453, as amended.

(2) The Department shall forward in an electronic format the necessary personal information of the applicants identified in this subsection to the selective service system. The applicant's signature on the application shall serve as an indication that the applicant either has already registered with the selective service system or that the applicant is authorizing the Department to forward to the selective service system the necessary information for such registration. The Department shall notify the applicant at the time of application that the applicant's signature constitutes consent to registration with the selective service system, if the applicant is not already registered.

(21 Del. C. 1953, § 3102; 58 Del. Laws, c. 516; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 397, § 22; 71 Del. Laws, c. 133, § 3; 72 Del. Laws, c. 335, §§ 3, 5; 72 Del. Laws, c. 485, § 3; 84 Del. Laws, c. 42, § 1.)

§ 3103. Issuance fee; renewal; qualifications.

(a) Upon receipt of the application and a fee of $40, the Division shall issue an identification card which shall expire and be renewable on the eighth anniversary date of the birth of the applicant next following the date of its issuance unless the birthdate be February 29, and in which event the identification card will expire on February 28 every eighth year. A permanent resident foreign national may be issued a full 8-year identification card. However, an identification card issued to a temporary foreign national must be limited to the period of time that the temporary foreign national is authorized to be in the United States.

(b) On or near the date of expiration of an identification card, each holder of such a card desiring renewal of such card shall appear at a Division of Motor Vehicles office in the county in which the holder of the card resides and be photographed by the Department of Transportation.

(c) No identification card shall be issued pursuant to subsection (a) of this section to any nonresident of the State.

(d) An individual who presents a valid, unexpired, Delaware personal credential card, issued under § 8915(d) of Title 29, is exempt from any fee charged under this section for an identification card.

(21 Del. C. 1953, § 3103; 58 Del. Laws, c. 516; 65 Del. Laws, c. 37, §§ 2, 3; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 82; 76 Del. Laws, c. 76, § 26; 76 Del. Laws, c. 126, § 2; 81 Del. Laws, c. 447, § 5; 83 Del. Laws, c. 29, § 1.)

§ 3104. Contents of identification cards.

(a) Every identification card shall bear a distinguishing number assigned to the holder and shall contain the name, date of birth, address, a photograph of the holder taken by the Department of Transportation and a brief description of the holder for purposes of identification. The identification card holder's Social Security number is used for identification purposes and shall be maintained in the Division of Motor Vehicles' record system.

(b) Every identification card shall bear in conspicuous print the words: "THIS IS NOT A DRIVER'S LICENSE."

(c) The Division of Motor Vehicles shall upon submission of satisfactory proof, provide that a person making application for an identification card designation that the holder is a veteran on the identification card.

(1) An applicant qualifies to have designation that the holder is a veteran added to their identification card if the applicant served in the United States Armed Forces, including a reserve component of the National Guard, and was discharged or released from service under conditions other than dishonorable:

(2) Satisfactory proof of that the applicant is a veteran includes any of the following:

a. Form DD-214, Certificate of Release or Discharge from Active Duty.

b. Form DD-256, Discharge Certificate that states "General Under Honorable Conditions".

c. Form NGB-22, Report of Separation and Record of Service, Departments of the Army and the Airforce, National Guard Bureau.

d. Valid military ID card including any of the following:

1. White Common Access Card.

2. Department of Defense Blue ID.

3. Department of Defense Red ID.

e. A valid identification card issued by a state other than Delaware with designation that the holder is a veteran.

(3) When and applicant for or holder of an identification card desires to add designation that the holder is a veteran as part of an initial application, renewal, or duplicate of an identification card, no fee in addition to the standard application or renewal fee may be charged for adding designation that the holder is a veteran.

(4) When the holder of an identification card desires to add designation that the holder is a veteran before identification card renewal, a fee of $10 may be assessed for such change.

(5) The Division shall coordinate with the Delaware Office of Veterans Services to establish a method of authenticating unclear military documentation.

(21 Del. C. 1953, § 3104; 58 Del. Laws, c. 516; 71 Del. Laws, c. 133, § 4; 72 Del. Laws, c. 335, § 4; 74 Del. Laws, c. 110, § 83; 75 Del. Laws, c. 185, §§ 3, 4; 83 Del. Laws, c. 489, § 2.)

§ 3105. Issuance of replacement cards; fee [For application of this section, see 85 Del. Laws, c. 40, § 15].

(a) In the event that any identification card issued under this chapter is lost or destroyed, the person to whom it was issued may apply to the Division for the issuance of a replacement identification card upon executing such forms as may be required by the Division and upon furnishing proof satisfactory to the Division that such identification card has been lost or destroyed.

(b) In the event a name change is requested for any identification card issued under this chapter, the person to whom it was issued may apply to the Division for the issuance of an updated identification card upon submitting such documentation as may be required by the Division.

(c) Upon receipt of the application and a fee of $10, the Division shall issue a replacement identification card.

(d) An individual who presents a valid, unexpired, Delaware personal credential card, issued under § 8915 of Title 29, is exempt from any fee charged under this section for a duplicate replacement identification card.

(21 Del. C. 1953, § 3105; 58 Del. Laws, c. 516; 67 Del. Laws, c. 260, § 1; 67 Del. Laws, c. 271, § 1; 81 Del. Laws, c. 447, § 6; 85 Del. Laws, c. 40, § 11.)

§ 3106. Signature.

Every holder of an identification card shall write the holder's usual signature, in a manner acceptable to the Department, in the space provided for that purpose on the card and such card shall not be valid until the card is so signed.

(21 Del. C. 1953, § 3106; 58 Del. Laws, c. 516; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 183, § 3.)

§ 3107. False statements.

Whoever makes any false affidavit or knowingly swears or affirms falsely to any matter or thing required by the terms of this chapter to be sworn to or affirmed is guilty of perjury and shall be fined or imprisoned as the law provides.

(21 Del. C. 1953, § 3108; 58 Del. Laws, c. 516; 66 Del. Laws, c. 416, § 3.)

§ 3108. Penalties.

(a) Whoever violates this chapter shall for the first offense be fined not less than $25 nor more than $115. For each subsequent like offense, the person shall be fined not less than $50 nor more than $230, or imprisoned not less than 10 nor more than 30 days, or both. Justices of the peace shall have jurisdiction over violations of this chapter.

(b) This section shall not apply to violations defined as perjury under § 3107 of this title.

(21 Del. C. 1953, § 3109; 58 Del. Laws, c. 516; 65 Del. Laws, c. 503, § 14; 66 Del. Laws, c. 416, § 3; 68 Del. Laws, c. 9, § 20; 70 Del. Laws, c. 186, § 1.)

Part II
Registration, Title and Licenses
Chapter 32
Limited Power of Attorney and Electronic Signatures for Division of Motor Vehicles Matters

(83 Del. Laws, c. 149, § 1.)

§ 3201. Definitions.

In this chapter:

(1) "Agent" means a person granted authority to act for the benefit of a principal under a limited durable power of attorney for completing all paperwork necessary to accomplish any required action(s) set forth in this title, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, concurrent agent, joint agent, successor agent, and a person to which an agent's authority is delegated.

(2) "Durable," with respect to a power of attorney, means not terminated by the principal's incapacity, and satisfying the requirements set forth in § 3203 of this title.

(3) "Durable power of attorney" means a power of attorney that is durable, meeting the requirements of § 3203 of this title.

(4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(5) "Electronic signature" shall mean the execution of the document by the identified person after appropriate verification of identity of the person executing the document using a verification system acceptable to the Department.

(6) "Good faith" means honesty in fact.

(7) "Incapacity" means inability of an individual to manage the individual's property or business affairs.

(8) "Limited" means that the power of attorney authorized herein is for the sole purpose of completing all paperwork necessary to accomplish any required action(s) set forth in this title.

(9) "Person" means an individual, corporation, statutory trust, estate, trust, partnership (general or limited), limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity or association.

(10) "Personal power of attorney" means any limited durable power of attorney executed in this State or, if executed other than in this State, specifying that the laws of this State shall govern such power of attorney.

(11) "Power of attorney" means a grant of authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.

(12) "Principal" means an individual who grants authority to an agent in a power of attorney acting for the individual and not as a fiduciary, officer, employee, representative, agent or official of any legal, governmental, or commercial entity or association.

(13) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) "Sign" means, with present intent to authenticate or adopt a record:

a. To execute or adopt a tangible symbol; or

b. To attach to or logically associate with the record an electronic sound, symbol, or process using an electronic program acceptable to the Department.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(83 Del. Laws, c. 149, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1.)

§ 3202. Applicability.

(a) (1) This chapter shall only apply to limited durable powers of attorney which are executed for the sole purpose of completing documentation required and allowable by the Department to accomplish certain actions set forth in this title.

(2) The provisions of this chapter shall not apply to any business or individual who is specifically required by statute or regulation to identify persons who have authority to sign on behalf of the business or individual. In those instances, all documentation must still be executed by an individual who has been previously identified in writing to the Department.

(b) A power of attorney that was granted in compliance with the laws of the jurisdiction governing such power of attorney will be recognized and enforceable under the laws of the State of Delaware in accordance with its terms.

(83 Del. Laws, c. 149, § 1.)

§ 3203. Power of attorney is durable.

A power of attorney is durable if it contains the words: "This power of attorney shall not be affected by the subsequent incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity.

(83 Del. Laws, c. 149, § 1.)

§ 3204. Execution of personal power of attorney — Requirements; notice; certification.

(a) A personal power of attorney must be:

(1) In writing;

(2) Signed by the principal or by another person subscribing the principal's name in the principal's presence and at the principal's express direction;

(3) Dated; and

(4) Signed in the presence of a notarial officer or contain an electronic signature acceptable to the Department.

(b) A personal power of attorney may be accompanied by a notice in the following form, signed by the principal and placed at the beginning of the personal power of attorney. In the absence of a signed notice, upon a challenge to the authority of an agent to act under the personal power of attorney, the agent shall have the burden of demonstrating that the personal power of attorney is valid.

NOTICE

As the person signing this limited durable power of attorney you are the Principal.

The purpose of this power of attorney is to give the person you designate (your "Agent") broad powers to complete all paperwork necessary to accomplish any required actions set forth in this title without advance notice to you or approval by you.

This power of attorney does not authorize your Agent to make health-care decisions for you.

Unless you specify otherwise, your Agent's authority will continue even if you become incapacitated, or until you die or revoke the power of attorney, or until your Agent resigns or is unable to act for you. You should select someone you trust to serve as your Agent.

This power of attorney does not impose a duty on your Agent to exercise granted powers, but when powers are exercised, your Agent must use due care to act for your benefit and in accordance with this power of attorney.

Your Agent must keep your funds and other property separate from your Agent's funds and other property.

A court can take away the powers of your Agent if it finds your Agent is not acting properly.

The powers and duties of an Agent under a durable power of attorney are explained more fully in § 3212 of this title.

If there is anything about this form that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

I have read or had explained to me this notice and I understand its contents.

_____PrincipalDate_____PrincipalDate

(c) Regardless of the method by which a person accepts appointment as an agent under a personal power of attorney (pursuant to § 3211 of Title 21 of the Delaware Code), such agent shall have no authority to act as agent under the personal power of attorney unless the agent has first executed and affixed to the personal power of attorney a certification in substantially the following form:

AGENT'S CERTIFICATION

I, _____(Name of Agent), have read the attached limited durable personal power of attorney and I am the person identified as the Agent or identified as the Agent for the Principal. To the best of my knowledge this power has not been revoked. I hereby acknowledge that, when I act as Agent, I shall:

Act in accordance with the principal's reasonable expectations to the extent actually known to me and, otherwise, in the Principal's best interest;

Act in good faith;

Act only within the scope of authority granted in the personal power of attorney; and

To the extent reasonably practicable under the circumstances, keep in regular contact with the principal and communicate with the principal.

In addition, in the absence of a specific provision to the contrary in the limited durable personal power of attorney, when I act as Agent, I shall:

Keep the assets of the Principal separate from my assets;

Exercise reasonable caution and prudence; and

Keep a full and accurate record of all actions, receipts and disbursements on behalf of the Principal.

_____AgentDate_____AgentDate

(83 Del. Laws, c. 149, § 1.)

§ 3205. Execution of personal power of attorney— Validity; limited durable power of attorney; copies.

(a) A personal power of attorney is validly executed if it complies with § 3204 of this title, unless such personal power of attorney provides that it is governed by the laws of another jurisdiction, in which case, such personal power of attorney is validly executed if such execution complies with the laws of such other jurisdiction.

(b) A limited durable power of attorney (other than a personal power of attorney) will be deemed to be validly executed under the laws of this State if, when the power of attorney was executed, the execution complied with:

(1) The law of the jurisdiction that determines the meaning and effect of the power of attorney; or

(2) The requirements for a military power of attorney pursuant to 10 U.S.C. § 1044b, as amended.

(c) Except as otherwise provided by statute other than this chapter, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

(83 Del. Laws, c. 149, § 1.)

§ 3206. Nomination of guardian of person or property; relation of agent to court-appointed fiduciary.

(a) The appointment by a court of a guardian or other fiduciary charged with the management of the principal's property or the care of the principal's person shall terminate all personal powers of attorney.

(b) After the appointment of a guardian or other fiduciary charged with the management of the principal's property or the care of the principal's person, the agent is accountable to such guardian or other fiduciary as well as to the principal as to any personal powers of attorney which the agent continues to hold. A guardian or other fiduciary shall only have such powers to revoke or amend the powers of the agent as shall be given to such guardian or other fiduciary by the court.

(83 Del. Laws, c. 149, § 1.)

§ 3207. When the personal power of attorney is effective.

A personal power of attorney is effective when executed.

(83 Del. Laws, c. 149, § 1.)

§ 3208. Termination of personal power of attorney or agent's authority.

(a) A personal power of attorney terminates when:

(1) The principal dies;

(2) The principal revokes the personal power of attorney;

(3) A terminating event set forth in the personal power of attorney occurs;

(4) The purpose of the personal power of attorney is accomplished;

(5) The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the personal power of attorney does not provide for another agent to act; or

(6) The personal power of attorney is revoked by order of the Court of Chancery pursuant to § 3214 of this title or otherwise.

(b) An agent's authority terminates when:

(1) The principal revokes the authority;

(2) The agent dies, becomes incapacitated, or resigns;

(3) An action is filed for the dissolution or annulment of the agent's marriage to the principal, unless the personal power of attorney otherwise provides;

(4) All documentation has been submitted, accepted, processed and acted upon by the Department;

(5) One year from the date of execution of the power of attorney; or

(6) The personal power of attorney terminates.

(c) Unless the personal power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection (b) of this section, notwithstanding a lapse of time since the execution of the personal power of attorney.

(d) Termination of an agent's authority or of a personal power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the personal power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(e) The execution of a personal power of attorney does not revoke a personal power of attorney previously executed by the principal unless the subsequent personal power of attorney provides that the previous personal power of attorney is revoked or that all other personal powers of attorney are revoked.

(83 Del. Laws, c. 149, § 1.)

§ 3209. Concurrent agents, joint agents, and successor agents.

(a) A principal may designate 2 or more persons to act as concurrent agents. Each concurrent agent may exercise its authority independently.

(b) A principal may designate 2 or more persons to act as joint agents. No joint agent shall have the power to act without the agreement of all other joint agents and shall have no power to act independent of the other agent.

(c) If the principal designates more than 1 agent and does not specify that they are concurrent agents or joint agents, such agents shall be considered concurrent agents.

(d) A principal may designate 1 or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. Unless the personal power of attorney otherwise provides, a successor agent:

(1) Has the same authority as that granted to the original agent; and

(2) May not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

(e) A principal may give an appointed agent or another person designated by name, office or function the authority to designate by a writing executed by such person, 1 or more concurrent, joint, or successor agents in addition to those designated in the personal power of attorney. Unless the personal power of attorney authorizing the appointment of such further agents otherwise provides, a concurrent, joint, or successor agent appointed by this method:

(1) Has the same authority as that granted to the original agent; and

(2) May not act until the predecessor designee has resigned, died, become incapacitated, is no longer qualified to serve, or has declined to serve.

(f) Except as otherwise provided in the personal power of attorney and subsection (g) of this section, an acting agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

(g) An acting agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

(83 Del. Laws, c. 149, § 1.)

§ 3210. Reimbursement and compensation of agent.

(a) An agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal.

(b) An agent shall not be entitled to compensation unless:

(1) The personal power of attorney so provides; and

(2) The compensation is reasonable under the circumstances.

(83 Del. Laws, c. 149, § 1.)

§ 3211. Agent's acceptance.

Except as otherwise provided in the personal power of attorney, a person accepts appointment as an agent under a personal power of attorney by signing the agent's certification (pursuant to § 3204 of this title) or by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

(83 Del. Laws, c. 149, § 1.)

§ 3212. Agent's duties.

(a) Notwithstanding provisions in the personal power of attorney, an agent that has accepted appointment pursuant to a personal power of attorney shall, in connection with exercising the authority granted to such agent therein:

(1) Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;

(2) Act in good faith;

(3) Act only within the scope of authority granted in the personal power of attorney; and

(4) To the extent reasonably practicable under the circumstances, keep in regular contact with the principal and communicate with the principal.

(b) Except as otherwise provided in the personal power of attorney, an agent that has accepted appointment shall:

(1) Act loyally for the principal's benefit;

(2) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;

(3) Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances; and

(4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal.

(c) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(d) If an agent has special skills or expertise the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

(e) An agent that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(f) Except as otherwise provided in the personal power of attorney and by § 3206 of this title, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested the agent shall comply with the request within a reasonable period of time.

(83 Del. Laws, c. 149, § 1.)

§ 3213. Exoneration of agent.

A provision in a personal power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

(1) Relieves the agent of liability for breach of duty committed in bad faith or with reckless indifference to the purposes of the personal power of attorney or the best interest of the principal; or

(2) Was inserted as a result of undue influence upon the principal.

(83 Del. Laws, c. 149, § 1.)

§ 3214. Judicial relief.

(a) A person designated in subsection (b) of this section may petition the Court of Chancery requesting that the Court:

(1) Determine whether the personal power of attorney or the authority of an agent is in effect or has terminated pursuant to § 3208 of this title or otherwise;

(2) Compel the agent to exercise or refrain from exercising authority in a particular manner or for a particular purpose;

(3) Compel the agent to account for transactions conducted on the principal's behalf pursuant to § 3212(f) of this title;

(4) Modify, suspend, or revoke the powers of the agent to act under a personal power of attorney, and, if the principal has not designated another agent or successor agent in the personal power of attorney, appoint another agent to act in place of the agent whose powers are modified, suspended, or revoked;

(5) Determine an agent's liability for violation of the agent's duties pursuant to § 3212 of this title.

(b) Any of the following persons may file a petition seeking appropriate relief under this section:

(1) The principal or the agent;

(2) The spouse, child, or parent of the principal;

(3) A guardian, trustee, or other fiduciary acting for the principal;

(4) The personal representative, trustee, or a beneficiary of the principal's estate;

(5) Any other interested person, as long as the person demonstrates to the Court's satisfaction that the person is interested in the welfare of the principal and has a good faith belief that:

a. The Court's intervention is necessary; and

b. The principal is incapacitated at the time of filing the petition or otherwise unable to protect that principal's own interests; or

(6) A person asked to accept a personal power of attorney.

(c) Upon motion by the principal, who shall be presumed to have legal capacity, the Court shall dismiss a petition filed under this section, unless the Court finds that the principal lacks capacity to revoke the agent's authority or the personal power of attorney.

(d) Nothing in this section shall preclude or diminish the Court's authority to appoint a guardian or other fiduciary pursuant to Chapter 39 of Title 12, or to order other judicial relief, in order to grant appropriate relief upon review of a personal power of attorney or an agent's conduct with respect to a personal power of attorney.

(e) Nothing in this section shall preclude the Department of Health and Social Services, the Public Guardian, or other governmental agency having authority to protect the welfare of the principal from petitioning the Court for access to the principal or to records necessary to determine, or terminate, possible abuse, neglect, exploitation or abandonment of the principal.

(83 Del. Laws, c. 149, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1.)

§ 3215. Agent's resignation; notice.

Unless the personal power of attorney provides a different method for an agent's resignation, an agent may resign by giving written notice to the principal and, if the principal is incapacitated:

(1) To the guardian, if 1 has been appointed for the principal, and a concurrent agent or successor agent; or

(2) If there is no person described in paragraph (1) of this section, to:

a. The principal's primary caregiver;

b. Another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or

c. A governmental agency having authority to protect the welfare of the principal.

(83 Del. Laws, c. 149, § 1.)

§ 3216. Acceptance of and reliance upon acknowledged personal power of attorney.

(a) For purposes of this section, "acknowledged" means purportedly verified before a notarial officer or contain an electronic signature acceptable to the Department.

(b) A person that in good faith accepts an acknowledged personal power of attorney without actual knowledge that the signature is not genuine may rely upon a presumption that the signature is genuine.

(c) A person that in good faith accepts an acknowledged personal power of attorney without actual knowledge that the personal power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the personal power of attorney as if the personal power of attorney were genuine, valid and still in effect, the agent's authority were genuine, valid and still in effect, and the agent had not exceeded and had properly exercised the authority.

(d) A person that is asked to accept an acknowledged personal power of attorney may request, and rely upon, without further investigation, an English translation, under oath of the translator, of the personal power of attorney if it contains, in whole or in part, language other than English.

(e) For purposes of this section, a person that conducts activities through employees is without actual knowledge of a fact relating to a personal power of attorney, a principal, or an agent if the employee conducting the transaction involving the personal power of attorney is without actual knowledge of the fact. Notification of revocation of a personal power of attorney by a principal or agent to an officer of a bank or other financial institution shall constitute actual notice to all employees.

(83 Del. Laws, c. 149, § 1.)

§ 3217. Acceptance of electronic signatures.

The Department may accept electronic signatures on any documents required to be submitted pursuant to this title.

(83 Del. Laws, c. 149, § 1.)

Part II
Registration, Title and Licenses
Chapter 33
Licensed Transporters

(84 Del. Laws, c. 302, § 3.)

§ 3301. Transporter license requirements.

(a) No individual, corporation, partnership, sole-proprietorship, or other legal entity may carry on or conduct the business of transporting vehicles unless issued a transporter license by the Division of Motor Vehicles. A transporter license issued under this title is not transferrable.

(b) An application for a transporter license must be made upon the form prescribed by the Division and must contain a certification by the applicant stating the information provided is true and accurate to the best of the applicant's knowledge.

(c) The owner of a transporter business must have a valid Delaware driver's license and established residency in Delaware at least 90 days prior to the time of application.

(d) An applicant for a transporter license must be at least 18 years of age, with a minimum of 1 year driving authority, on the date the application is submitted.

(e) A transporter licensee who is under the age of 21 may only operate a motor vehicle that is displaying a Delaware transporter plate on the vehicle or any attached trailer or mobile home within Delaware. Only individuals over the age of 21 may operate a motor vehicle that is displaying a Delaware transporter plate on the vehicle or any attached trailer or mobile home outside of Delaware.

(f) (1) An applicant seeking a transporter license or license renewal, if more than 5 years have passed since the initial transporter license was granted, must submit fingerprints and other necessary information as may be required to obtain a report of the applicant's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Central Repository contains no such information relating to the applicant.

(2) All information obtained under this subsection must be forwarded to the Division of Motor Vehicles for review to determine the applicant's suitability for licensure. Information obtained under this subsection is confidential and may only be disclosed to the Director of the Division or the Director's designee.

(g) An applicant for a transporter license must verify, on a form prescribed by the Division of Motor Vehicles or through other means deemed acceptable by the Division through regulation, that the transporter has liability insurance as required under § 2118 of this title.

(h) The fee for a transporter license is $50.

(i) An applicant for a transporter license must have a valid business license from the Delaware Division of Revenue and must satisfy any local or municipal business licensing requirements.

(84 Del. Laws, c. 302, § 3.)

§ 3302. Transporter location and business requirements.

(a) Except as provided herein, a transporter license may not be issued to a vehicle transporter unless the transporter has an established place of business that is owned, rented, or leased by the transporter, and which meets the following criteria:

(1) A telephone number is listed in the name of the business.

(2) The Division of Revenue business license, any local or municipal business license, and the transporter license are kept at the business location, prominently displayed, and available for inspection by the Division of Motor Vehicles.

(3) The business maintains and has adequate storage to maintain any records required by the Division of Motor Vehicles. All records regarding the transportation of vehicles and records of transporter registration plates assigned to the transporter must be maintained in paper or electronic form on the premises of the licensed location. Any records required by the Division must be maintained for a minimum of 5 years.

(b) Every transporter must have in the transporter's possession, prior to taking possession of a motor vehicle or mobile home for transport, a written agreement that confirms the transporter is contracted to pick up and deliver the motor vehicle or mobile home.

(c) During all posted business hours, the records of the transporter must be open to inspection by the Division, any police officer, or any duly authorized investigator at the Department of Justice while discharging their official duties.

(d) At least 30 days prior to changing the location of the transporter's business, the transporter must notify the Division upon a form prescribed by the Division.

(84 Del. Laws, c. 302, § 3.)

§ 3303. Issuance of transporter license.

Upon receiving an application for a transporter license from an applicant and determining, so far as possible, that the applicant is of good character and that the applicant has complied with and reasonably can be expected to comply with the laws of this State and requirements of this chapter, the Division may approve an application and issue a transporter license to the applicant.

(84 Del. Laws, c. 302, § 3.)

§ 3304. Expiration and renewal of transporter license.

(a) Each license issued under this chapter must expire either 12 or 24 months after issuance or renewal.

(b) A transporter license expires upon the expiration date unless properly renewed under procedures or regulations promulgated by the Division of Motor Vehicles.

(c) A licensee seeking to renew a license must pay, in addition to any other renewal fee required, a fee of $10 per year for each transporter plate issued to the licensee.

(84 Del. Laws, c. 302, § 3.)

§ 3305. Prohibited acts.

(a) A licensed transporter, or any agent or employee of the transporter, may not permit any individual to operate a vehicle or mobile home bearing a transporter plate if they know the individual does not have a valid driver's license.

(b) A licensed transporter, or any agent or employee of the transporter, may not commit any illegal activity incident to the transport of a vehicle, and may not commit fraud in the execution of, or any material alteration of, a contract, power of attorney, or other document incident to the transport of a vehicle.

(c) A licensed transporter, or any agent or employee of the transporter, may only use a transporter plate or allow a transporter plate to be used on an unregistered vehicle delivered by the transporter. A transporter plate may not be used on any motor vehicle or mobile home that is registered in any state. A transporter plate may not be used on any OHV or any other mobile equipment or motorized apparatus which is not eligible to be registered within Delaware.

(d) A licensed transporter, or any agent or employee of the transporter, may not use a transporter plate on a vehicle without first preparing a written record as required by § 2124(d) of this title.

(e) A licensed transporter, or any agent or employee of the transporter, may not use a transporter license plate on a vehicle owned or leased by the transporter, its officers, or any of its employees.

(84 Del. Laws, c. 302, § 3.)

§ 3306. Acts of officers, directors, partners, employees, and agents.

(a) If a licensed transporter is a partnership or corporation, it is sufficient cause for the denial, suspension, or revocation of the license if any officer, director, or trustee of the partnership or corporation, or any member in the case of a partnership, has committed any act or omitted any duty that would be cause for the denial, suspension, or revocation of a license issued to the officer, director, trustee, or member as an individual under this chapter.

(b) For purposes of this section, a licensee is responsible for and deemed to have committed an act of an employee or other agent of the licensee while acting as the licensee's employee or agent, if the licensee approved of the act or had knowledge of the act or similar acts, and if the licensee, after approving the act or having such knowledge, retained the benefit, proceeds, profits, or advantages accruing from the act.

(84 Del. Laws, c. 302, § 3.)

§ 3307. Denial of an application for licensure or renewal of a transporter license; suspension or revocation of a transporter license.

(a) The Division may deny an original or renewal application for licensure, or may suspend or revoke a transporter license if the applicant or licensee has committed any act prohibited under this chapter or failed to comply with any requirement of this chapter, or for any of the following reasons:

(1) The original or renewal application for the transporter license contains a material misstatement or omission.

(2) The applicant or licensee fails to comply with a cease-and-desist order or written warning issued by the Division.

(3) The applicant or licensee fails to comply with the requirements of this title in connection with the operation of a transporter business.

(4) The applicant or licensee has been convicted of a felony in this State or any other jurisdiction. A felony conviction may be waived by the Division for purposes of licensure if, at the time the application is submitted, more than 10 years have passed since the date of conviction. The Division may not waive a felony in considering an application if the applicant is incarcerated, on work release, on probation, on parole, or serving any part of a suspended sentence, or if the applicant is not in substantial compliance with all court orders pertaining to fines, restitution, and community service.

(5) The applicant or licensee has been convicted of a misdemeanor involving theft, fraud, dishonesty, false pretense, or moral turpitude in this State or any other jurisdiction. A misdemeanor conviction may be waived by the Division for purposes of licensure if, at the time the application is submitted, more than 5 years have passed since the date of conviction. The Division may not waive a misdemeanor in considering an application if the applicant is incarcerated, on work release, on probation, on parole, or serving any part of a suspended sentence, or if the applicant is not in substantial compliance with all court orders pertaining to fines, restitution, and community service.

(6) The applicant or licensee has been convicted of any crime that the Division deems by regulation may create public safety concerns, regardless of the classification of the offense. The Division may not waive any conviction of a crime that creates public safety concerns.

(7) The applicant or licensee fails to notify the Division within 72 hours of any known change in criminal history.

(8) The Division determines, so far as can be ascertained, that the applicant or licensee does not or no longer meets the standards set forth in this chapter.

(9) The applicant or licensee does not have valid driving authority, has more than 8 points, has had a license to drive suspended or revoked in the previous 5 years, or has hired or otherwise permitted an individual without valid driving authority, with more than 8 points, or who has had a license to drive suspended or revoked in the previous 5 years to operate a vehicle in the transporter's business.

(10) The applicant or licensee, while under the age of 21, has operated a motor vehicle or towed a trailer or mobile home displaying a Delaware transporter plate outside the State, or the applicant or licensee hired or otherwise permitted an individual under the age of 21 to operate a motor vehicle or tow a trailer or mobile home displaying a Delaware transporter plate outside the State.

(11) The applicant previously held a transporter or dealer license that was revoked by the Division or suspended by the Division and the terms of the suspension have not been satisfied.

(12) The applicant or licensee solely employs call forwarding, telephone answering service, or mail forwarding services during scheduled business hours or otherwise operates from a remote or otherwise unlicensed location.

(13) The applicant or licensee has failed to maintain a written record required under § 2124(d) of this title.

(14) The applicant or licensee has used a transporter plate for personal use on a vehicle owned by the transporter or any employee or agent of the transporter.

(15) The applicant or licensee has used a transporter plate on a motor vehicle that is registered in this State or any other state.

(16) The applicant or licensee has used a transporter plate on any OHV or on any mobile equipment or motorized apparatus that is not eligible to be registered in this State.

(b) The Division must defer any original application for licensure or renewal application if the applicant has pending criminal charges that would be grounds for denying an application or suspending or revoking a license if convicted under paragraph (a)(4), (a)(5), or (a)(6) of this section.

(84 Del. Laws, c. 302, § 3.)

§ 3308. Notification of intent to suspend or revoke a license or deny an original or renewal application.

(a) No transporter license issued under this title may be suspended or revoked, nor may an application for licensure or renewal be denied, unless a notice of the Division's intent to suspend or revoke the license or deny the application has been furnished to the applicant or licensee.

(b) The written notice may be sent to the applicant or licensee by certified mail, return receipt requested, addressed to the last known address as shown on the driver's license, transporter license application, or other record of information in possession of the Division, or may be hand delivered to a person of suitable age and discretion at the licensed business location of the transporter. If the notice is returned as unclaimed, notice may be provided to the applicant or licensee in the same manner as service of process may be effected in civil litigation.

(c) The written notice must contain the following:

(1) The Division's intention to suspend, revoke, or deny the application for licensure or renewal of the transporter license.

(2) The reason for the intended action, including any law or regulation allegedly violated by the transporter.

(3) A citation to the law or regulation giving the Division authority to act.

(4) The right of the applicant or licensee to request a hearing to dispute the intended action. The hearing must be requested within 10 days of the earlier of the date the applicant or licensee received the notice or the Division received the return receipt.

(5) The right of the applicant or licensee to present evidence, be represented by counsel, and appear personally or by representative at any hearing requested under this section.

(d) If no hearing is requested within the allotted time, the Division may issue a final decision, which may be provided to the applicant or licensee in the same manner as the written notice under this section.

(e) Any hearing requested by a transporter under this section must follow the procedures set forth in § 3310 of this title.

(84 Del. Laws, c. 302, § 3.)

§ 3309. Effect of denial of original or renewal application or revocation on applicant or licensee.

(a) A transporter whose application for licensure or renewal has been denied, or whose license has been revoked, may not be employed by any other licensed transporter or dealership, nor may the transporter be employed in any of the capacities listed in this section for the following time periods:

(1) If the transporter's license is revoked, for 5 years from the effective date of the revocation.

(2) If a transporter's original or renewal application is denied, for 12 months from the date of the decision denying the application, or any other time period set forth in the decision.

(b) When issuing a decision that revokes or suspends a transporter license, or that denies an original or renewal application, the Division must provide the applicant or licensee with notice of the following:

(1) The transporter must return all documentation and transporter plates required under § 3311 of this title.

(2) If the transporter does not return the documentation or plates as required by this section within 30 days from the date the Division provides the required notification, the time periods set forth in subsection (a) of this section are extended by 1 day for each day the documentation and transporter plates remain outstanding.

(3) If the documentation and transporter plates are not provided within 6 months of the deadline, the time periods set forth in subsection (b) of this section may be extended indefinitely.

(c) If a transporter is or is found to have been employed in violation of this section, the time periods set forth in subsection (a) are extended by 6 months for every month the transporter is employed in violation of this section.

(d) The prohibitions set forth in this section apply to any individual applicant or licensee. If the applicant or licensee is a partnership, the prohibitions set forth in this section apply to each individual partner listed on the application. If the applicant or licensee is a corporation, the prohibitions set forth in this section apply to the individual or individuals who signed the application.

(e) The Division must notify any transporter found to be in violation of this section of its intent to extend the suspension of the license or any time periods set forth under subsection (a) of this section. The notice may be provided in the same manner as the notice of intent to revoke or suspend the license or deny the original or renewal application under § 3308 of this title. The notice must include the following:

(1) The Division's intent to extend the suspension or any time periods set forth under subsection (a) of this section.

(2) The nature of the violations committed by the transporter.

(3) An explanation that the transporter has a right to request a hearing to dispute the intended extension of the suspension or time periods set forth under subsection (a) of this section, that the hearing must be requested within 10 business days from the earlier of the date the applicant or licensee receives the notice or the Division receives the return receipt.

(4) An explanation that the transporter has the right to present evidence, to be represented by counsel, and to appear personally or by other representative at the hearing, if requested.

(f) If no hearing is requested within the allotted time, the Division may issue a final decision, which may be provided to the applicant or licensee in the same manner as the written notice under this section.

(g) Any hearing requested by a transporter under this section must follow the procedures set forth in § 3310 of this title.

(84 Del. Laws, c. 302, § 3.)

§ 3310. Hearings.

(a) If a transporter timely requests a hearing to contest any proposal to suspend or revoke a license, to deny an original or renewal application for a license, or to extend any period of suspension or other time period established under this chapter, the Division must provide the requested hearing.

(b) The Division must provide notice of the time, date, and location of the hearing at least 30 days in advance of the hearing.

(c) At any hearing under this section, the transporter has the right to be heard personally, by counsel, or by other representative.

(d) Prior to a hearing under this section, the Director may initiate investigations, appoint a hearing officer, and subpoena witnesses.

(e) A hearing officer may make findings of fact and issue recommendations to the Division. If the findings of fact support the proposed action, the Director may issue a decision taking the proposed action.

(f) In considering whether or not to suspend or revoke a license, deny an original or renewal application, or extend any time periods under this section, the Director must consider the following facts:

(1) The nature of the violation or violations and, if appropriate, the willingness and ability of the transporter to make restitution to any party harmed by the actions of the transporter.

(2) The effect of the proposed action on the parties involved.

(g) Following a hearing and after considering all relevant facts or if a timely hearing request is not received after issuing the notice of intent under § 3308 or § 3309 of this title, the Director must issue a written decision to all parties involved. A copy of the decision must be provided to the transporter in the same manner as the notice of intent to revoke or suspend the license or deny the original or renewal application under § 3308 of this title.

(h) A final decision of the Director may be appealed to the Superior Court. The notice of appeal must be filed within 30 days of the earlier of the date the applicant or licensee receives the decision or the Division receives the return receipt.

(84 Del. Laws, c. 302, § 3.)

§ 3311. Return of license and transporter plates.

If a licensed transporter fails to renew the transporter's license, or if the Division revokes a transporter license or denies the renewal of a transporter licensed under this chapter, the transporter must immediately return both the license and all transporter plates issued to the transporter.

(84 Del. Laws, c. 302, § 3.)

§ 3312. Cease and desist orders and injunctive relief.

(a) In addition to the legal remedies provided for in this chapter, the Division has authority to issue cease and desist orders to any person, corporation, partnership, or other legal entity who violates this chapter.

(b) The Division may file a complaint for injunctive relief with the Court of Chancery upon notice of a violation of a cease and desist order issued under this section. The Court of Chancery may award attorneys' fees and costs if a preliminary or permanent injunction is granted by the Court. Nothing herein prevents the Department of Justice from seeking any civil remedy or criminal sanction for any conduct constituting a violation of this chapter.

(84 Del. Laws, c. 302, § 3.)

Part III
Operation and Equipment
Chapter 41
Rules of the Road
Subchapter I
Obedience to and Effect of Traffic Laws

§ 4101. Provisions refer to vehicles upon highways; exceptions; powers of local authorities.

(a) The provisions of this title relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(1) Where a different place is specifically referred to in a given section.

(2) That subchapter IX of this chapter shall apply upon highways and elsewhere throughout the State.

(3) That subchapter VIII of this chapter and § 4164 of this title shall apply upon highways and elsewhere throughout the State, except that subchapter VIII of this chapter and § 4164 of this title shall not apply upon any nonresidential, commercial property, except as set forth in § 4172 of this title. For the purposes of this paragraph, "elsewhere," except for purposes of § 4172 of this title, shall mean only those areas regulated by traffic-control devices which have been reviewed and approved as acceptable for the area by the Delaware Department of Transportation.

(4) Upon application by a majority of persons having a property interest in a private road or way upon which motor vehicles are driven, the appropriate agency or officer of any town, city or county in which such private property is located may petition the Department of Safety and Homeland Security (hereinafter "Department") in a manner prescribed by the Department, requesting the Department assume jurisdiction over such private property. Upon acceptance of jurisdiction over the private property, the Department shall, by written notice, so notify each governmental body and property owner affected and shall supply copies of such notice to all appropriate courts and law-enforcement agencies. One week following the official acceptance of such jurisdiction, all provisions of Title 17 and this title shall apply to the affected private property. The installation and maintenance of all traffic-control devices authorized by the Department of Transportation shall be undertaken by the owners at no cost to the State.

(b) Local authorities, except as expressly authorized by law, shall not enact or enforce any rules or regulations contrary to this chapter. Traffic ordinances and regulations adopted by local authorities, and substantially conforming to the sections of this chapter, shall have the same force and effect as the traffic laws of this title. Whenever any provision of this title refers to a specific section of this title, such section shall be deemed to include substantially conforming ordinances and regulations enacted by local authorities. The court's notice of conviction for violating a local ordinance or regulation that substantially conforms to this title, when included in the person's driving record, shall be deemed to be equivalent to a violation of the state statute to which it conforms. This section shall not be deemed to affect the jurisdiction for violations of local traffic ordinances or regulations nor the fine to be imposed for such a violation. Local authorities may regulate the use of the highways by processions or assemblages. Nothing in this chapter shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as a matter of right from prohibiting such use nor requiring other or different or additional conditions than those specified in this chapter or otherwise regulating such use as seems best to such owner.

(c) The authority to authorize, maintain, install and remove all traffic-control devices necessary to implement this title is provided to the Department of Transportation and to local authorities in their respective jurisdictions by Chapter 1 of Title 17. Unless otherwise provided in this title, the authorities granted are uniformly applicable to all sections of this title.

(d) *Liability for failure of owner to comply with traffic light signals.* — (1) The Department of Safety and Homeland Security and/or the governing body of any city or any county may provide, by regulation or ordinance, for the establishment of a program imposing monetary liability on the owner of a motor vehicle for failure to comply with traffic light signals in accordance with the provisions of this subsection. This subsection allows the Department of Transportation and/or the governing body of any city or county to install and operate traffic light signal violation monitoring systems; provided however, that in the event the installation other than by the Department of Transportation, the Department of Transportation must first approve such installation using the same recognized safety and accident criteria which the Department of Transportation uses to determine new locations; and provided further that the duration of the yellow light change interval, at any intersection where a traffic control photographic system or other traffic light signal violation monitoring system is in use, must be no less than the yellow light change interval duration specified in the design manual developed by the Department of Transportation. All existing locations erected without the Department of Transportation prior approvals shall be reviewed by the Department of Transportation using same recognized safety and accident criteria used to authorize new locations. Any location which fails to meet the criteria shall be removed upon end of the contract with the camera operator vendor.

(2) Jurisdictions operating an Electronic Red Light Safety Program can only issue right turn on red violations if there is safety and crash data to support it as determined by the Department of Transportation.

(3) *Liability.* — The owner or operator of a vehicle which has failed to comply with a traffic light signal, as evidenced by information obtained from a traffic light signal violation monitoring system, shall be subject to a civil or administrative assessment not to exceed

$110; provided, however, that the city or county may provide for an additional assessment not to exceed $10 if the civil or administrative assessment is not paid within 20 days, which assessment may be increased to an amount not to exceed $20 if the assessment is not paid within 45 days, and may be increased to an amount not to exceed $30 if the assessment is not paid within 90 days. Court costs or similar administrative fees not to exceed $35 may also be assessed against an owner or operator who requests a hearing to contest the violation and is ultimately found or pleads responsible for the violation or who fails to pay or contest the violation in a timely manner. No assessments and court costs other than those specified in this subsection may be imposed. A violation for which a civil assessment is imposed under this subsection shall not be classified as a criminal offense and shall not be made a part of the operating record of the person upon whom such liability is imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance. Assessments collected as a result of a traffic control signal monitoring system shall be paid to the city or county which controlled the monitoring system, or the General Fund for personnel, after first being applied to reimburse the applicable state agencies for their costs of administering such systems.

(4) *Definitions.* — For purpose of this subsection only:

a. "Owner" means the registered owner of such vehicle on record with this or any other state; provided, however, that in the event that the owner is a vehicle leasing company, the "owner," for purposes of this subsection, shall mean the person shown on the records to be the lessee of such vehicle. Vehicle rental companies are excluded from the definition of "owner."

b. "Traffic light signal violation monitoring system" means a vehicle sensor installed to work in conjunction with a traffic light that automatically produces 2 or more photographs, or 2 or more microphotographs, or a videotape, or other recorded images of each vehicle at the time it is used or operated in violation of this subsection.

(5) *Summons and notice of violation.* — Any nonresident owner or operator of any motor vehicle which is operated or driven on the public streets, roads, turnpikes or highways of this State is deemed to have submitted to the jurisdiction of the Delaware courts for purposes of this subsection. Notwithstanding any other provision of the Delaware Code, a summons for a violation of this subsection may be executed by mailing to any Delaware resident or nonresident by first class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Division of Motor Vehicles of this or any other state, as appropriate. Collection actions, including default judgment and execution, may proceed based upon jurisdiction obtained through the mailing by first class mail of a summons and subsequent court notices pursuant to this subsection. Every initial mailing shall include the:

a. Name and address of the owner of the vehicle;

b. Registration number of the motor vehicle involved in the violation;

c. Violation charges;

d. Location where the violation occurred;

e. Date and time of the violation;

f. Copies of 2 or more photographs, or microphotographs or other recorded images, taken as proof of the violation;

g. Amount of the civil assessment imposed and the date by which the civil assessment should be paid;

h. Information advising the summonsed person of the matter, time and place by which liability as alleged in the notice may be contested, and warning that the failure to pay the civil assessment or to contest liability in a timely manner is an admission of liability and may result in a judgment being entered against the summonsed person and/or the denial of the registration or the renewal of the registration of any of the owner's vehicles; and

i. Notice of the summonsed person's ability to rebut the presumption that the summonsed person was the operator of the vehicle at the time of the alleged violation and the means for rebutting such presumption.

(6) *Payment by voluntary assessment.* — Persons electing to pay by voluntary assessment shall make payments to the entity designated on the summons for payment. Such entity may be the Justice of the Peace Court or an entity designated by the Court, the Department of Safety and Homeland Security, or by the city or county in which the traffic light was located. Procedures for payment under this subsection shall be as provided by court rule or policy directive of the Justice of the Peace Court, by regulation of the Department of Safety and Homeland Security, or by regulation, code or ordinance of the applicable city or county, and shall be in lieu of the procedures set forth in § 709 of this title.

(7) *Procedures to contest the violation.* — A person receiving the summons pursuant to this subsection may request a hearing to contest the violation by notifying, in writing, the entity designated on the summons within 20 days of the date. Upon receipt of a timely request for a hearing a civil hearing shall be scheduled and the defendant notified of the hearing date by first class mail. A civil hearing shall be held by the Justice of the Peace Court or such other entity as designated by the Department of Safety and Homeland Security or applicable county or city. The hearing may be informal and shall be held in accordance with Justice of the Peace Court rules or policy directive, regulation of the Department of Safety and Homeland Security, or by regulation, code or ordinance of the applicable city or county. Additional administrative collection processes may be established by court rule, policy directive, regulation, code or ordinance, as applicable. Costs for such hearing shall not be assessed against the prevailing party. There shall be no right of transfer to the Court of Common Pleas.

(8) *Failure to pay or successfully contest the violation.* — If the owner or an operator identified by the owner fails to pay the civil penalty by voluntary assessment, request a hearing within the required time or submit an affidavit stating that the owner or operator

identified was not the driver, the Division of Motor Vehicles may refuse to renew the registration of the owner's vehicle operated at the time the summons was issued. If the owner or an operator identified by the owner is found responsible at a hearing and fails to pay as ordered by the Court, or requests a hearing and fails to appear, the Division of Motor Vehicles shall suspend the license of the owner or operator.

Upon receiving a record of failure to comply, the Clerk may enter a civil traffic judgment against the owner or operator in the amount of the civil penalty, costs, and any applicable penalty amounts, giving credit for any amount paid. Such judgment may, upon motion, be transferred by the Court to the civil docket. Any judgment so transferred may be executed and enforced or transferred in the same manner as other judgments of the Court and the Division of Public Safety or its designee, or the applicable city or county shall have authority to seek such execution, enforcement or transfer.

(9) *Proof of violation.* — Proof of a violation of this subsection shall be evidenced by information obtained from a traffic light signal violation monitoring system authorized pursuant to this subsection. A certificate, or facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a traffic light signal violation monitoring system shall constitute prima facie evidence of the facts contained therein, if the certificate, or facsimile thereof, is sworn to or affirmed by a technician employed by a locality authorized to impose assessments pursuant to this subsection, or a technician employed by a state agency or entity designated by a state agency for the purposes of this section. Any photographs, microphotographs, videotape or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to regulation, ordinance or other law adopted pursuant to this subsection.

(10) *Presumptions.* — The owner of any vehicle found to be in violation of this subsection shall be held prima facie responsible for such violation in the same manner as provided for under § 7003 of this title, unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody or control of another person. Such presumption shall be rebutted if the owner:

a. Furnishes an affidavit by regular mail to the entity indicated on the summons that the owner was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person or company who leased, rented or otherwise had the care, custody or control of the vehicle, or attaches a certified copy of a police report showing that the vehicle or license plate or plates thereof had been reported to the police as stolen prior to the time of the alleged violation of this subsection; or

b. Provides proof in court or to the entity handling the administrative appeal process that the owner was not the operator of the vehicle at the time of the alleged violation or that the owner failed to comply with the traffic signal either in order to yield the right-of-way to an emergency vehicle or as part of a funeral procession.

A summons may be issued to a person identified by affidavit or evidence in court as the actual operator of the vehicle shown to have violated the traffic light signal. There shall be a presumption that the person so identified was the driver. The presumption may be rebutted as described in this subsection.

(11) Notwithstanding any other provision in this section, if the motor vehicle which is found by the traffic light signal violation monitoring system to have failed to comply with a traffic light signal is commercially licensed, then the owner of that vehicle shall be sent notice of the date, time and location of the violation with 2 photographs thereof. Within 10 days of the receipt of said notice, the owner of the vehicle shall provide the law-enforcement agency which has issued the summons with the name and address of the driver of the vehicle at the date, time and location of the violation and, within the same time period, shall provide the driver of the vehicle with the photographs of the violation. After receipt by the law-enforcement agency which has issued the summons of the name and address of the driver of the vehicle at the time of the violation, the driver of the vehicle shall be prima facie responsible for such violation in the same manner as provided for under § 7003 of this title and shall be subject to the provisions of this section. Failure of the owner of the vehicle found to be in violation of subsection (d) to provide the name and address of the driver at the time of the violation within the period prescribed shall cause the owner to be held responsible as set forth in paragraph (d)(5) of this section.

(12) Any person found responsible for a civil traffic offense shall have a right of appeal only in those cases in which the civil penalty imposed exceeds $100, upon giving bond with surety satisfactory to the judge before whom such person was found responsible, such appeal to be taken and bond given within 15 days from the time of the finding of responsible. Such appeal shall operate as a stay or supersedeas of all proceedings in the court below in the same manner that a certiorari from the Superior Court operates. The taking of such appeal shall constitute a waiver by the appellant of the appellant's right to a writ of certiorari in the Superior Court. Additional penalty assessments for late payment/response pursuant to paragraph (d)(3) of this section shall be included in determining the amount of the civil penalty for purposes of determining the right to an appeal.

(21 Del. C. 1953, § 4101; 54 Del. Laws, c. 160, § 1; 57 Del. Laws, c. 670, § 13A; 58 Del. Laws, c. 515, § 1; 60 Del. Laws, c. 701, § 8; 63 Del. Laws, c. 449, § 1; 68 Del. Laws, c. 390, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 89, §§ 1, 2; 73 Del. Laws, c. 204, § 1; 74 Del. Laws, c. 66, § 1; 74 Del. Laws, c. 110, §§ 84, 85, 138; 74 Del. Laws, c. 301, § 1; 75 Del. Laws, c. 56, §§ 1-12; 76 Del. Laws, c. 79, § 118(1), (2); 77 Del. Laws, c. 281, § 1; 80 Del. Laws, c. 299, § 126; 83 Del. Laws, c. 283, § 35; 83 Del. Laws, c. 294, § 2.)

§ 4102. Required obedience to traffic laws.

It is unlawful for any person to do any act forbidden or fail to perform any act required in this chapter.

(21 Del. C. 1953, § 4102; 54 Del. Laws, c. 160, § 1; 77 Del. Laws, c. 60, § 1.)

§ 4103. Obedience to authorized persons directing traffic.

(a) (1) No person shall wilfully fail or refuse to comply with any lawful order or direction of any of the following, who are invested by law with authority to direct, control, or regulate vehicle and pedestrian traffic:

a. A police officer.

b. An authorized flagperson.

c. A fire police officer.

d. A uniformed adult school crossing guard.

e. A commissioned constable.

(2) This subsection does not operate to relieve a driver of the duty to operate the driver's vehicle with due regard to the safety of all persons using the highway.

(b) Any driver who, having received a visual or audible signal from a police officer identifiable by uniform, by motor vehicle or by a clearly discernible police signal to bring the driver's vehicle to a stop, operates the vehicle in disregard of the signal or interferes with or endangers the operation of the police vehicle or who increases speed or extinguishes the vehicle's lights and attempts to flee or elude the police officer shall be guilty of a class G felony, with a minimum fine of $575 which may not be suspended. Upon receiving notice of such conviction the Secretary, at the Secretary's discretion, may forthwith revoke the operator's or chauffeur's license of the person so convicted for a period of 2 years. For each subsequent like offense, the person shall be guilty of a class E felony, with a minimum fine of $1,150 which may not be suspended. Upon receiving a court notice of conviction for a subsequent like offense, the Secretary shall revoke the operator's or chauffeur's license for an additional 3-year period. It shall be an affirmative defense for this section if the driver proceeds at or below the posted speed limit to a safe location or, at nighttime to a well-lit reasonable location and stops the vehicle at that point that the driver is not guilty of this section.

(c) If any vehicle is witnessed by a police officer to be in violation of subsection (b) of this section and the identity of the operator is not otherwise apparent, it shall be a rebuttable presumption that the persons in whose name such vehicle is registered, to whom a rental vehicle is leased or whose name appears on a company's records as driving a company vehicle, committed such violation of subsection (b) of this section.

(21 Del. C. 1953, § 4103; 54 Del. Laws, c. 160, § 1; 57 Del. Laws, c. 141; 57 Del. Laws, c. 670, § 13B; 60 Del. Laws, c. 701, § 9; 64 Del. Laws, c. 164, § 1; 68 Del. Laws, c. 9, § 21; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 289, §§ 1-3; 85 Del. Laws, c. 9, § 1.)

§ 4104. Persons riding animals or driving animal-drawn vehicles.

Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application.

(21 Del. C. 1953, § 4104; 54 Del. Laws, c. 160, § 1.)

§ 4105. Persons and vehicles working on highways and utilities; exceptions.

(a) Unless specifically made applicable, the provisions of this title, except those contained in subchapter IX of this chapter, shall not apply to persons, motor vehicles and other equipment while actually engaged in work upon a highway or in work upon utility facilities along a highway, so long as proper traffic-control devices are posted, but shall apply to such persons and vehicles when traveling to or from such work.

(b) The driver of a vehicle shall yield the right-of-way to any authorized vehicle or pedestrian actually engaged in work upon a highway within any highway construction or maintenance area indicated by traffic-control devices.

(c) The driver of a vehicle shall yield the right-of-way to any authorized vehicle obviously and actually engaged in work upon a highway whenever such vehicle displays flashing lights meeting the requirements of the Secretary of Public Safety.

(d) Traffic-control devices shall be used as required in the standards adopted under § 147 of Title 17. Failure to comply with this section shall be cause for immediate cessation of operations in the affected area and the immediate reopening of the highway in a safe manner.

(e) Failure to comply with the lawful order to effect immediate cessation of operations and the reopening of the highway shall subject the violator to a fine of not less than $115 nor more than $575.

(f) (1) The driver of a vehicle who violates any of the following sections of this title shall be fined not less than double the enumerated amount for a first offense when the violation occurs within any highway construction or maintenance area indicated by traffic-control devices:

a. Section 4102 of this title relating to obedience to traffic laws;

b. Section 4103 of this title relating to obedience to authorized persons directing traffic;

c. Section 4107 of this title relating to obedience to traffic-control devices;

d. Section 4110 of this title relating to flashing signals;

e. Section 4114 of this title relating to driving on the right side of roadway;

f. Section 4115 of this title relating to passing vehicles proceeding in opposite directions;

g. Section 4116 of this title relating to overtaking a vehicle on left;

h. Section 4117 of this title relating to when overtaking on the right is permitted;

i. Section 4118 of this title relating to limitations on overtaking on the left;

j. Section 4119 of this title relating to further limitations on driving to the left of center of roadway;

k. Section 4120 of this title relating to no-passing zones;

l. Section 4122 of this title relating to driving on roadways laned for traffic;

m. Section 4123 of this title relating to following too closely;

n. Section 4164 of this title relating to stop signs and yield signs;

o. Section 4168 of this title relating to general speed restrictions;

p. Section 4169 of this title relating to specific speed limits;

q. Section 4175 of this title relating to reckless driving;

r. Section 4176 of this title relating to careless or inattentive driving;

s. Section 4177 of this title relating to operation of vehicle while under the influence of alcohol and/or drugs;

t. Section 4178 of this title relating to stopping, standing or parking; and

u. Section 4184 of this title relating to limitations on backing.

(2) As used in this subsection, the phrase "within any highway construction or maintenance area indicated by traffic-control devices" shall mean that area between the first traffic-control device informing road users of their approach toward a work zone area until the last traffic-control device indicating all restrictions are removed and normal vehicle operations can resume. The phrase shall also include detour routes for highway construction or maintenance marked by traffic-control devices. "Traffic-control devices" and "work zone" shall have the same meaning as adopted pursuant to § 147 of Title 17, as amended. "Highway construction and maintenance area" shall also include construction and maintenance for utilities or railroads within or adjacent to the highway rights-of-way.

(3) Whenever practical, signs designed in compliance with regulations of the Department shall be appropriately placed to notify motorists that increased penalties apply for moving violations in construction or maintenance areas. However, the failure to post or an improper posting of such signs shall not be a defense to a violation of this section.

(21 Del. C. 1953, § 4105; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 700, § 3; 67 Del. Laws, c. 342, § 1; 68 Del. Laws, c. 9, § 22.)

Subchapter II

Traffic Signs, Signals and Markings

§ 4106. Authorized emergency vehicles.

(a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(b) The driver of an authorized emergency vehicle may:

(1) Park or stand, irrespective of the provisions of this chapter;

(2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(3) Exceed the speed limits so long as the driver does not endanger life or property;

(4) Disregard regulations governing direction of movement or turning in specified directions.

(c) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of audible or visual signals meeting the requirements of this title, except that an authorized emergency vehicle operated as a police vehicle need not make use of such signals.

(d) The driver of an emergency vehicle is not liable for any damage to or loss of property or for any personal injury or death caused by the negligent or wrongful act or omission of such driver except acts or omissions amounting to gross or wilful or wanton negligence so long as the applicable portions of subsection (c) of this section have been followed. The owner of such emergency vehicle may not assert the defense of governmental immunity in any action on account of any damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of such driver or owner.

(e) Authorized emergency vehicles within the meaning of this chapter mean vehicles of a fire department, police vehicles, ambulances, vehicles used by a fire chief, deputy fire chief, assistant fire chief, chief engineer or fire police officer of any duly organized fire company in the performance of those duties, vehicles under the control of the Delaware State Fire Prevention Commission, the vehicle of the State Forester in the performance of the State Forester's duties, the vehicle of the Forest Fire Control Supervisor in the performance of the Forest Fire Control Supervisor's duties, the vehicles of the State Emergency Response Team in the performance of its duties, the vehicles

of the Department of Correction, Bureau of Prisons and Bureau of Community Corrections in the performance of their respective duties, and emergency vehicles of state, federal, county or municipal departments or public service corporations as are designated or authorized by the Secretary of Safety and Homeland Security.

(21 Del. C. 1953, § 4106; 54 Del. Laws, c. 160, § 1; 61 Del. Laws, c. 461, § 1; 63 Del. Laws, c. 162, § 1; 63 Del. Laws, c. 300, § 1; 68 Del. Laws, c. 251, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 89, § 281(a); 77 Del. Laws, c. 6, § 1; 83 Del. Laws, c. 224, § 1; 83 Del. Laws, c. 370, § 1.)

§ 4107. Obedience to and required traffic-control devices.

(a) The driver of any vehicle shall obey the instructions of any traffic-control device applicable thereto placed in accordance with this title, unless otherwise directed as authorized in § 4103 of this title, subject to the exceptions granted the driver of an authorized emergency vehicle in this title.

(b) No provision of this chapter for which traffic-control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official traffic-control device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. This subsection shall not operate to relieve a driver of the duty to operate a vehicle with due regard to the safety of all persons using the highway.

(c) Whenever a particular section does not state that traffic-control devices are required, such section shall be effective even though no traffic-control devices are erected or in place.

(d) In the event a traffic-control signal is erected and maintained at a place other than an intersection, this title shall be applicable except as to those provisions which by their nature can have no application.

(e) Whenever traffic-control devices are placed in position approximately conforming to the requirements of this title, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.

(f) Any traffic-control device placed pursuant to this title and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this title, unless the contrary shall be established by competent evidence.

(21 Del. C. 1953, § 4107; 54 Del. Laws, c. 160, § 1; 57 Del. Laws, c. 670, § 13A; 60 Del. Laws, c. 701, § 10; 70 Del. Laws, c. 186, § 1.)

§ 4108. Traffic-control signal legend.

(a) Whenever traffic is controlled by official traffic-control signals showing different colored circular lights, color-lighted arrows, or color-lighted bicycle symbols, successively 1 at a time or in combination, only the colors green, red and yellow shall be used, except for pedestrian control signals, and such lights shall indicate and apply to drivers of vehicles, operators of bicycles and pedestrians as follows:

(1) *Green indication:*

a. Vehicular traffic facing the signal may proceed straight through or turn right or left unless a traffic-control device at such place prohibits either such turn. Vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

b. Unless otherwise directed by a pedestrian-control signal as provided in § 4109 of this title, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(2) *Circular yellow or yellow arrow:*

a. Vehicular traffic facing the circular yellow signal is thereby warned that a red signal for the previously permitted movement will be exhibited immediately thereafter.

b. Vehicular traffic facing the yellow arrow signal shown alone or in combination with another indication is thereby warned that the previously displayed green arrow signal is being terminated. The yellow arrow signal may be followed by a red signal or a green signal.

c. Pedestrians facing a yellow signal, unless otherwise directed by a pedestrian-control signal, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

(3) *Red indication:*

a. Vehicular traffic facing the red signal shall stop before crossing the stop limit, whether marked by sign or painted line, or if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until an indication to proceed is shown or as provided in paragraph (a)(3)b. of this section.

b. When a traffic-control device is not in place prohibiting such turn, vehicular traffic facing a circular red signal may cautiously enter the intersection to turn right, or to turn left from a one-way roadway onto a one-way roadway.

c. When turns on red are permitted, the right to proceed to turn after stopping shall be subject to the rule applicable after making a stop as at a stop sign.

d. No pedestrian facing such signal shall enter the roadway unless the pedestrian can do so safely and without interfering with any vehicular traffic.

(4) *Green arrow or arrows:*

a. Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

b. Vehicles facing such signals are thereby advised that other traffic movements may be prohibited from the lane or lanes that the signal indication controls. Making or attempting to make any prohibited movement is unlawful.

c. Pedestrians facing such signals shall not enter the roadway unless they can do so safely and without interfering with any vehicular traffic.

(5) *Bicycle signals:*

Bicycle signals may include circular or arrow traffic signal indications designated as bicycle signals by an adjacent sign, and traffic indications in the shape of a bicycle. Circular and arrow bicycle signals shall have the same meaning as the corresponding circular and arrow signals as described in paragraphs (a)(1) through (a)(4) of this section, but shall only apply to a person operating a bicycle in a bicycle lane or path. Bicycle-shaped bicycle signals shall have the same meaning as the corresponding circular signals as described in paragraphs (a)(1) through (a)(4) of this section, but shall only apply to a person operating a bicycle in a bicycle lane or path. A person operating a bicycle in a general travel lane shall obey the circular and arrow traffic signals described in paragraphs (a)(1) through (a)(4) of this section.

(b) When lane use control signals are placed over the individual lanes of roadway or highway, vehicular traffic may travel in any lane or lanes over which a green signal is shown, but shall not enter or travel in any lane or lanes over which a red signal is shown. Left turns may be made across such lane if not otherwise prohibited. Vehicular traffic shall move from any lane over which a steady amber signal is displayed as soon as the movement can be made in safety. Vehicular traffic may use a lane over which a flashing yellow signal is displayed for the purpose of making a left turn.

(c) In the event that traffic signals are in place and no lighted indication is visible to an approaching driver, the approaching driver shall reduce speed and prepare to yield to other vehicles in or approaching the intersection.

(d) Whoever violates this section shall be fined not less than $75 nor more than $115. Whoever violates paragraph (a)(3) of this section shall be fined not less than $75 nor more than $230. For each subsequent offense of paragraph (a)(3) of this section within 2 years, the person shall be fined not less than $100 nor more than $575, or imprisoned not less than 10 nor more than 60 days, or both.

(e) Notwithstanding any provision of the Delaware Code to the contrary, any local government, municipality, town or county, whether incorporated or unincorporated, shall pay to the General Fund any sums collected under this section or any substantially conforming ordinances and regulations enacted by local authorities that exceed the maximum fine permitted under the law as it existed prior to the effective date of subsection (d) of this section.

(21 Del. C. 1953, § 4108; 54 Del. Laws, c. 160, § 1; 58 Del. Laws, c. 430; 58 Del. Laws, c. 570; 60 Del. Laws, c. 701, § 11; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 407, § 1; 81 Del. Laws, c. 196, § 1.)

§ 4109. Pedestrian-control signals.

Whenever special pedestrian-control signals exhibiting the words or symbols “Walk” or “Don’t Start” or “Don’t Walk” are in place, such signals shall take precedence over pedestrian movements outlined in § 4108 of this title. Such signals shall apply as follows:

(1) *“Walk” or flashing “Walk”. —*

Pedestrians facing such signals may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the driver of all vehicles.

(2) *“Don’t Walk” or flashing “Don’t Walk” or “Don’t Start”. —*

No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed crossing on the walk signal shall proceed to the nearest sidewalk or safety island.

(21 Del. C. 1953, § 4109; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 12; 70 Del. Laws, c. 186, § 1.)

§ 4110. Traffic signals.

(a) Whenever a flashing red, yellow or green signal is used in a traffic signal or with a traffic sign, it shall require obedience by vehicle traffic as follows:

(1) *Flashing red. —*

When a red lens is illuminated with intermittent flashes, drivers of vehicles shall stop before crossing the stop limit whether marked by a sign or painted line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop as at a stop sign.

(2) *Flashing yellow or green. —*

When a yellow or green lens is illuminated with intermittent flashes, drivers of vehicles may proceed through the intersection or pass such signals only with caution.

(b) In the event that flashing signals are in place and no lighted indication is visible to an approaching driver, the approaching driver shall reduce speed and prepare to yield to other vehicles in or approaching the intersection. If facing a stop sign, the approaching driver shall stop and proceed as from a stop sign.

(c) This section shall not apply at railroad grade crossings.

(21 Del. C. 1953, § 4110; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 13; 67 Del. Laws, c. 46, § 72; 70 Del. Laws, c. 186, § 1.)

§ 4111. Display of unauthorized signs, signals or markings.

(a) No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal.

(b) No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising, and no person shall attach to any traffic sign or signal any other sign containing commercial advertising.

(c) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs, in compliance with § 1108 of Title 17.

(d) Every such prohibited sign, signal or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.

(21 Del. C. 1953, § 4111; 54 Del. Laws, c. 160, § 1.)

§ 4112. Interference with official traffic-control devices or railroad signs or signals or other street signs.

No person shall, without lawful authority, attempt to or, in fact alter, damage, deface, injure, twist, knock down, interfere with the operation of or remove any public roadway, bridge, drain, light, gate or traffic-control device, railroad sign or signal or other appurtenance or any inscription, shield or insignia thereon or any other part thereof or other type of highway signs erected by the State regardless of whether such sign is classified as regulatory or informational. Whoever violates this section shall, for the first offense, be fined not less than $57.50 nor more than $230, or imprisoned for not more than 10 days, or both. For each subsequent like offense committed within 2 years, the person shall be fined not less than $115 nor more than $460, or imprisoned for not more than 30 days, or both. Whoever violates this section shall in addition to any fine or incarceration make restitution to the State for actual costs incurred to replace the traffic-control device.

(21 Del. C. 1953, § 4112; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 14; 62 Del. Laws, c. 383, §§ 1-3; 68 Del. Laws, c. 9, § 23; 70 Del. Laws, c. 186, § 1.)

§ 4112A. Traffic control signal preemption devices.

(a) As used in this section, “traffic control signal preemption device” means any device that emits a pulse of light or other signal that, when received by a detector attached to a traffic control signal alters or interferes with normal operation of the traffic control device.

(b) Except as provided in subsection (d) or (e) of this section, a traffic control signal preemption device may not be installed on a motor vehicle, may not be transported in the passenger compartment of a motor vehicle, and may not be operated by the driver or passenger of a motor vehicle. No person who is not in a motor vehicle shall operate a traffic control signal preemption device. Violation of this subsection is an unclassified misdemeanor and upon arrest the device shall be seized and those convicted shall forfeit the traffic control signal preemption device and shall also be fined not less than $250 nor more than $750 and/or be sentenced to up to 3 months incarceration at Level V.

(c) No one may sell a traffic control signal preemption device, whether or not installed in a vehicle, to any person or entity for any intended use other than operation as permitted under subsection (d) or (e) of this section. Violation of this subsection is a class A misdemeanor.

(d) Installation of a traffic control signal preemption device is permitted on the following vehicles, and operation of the device is permitted as follows:

(1) Law-enforcement vehicles registered to state, county, or local authorities, when responding to a bona fide emergency, when used in combination with sirens and/or flashing lights.

(2) Vehicles registered to local fire departments and state or federal firefighting vehicles, when responding to a bona fide emergency, when used in combination with sirens and/or flashing lights.

(3) Vehicles that are designed and used exclusively as ambulances, paramedic or rescue vehicles, when responding to a bona fide emergency, when used in combination with sirens and/or flashing lights.

(4) Vehicles that are equipped and used exclusively as organ transport vehicles, when the transportation is declared an emergency by a member of the transplant team or a representative of the organ procurement organization, when used in combination with sirens and/or flashing lights.

(5) Vehicles registered to the Delaware Emergency Management Agency when responding to a bona fide emergency, when used in combination with sirens and/or flashing lights.

(6) Vehicles owned and operated by the Department of Transportation equipped to install, test and repair traffic signals when used for that express purpose.

(7) Department of Transportation vehicles that are expressly authorized by the Secretary of the Department of Transportation.

(e) Vehicles identified in paragraphs (d)(2) and (3) of this section may operate a traffic control preemption device when such vehicles are returning to their assigned duty station entranceways or driveways, but only to affect the operation of the traffic control signal or signals permitting direct access of such vehicles to their assigned duty stations' entranceways or driveways.

(74 Del. Laws, c. 231, § 1; 76 Del. Laws, c. 137, § 1; 78 Del. Laws, c. 89, §§ 1, 2.)

Subchapter III

Driving on Right Side of Roadway; Overtaking and Passing, etc.

§ 4114. Driving on right side of roadway; exceptions.

(a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(2) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(3) Upon a roadway divided into 3 marked lanes for traffic under the rules applicable thereon; or

(4) Upon a roadway designated and signposted for one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(c) Upon any roadway having 4 or more lanes for moving traffic and providing for 2-way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway, except when authorized by signs or markings designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under this section. This subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road, driveway or highway.

(21 Del. C. 1953, § 4114; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 15.)

§ 4114A. Lane travel restrictions on certain roadways.

(a) This section applies only to vehicles traveling on the portions of State Route 1 and Interstate 495 that are any of the following:

(1) An "express highway," as defined in § 101 of Title 17.

(2) A "controlled-access facility," as defined in § 172 of Title 17.

(b) A vehicle may not travel in the left lane, except in any of the following circumstances:

(1) When no other vehicle is traveling in the same lane less than 100 feet behind the vehicle.

(2) When overtaking and passing another vehicle proceeding in the same direction under the rules governing overtaking and passing another vehicle.

(3) When necessary to enter, leave, or continue on the roadway.

(4) When necessary due to an obstruction.

(5) When necessary in response to emergency conditions.

(6) When necessary due to traffic conditions or congestion.

(7) To comply with other law or regulation.

(c) A vehicle with a gross vehicle weight rating of more than 26,000 pounds may only travel in the right-hand lane, except as provided in paragraphs (b)(2) through (b)(7) of this section.

(d) An operator who refuses, fails, or neglects to comply with this section is subject to a civil penalty as follows:

(1) For a first occurrence, a civil penalty of not less than $25 nor more than $75.

(2) For a subsequent occurrence, a civil penalty of not less than $57.50 nor more than $95.

(84 Del. Laws, c. 457, § 1.)

§ 4115. Passing vehicles proceeding in opposite directions.

Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than 1 line of traffic in each direction each driver shall give to the other at least one half of the main-traveled portion of the roadway as nearly as possible.

(21 Del. C. 1953, § 4115; 54 Del. Laws, c. 160, § 1.)

§ 4116. Overtaking a vehicle or bicycle on the left.

The following rules shall govern the overtaking and passing of vehicles and bicycles proceeding in the same direction, subject to those limitations, exceptions and special rules hereinafter stated:

(1) On a roadway with at least 2 travel lanes proceeding in the same direction and if a travel lane proceeding in the same direction exists to the left, the driver of the overtaking vehicle shall, yielding the right-of-way and proceeding with caution, move completely into the lane to the left before passing.

(2) On a roadway with only 1 travel lane proceeding in a given direction and where that travel lane is too narrow for an overtaking vehicle to travel safely side-by-side within the lane with the overtaken vehicle or bicycle, the driver of the overtaking vehicle shall move completely into the lane to the left before passing. The driver of the overtaking vehicle shall only make this movement if it can be accomplished while obeying the limitations described in §§ 4118 through 4120 of this title.

(3) On a roadway with only 1 travel lane proceeding in a given direction and where that travel lane is both wide enough for an overtaking vehicle to travel safely side-by-side within the lane with the overtaken vehicle or bicycle and where the vehicle or bicycle to be overtaken is also positioned in the right part of the lane leaving sufficient space for safe passing within the travel lane, the driver of the overtaking vehicle shall:

a. Reduce speed while passing in order to lessen the speed differential between the overtaking vehicle and the overtaken vehicle or bicycle;

b. Pass to the left of the overtaken vehicle or bicycle at a reasonable and prudent distance, which shall in any case never be less than 3 feet; and

c. Return to a normal position in the travel lane only when safely clear of the overtaken vehicle or bicycle.

(4) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle or operator of an overtaken bicycle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of the vehicle or bicycle until completely passed by the overtaking vehicle.

(5) A person who violates this section by driving below the posted speed limit in the left lane of a multilane roadway when it impedes the ability of 1 or more vehicles to pass, except when such person is making a legal left turn or otherwise lawfully exiting the road to the left, shall be penalized as provided in § 4205 of this title.

(21 Del. C. 1953, § 4116; 54 Del. Laws, c. 160, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 150, § 1; 78 Del. Laws, c. 395, § 1; 81 Del. Laws, c. 196, § 1.)

§ 4117. When overtaking on the right is permitted.

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under conditions permitting such movement in safety. In no event, except as permitted in subsection (c) and (d) of this section, shall such movement be made by driving off the roadway, main traveled portion, or regular moving traffic lane of the highway.

(b) Overtaking and passing on the right, except as permitted herein, shall be unlawful:

(1) When the vehicle overtaken is making or about to make a left turn;

(2) Upon any roadway which is officially marked for more than 1 traffic lane in 1 direction;

(3) Upon any roadway on which traffic is restricted to 1 direction of movement and the roadway is of sufficient width for 2 or more lanes of moving vehicles.

(c) When the vehicle overtaken is making or about to make a left turn, the vehicle approaching from the rear may pass on the right using the shoulder if necessary.

(d) When the overtaking vehicle is a Delaware Department of Transportation authorized vehicle or an emergency vehicle, as defined in § 4106(e) of this title, responding to an emergency, the overtaking vehicle may pass on the right using the shoulder if necessary.

(21 Del. C. 1953, § 4117; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 16; 81 Del. Laws, c. 182, § 1.)

§ 4118. Limitations on overtaking on the left.

No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable.

(21 Del. C. 1953, § 4118; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 17.)

§ 4119. Further limitations on driving to left of center of roadway.

(a) No vehicle shall be driven on the left side of the roadway under the following conditions:

(1) When approaching or upon a curve or the crest of a grade in the highway where the driver’s view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(2) When approaching within 100 feet of or traversing any intersection or railroad grade crossing, unless otherwise indicated by official traffic-control devices;

(3) When the view is obstructed upon approaching within 100 feet of any bridge, viaduct or tunnel.

(b) The foregoing limitations shall not apply upon a one-way roadway, nor under the conditions described in § 4114(a)(2) of this title, nor to the driver of a vehicle turning left into or from an alley, private road, driveway or highway.

(21 Del. C. 1953, § 4119; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 18.)

§ 4120. No-passing zones; exceptions.

(a) The Department of Transportation is authorized to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions thereof.

(b) Where signs or markings are in place to define a no-passing zone, no driver shall at any time drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length; except as follows:

(1) When reasonably necessary to avoid parked vehicles, pedestrians, animals, surface hazards or other obstructions on a roadway and where only 1 travel lane proceeding in a given direction exists but while still obeying the limitations described in §§ 4118 and 4119 of this title;

(2) When reasonably necessary to pass a vehicle or bicycle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing and where only 1 travel lane proceeding in a given direction exists but while still obeying the limitations described in §§ 4118 and 4119 of this title; or

(3) When making a left turn into or from an alley, private road, driveway or highway.

(21 Del. C. 1953, § 4120; 54 Del. Laws, c. 160, § 1; 57 Del. Laws, c. 670, § 13A; 60 Del. Laws, c. 701, §§ 19, 20; 81 Del. Laws, c. 196, § 1.)

§ 4121. One-way roadways and rotary traffic islands.

(a) Upon a roadway where traffic-control devices establish one-way traffic, a vehicle shall be driven only in the direction designated. Such designation may be at all times or at such times as shall be indicated by traffic-control devices.

(b) A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

(c) A driver about to enter a rotary traffic island shall yield the right-of-way to any vehicles passing around it.

(21 Del. C. 1953, § 4121; 54 Del. Laws, c. 160, § 1; 57 Del. Laws, c. 670, § 13A; 60 Del. Laws, c. 701, § 21.)

§ 4122. Driving on roadways laned for traffic.

Whenever any roadway has been divided into 2 or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into 3 lanes for 2-way traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of oncoming traffic within a safe distance, or in preparation for a left turn or where such center lane is at the time allocated exclusively by traffic-control devices to traffic moving in the direction the vehicle is proceeding.

(3) Traffic-control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway, and drivers of vehicles shall obey the directions of every such traffic-control device.

(4) Traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device.

(21 Del. C. 1953, § 4122; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 22.)

§ 4123. Following too closely.

(a) The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(b) The driver of any truck or vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district, and which is following another vehicle, shall, whenever conditions permit, leave sufficient space, but not less than 300 feet, so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a motor vehicle drawing another vehicle from overtaking and passing any vehicle or combination of vehicles. Whoever violates this subsection shall, for the first offense, be fined not less than $28.75 nor more than $75. For each subsequent like offense within 2 years, the person shall be fined not less than $57.50 nor more than $95.

(c) Vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade, whether or not towing other vehicles, shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions.

(21 Del. C. 1953, § 4123; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 23; 62 Del. Laws, c. 140, § 1; 68 Del. Laws, c. 9, § 24; 78 Del. Laws, c. 208, §§ 1-3.)

§ 4124. Driving on divided highways.

Whenever any highway has been divided into 2 or more roads by an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand road unless directed or permitted to use another road by official traffic-control devices or police officers. No vehicle shall be driven over, across or within any such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection as established, unless specifically authorized by public authority. The driver of a vehicle may turn left across a paved dividing space unless prohibited by an official traffic-control device.

(21 Del. C. 1953, § 4124; 54 Del. Laws, c. 160, § 1; 56 Del. Laws, c. 313; 79 Del. Laws, c. 258, § 1.)

§ 4125. Turning off roadway by slow-moving vehicle.

On a 2-lane highway where passing is unsafe because of traffic in the opposite direction or other conditions, a slow-moving vehicle, behind which 5 or more vehicles are formed in line, shall turn off the roadway wherever sufficient area for a safe turnout exists, in order to permit the vehicles following to proceed. As used in this section, a slow-moving vehicle is one which is proceeding at a rate of speed less than the normal flow of traffic at the particular time and place.

(60 Del. Laws, c. 701, § 24.)

Subchapter III-A
Controlled-Access Highways

§ 4126. Unlawful use of controlled-access highways; penalties.

(a) On any state highway designated by the Department of Transportation as a "controlled-access highway," no person shall:

(1) Drive a vehicle over, upon or across any curb, central dividing section or other separation or dividing line;

(2) Make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation or line;

(3) Drive any vehicle except in the proper lane provided for that purpose in the proper direction in said lane;

(4) Drive any vehicle from a local service road except through an opening provided for that purpose in the dividing curb or dividing section or dividing line which separates such service road from the controlled-access facility proper;

(5) Drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established;

(6) Back a vehicle upon any shoulder or roadway;

(7) Operate or drive a bicycle, except where appropriately marked by the Department of Transportation;

(8) Operate or drive any nonmotorized vehicle or wagon;

(9) Lead or participate in a parade;

(10) Lead or participate in a convoy or procession, either walking or riding, except a riding funeral procession which proceeds at the prevailing rate of speed and which does not prevent or interfere with the entrance into or exit off of the controlled access highway by others;

(11) Walk as a pedestrian except to contact aid in the event of an accident, breakdown or other emergency;

(12) Operate a vehicle of any type or kind prohibited by traffic-control devices at the entrances;

(13) Disobey the restriction stated on any traffic-control device erected at the entrances.

(b) Whoever violates subsection (a) of this section shall for the first offense be fined not less than $25 nor more than $75. For each subsequent like offense, the person shall be fined not less than $50 nor more than $95. Justices of the peace shall have original jurisdiction to hear, try and finally determine alleged violations of this section.

(21 Del. C. 1953, § 4126; 54 Del. Laws, c. 160, § 1; 57 Del. Laws, c. 670, § 13A; 58 Del. Laws, c. 381; 60 Del. Laws, c. 700, § 4; 60 Del. Laws, c. 701, § 26; 65 Del. Laws, c. 503, § 15; 67 Del. Laws, c. 90, § 1; 68 Del. Laws, c. 9, § 25; 69 Del. Laws, c. 243, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 208, §§ 4-6.)

§ 4127. Unlawful evasion of Delaware Turnpike and the Korean War Veterans Memorial Highway; harassment of toll collectors; penalty; appeal; jurisdiction; payment of minimum fine before trial.

(a) No vehicle shall be used on any part of the Delaware Turnpike, the Korean War Veterans Memorial Highway or any other State toll road except upon payment of such tolls as may from time to time be prescribed by the Department of Transportation of this State.

(b) It is unlawful for any person to refuse to pay, to evade or attempt to evade the payment of such toll. Any such violation regarding the payment of tolls shall be an unclassified misdemeanor, and shall be punishable by a fine of not less than $25 nor more than $100, or imprisonment for not less than 10 nor more than 30 days, or both.

(c) Any person convicted under this section shall have the right of an appeal as prescribed in § 708 of this title.

(d) In the event of an arrest for the violation of this section, the person arrested shall be taken before a justice of the peace whose regular office is nearest to the place where such person was arrested. The person so arrested shall have the privilege of electing to have the case tried and determined in the Court of Common Pleas as provided in § 5901 of Title 11.

(e) Any peace officer may stop and arrest, with or without a warrant, any person abroad who the police officer has reasonable ground to suspect is committing, has committed or is attempting to commit a violation of this section.

(f) Any person arrested for violations of this section shall have the right to appear before the committing justice of the peace on or before the date and time set for trial and pay the minimum fine for each such offense or to mail the minimum fine to the committing justice of the peace provided that such remittance is mailed at least 2 days before the date set for the trial. Court costs shall not be assessed if the fine is paid pursuant to this subsection, any statute or court rule of this State notwithstanding. The Court shall mail a receipt indicating the payment of a fine pursuant to this subsection if the person paying such fine makes a written request for a receipt and encloses a self-addressed envelope with postage affixed thereon.

(g) If any vehicle is witnessed by a police officer, toll collector or video surveillance device, to be in violation of subsection (b) of this section, and the identity of the operator is not otherwise apparent, it shall be a rebuttable presumption that the person in whose name the vehicle is registered committed such violation of subsection (b) of this section.

(h) Any person who commits an act of offensive touching, presents payment in the form of an obviously unsanitary piece of United States currency, or who commits any act knowing that one is thereby likely to cause offense or alarm to an on duty toll collector, will be guilty of an unclassified misdemeanor.

(21 Del. C. 1953, § 4127; 57 Del. Laws, c. 456; 58 Del. Laws, c. 198; 60 Del. Laws, c. 701, § 26; 68 Del. Laws, c. 9, § 26; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 342, §§ 1-4; 71 Del. Laws, c. 13, § 3; 77 Del. Laws, c. 60, § 10.)

§ 4128. Delaware Memorial Bridge; toll evasion; payment of minimum fine before trial.

(a) No vehicle shall use any part of the Delaware Memorial Bridge, except upon payment of such tolls as may from time to time be prescribed by the Delaware River and Bay Authority.

(b) No person shall refuse to pay, evade or attempt to evade the payment of any such toll. Any such violation regarding the payment of tolls shall be an unclassified misdemeanor, and shall be punishable by a fine of not less than $25 nor more than $100, or imprisonment for not less than 10 nor more than 30 days, or both.

(c) Any person convicted under this section shall have the right of appeal as set forth in § 708 of this title.

(d) In the event of an arrest for a violation of this section, the person arrested shall be taken before a justice of the peace whose regular office is nearest to the place where such person was arrested. The person so arrested may elect to have the case tried and determined in the Court of Common Pleas and shall be advised of this privilege as set forth in § 5901 of Title 11.

(e) Any peace officer may stop and arrest, with or without a warrant, any person abroad who the police officer has reasonable grounds to suspect is committing, has committed or is attempting to commit a violation of this section.

(f) Any person arrested for violations of this section shall have the right to appear before the committing justice of the peace on or before the date and time set for trial and pay the minimum fine for each such offense or to mail the minimum fine to the committing justice of the peace provided that such remittance is mailed at least 2 days before the date set for trial. Court costs shall not be assessed if the fine is paid pursuant to this subsection, any statute or court rule of this State notwithstanding. The Court shall mail a receipt indicating the payment of a fine pursuant to this subsection if the person paying such fine makes a written request for a receipt and encloses a self-addressed envelope with postage affixed thereon.

(g) If any vehicle is witnessed by a police officer, toll collector or video surveillance device to be in violation of subsection (b) of this section and the identity of the operator is not apparent, it shall be a rebuttable presumption that the person in whose name the vehicle is registered committed the violation.

(h) Any person who commits an act of offensive touching against a toll collector who is on duty, presents payment in the form of obviously unsanitary United States currency, or commits any act knowing that such act is likely to cause offense or alarm to a toll collector on duty is guilty of an unclassified misdemeanor.

(60 Del. Laws, c. 555, § 2; 62 Del. Laws, c. 403, § 1; 65 Del. Laws, c. 503, § 16; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 174, § 1; 77 Del. Laws, c. 60, § 11.)

§ 4129. Civil penalty for evasion of tolls.

(a) In addition to the provisions of §§ 4127 and 4128 of this title, any person who refuses to pay, evades or attempts to evade the payment of a toll in connection with the use of the Delaware Turnpike, the Korean War Veterans Memorial Highway, any other state toll road or the Delaware Memorial Bridge shall be liable for the payment of one toll, a $25 administrative fee, and for a civil penalty of $25 per violation payable to the Department of Transportation or its designee or, in the case of the Delaware Memorial Bridge, the Delaware River & Bay Authority or its designee.

(b) Except as provided in subsection (d) of this section, an owner of a vehicle shall be jointly and severally liable for failure of an operator thereof to comply with subsection (a) of this section. The owner of a vehicle shall be liable pursuant to this section if such vehicle

was used or operated with the permission of the owner, express or implied, in violation of this section, and such violation is evidenced by information obtained from visual observation, video surveillance device or other method of identifying the vehicle; provided however, that no owner of a vehicle shall be liable where the operator of the vehicle has been identified and charged with a violation of this section for the same incident.

(c) In the event of nonpayment of the proper toll, as evidenced by visual observation, a video surveillance device or other method of identifying the vehicle, the Department of Transportation or its designee or, in the case of the Delaware Memorial Bridge, the Delaware River & Bay Authority or its designee may send an advisory and payment request to the owner of the vehicle by regular mail at the address of record with the Division of Motor Vehicles, or, if applicable, the licensing authority of another jurisdiction, providing the owner with the opportunity to resolve the matter prior to the issuance of a summons and complaint that charges a violation of this section. The advisory and payment request shall contain sufficient information to inform the owner of the nature, date, time and location of the alleged violation. In addition to the payment of the proper toll, the Department of Transportation or, in the case of the Delaware Memorial Bridge, the Delaware River and Bay Authority or its designee may require as part of the advisory and payment request that the owner pay a reasonable administrative fee of up to $25 to the entity processing the violation. If the owner fails to pay the required toll and fee, the owner shall be subject to liability on the sixty-first day following the date the violation is transmitted, for the violation of this section by the vehicle owner or operator.

(d) An owner of a vehicle who is a lessor of a vehicle operated in violation of this section shall not be liable for such violation if the lessor submits a copy of the rental, lease or other contract document covering that vehicle on the date of the violation, with the name and address of the lessee clearly legible, to the Department of Transportation or its designee or, in the case of the Delaware Memorial Bridge, the Delaware River and Bay Authority or its designee within 10 days of the receipt of the notice of violation. Failure to provide such information in the timeframe required shall render the lessor liable for the penalty prescribed by this section. Where the lessor complies with this subsection, the lessee of such vehicle shall be deemed the owner of the vehicle for the purposes of this section and shall be subject to liability for the violation hereunder, as if the lessee were the owner and/or operator at the time of the violation.

(e) *Enhanced civil enforcement authority.* — If a vehicle owner has been issued advisory and payment requests for nonpayment of tolls under subsection (c) of this section, and the combined total of outstanding and unpaid tolls, applicable administrative fees and associated penalties exceeds $1,000, the vehicle shall be subject to a civil administrative stop pursuant to Chapter 8 of this title, and the vehicle owner shall be subject to enhanced civil enforcement, as follows:

(1) Such vehicle shall be immobilized in such manner as to prevent its operation, or removed to an official pound by authority of any police officer of this State, a county or municipality therein, or the Delaware River and Bay Authority. Any vehicle so immobilized or impounded shall not be released to its lawful owner until all unpaid tolls and applicable administrative fees issued to such owner have been discharged by payment in full, together with payment for the costs of immobilizing, releasing, and storing such vehicle. The owner shall sign a receipt for such vehicle. Payment for any such towing shall be in accordance with the towing costs outlined in the current agreement between police agency and the towing operator. If the vehicle is a tractor-trailer combination, the trailer may be released to an authorized agent if the tractor is immobilized pursuant to this section.

(2) In any case involving immobilization of a vehicle pursuant to this section, the police officer shall place on such vehicle, in a conspicuous manner, notice sufficient to warn any individual that such vehicle has been immobilized and that any attempt to move such vehicle might result in damage to such vehicle.

(3) Any vehicle remaining immobilized and not released for 48 hours may be towed and impounded at the direction of a police officer.

(71 Del. Laws, c. 13, § 2; 73 Del. Laws, c. 174, §§ 2-6; 76 Del. Laws, c. 400, § 1; 85 Del. Laws, c. 37, § 1.)

Subchapter IV
Right-of-Way

§ 4130. Vehicle obstructing traffic.

No driver shall enter an intersection or a marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk or railroad grade crossing to accommodate the vehicle the driver is operating without obstructing the passage of other vehicles, pedestrians or railroad trains notwithstanding any traffic-control signal indication to proceed.

(60 Del. Laws, c. 701, § 27; 70 Del. Laws, c. 186, § 1.)

§ 4131. Vehicle approaching or entering intersection.

(a) The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different highway.

(b) When 2 vehicles enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(c) The right-of-way rules declared in subsections (a) and (b) of this section are modified at through highways and otherwise as stated in this chapter.

(21 Del. C. 1953, § 4131; 54 Del. Laws, c. 160, § 1.)

§ 4132. Vehicle turning left.

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is so close as to constitute an immediate hazard.

(21 Del. C. 1953, § 4132; 54 Del. Laws, c. 160, § 1.)

§ 4133. Vehicle entering roadway.

The driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right-of-way to all vehicles approaching on the roadway to be entered or crossed.

(21 Del. C. 1953, § 4133; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 28.)

§ 4134. Operation of vehicles on approach of authorized emergency vehicles; stationary vehicles.

(a) On the immediate approach of an authorized emergency vehicle making use of audible or visual signals, or of a police vehicle properly and lawfully making use of an audible signal only, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway, clear of any intersections, and shall relinquish the right-of-way until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(b) (1) For purposes of this subsection, "stationary vehicle giving a warning signal" means any of the following:

a. A stationary authorized emergency vehicle, when the authorized emergency vehicle is giving a signal by displaying alternately flashing red, blue, blue and white, red and white, red and blue, or red, white and blue lights.

b. A stationary authorized vehicle of the Department of Transportation, which is giving a signal by displaying alternately flashing amber or red and amber lights.

c. A stationary tow truck, which is giving a signal by displaying alternately flashing amber, white, or amber and white lights.

d. A stationary vehicle owned or operated by a public utility, which is giving a signal by displaying alternately flashing amber, white, or amber and white lights.

e. A stationary vehicle displaying warning signals, including vehicle hazard warning lights, road flares, traffic cones, caution signs, or any nonvehicular warning signs.

(2) A person driving a vehicle who is approaching a stationary vehicle giving a warning signal shall do 1 of the following:

a. Proceed with caution and yield the right-of-way by making a lane change into a lane not adjacent to that of a stationary vehicle described in this subsection, if possible with due regard to safety and traffic conditions, if on a roadway having at least 4 lanes with not less than 2 lanes proceeding in the same direction as the approaching vehicle.

b. Proceed with caution and reduce the speed of the vehicle to a safe speed at least 20 miles per hour less than the posted speed limit, if the speed limit is 50 miles per hour or above, while passing a stationary vehicle described in this subsection, if changing lanes would be impossible or unsafe.

(c) This section does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(d) Any person violating subsection (b) of this section who hits, strikes, or in any way contacts an emergency responder, causing physical injury, with that person's vehicle is guilty of a class F felony.

(e) A person who violates this section is subject to the following fine:

(1) For a first offense, a fine of up to $250, or community service equivalent in value to the fine, to be calculated utilizing the Delaware minimum wage.

(2) For a second offense, a fine of up to $500, or community service equivalent in value to the fine, to be calculated utilizing the Delaware minimum wage.

(3) For any subsequent offenses, up to $1,000, or community service equivalent in value to the fine, to be calculated utilizing the Delaware minimum wage.

(21 Del. C. 1953, § 4134; 54 Del. Laws, c. 160, § 1; 59 Del. Laws, c. 351, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 366, § 1; 76 Del. Laws, c. 345, § 1; 77 Del. Laws, c. 27, § 1; 77 Del. Laws, c. 465, § 1; 80 Del. Laws, c. 104, § 1; 83 Del. Laws, c. 288, § 1; 84 Del. Laws, c. 72, § 1; 84 Del. Laws, c. 404, § 1.)

§ 4135. Entering or crossing divided highway from crossover or other intervening space between opposing lanes.

The driver of a vehicle about to drive onto or across a lane or lanes of a divided highway from the intervening space between opposing lanes where there is no official traffic-control device shall yield the right-of-way to any vehicle approaching on the divided highway.

(21 Del. C. 1953, § 4135; 57 Del. Laws, c. 616.)

§ 4136. Driving upon sidewalk or bicycle path by vehicles and bicycles.

(a) No person shall drive any motor vehicle upon a sidewalk or bicycle path or sidewalk area or bicycle path area except upon a permanent or duly authorized temporary driveway.

(b) A person riding a bicycle upon a sidewalk or bicycle path lawfully used by pedestrians shall give audible signal before overtaking and passing such pedestrian.

(c) A person shall not ride a bicycle upon a sidewalk in a business district, when use of a sidewalk is prohibited by official traffic-control devices or when a usable bicycle-only lane has been provided adjacent to the sidewalk.

(60 Del. Laws, c. 701, § 29.)

§ 4137. Electronic traffic monitoring for vehicle obstructions system.

(a) This section establishes the authority for the State and municipalities in the State to use an electronic traffic monitoring for vehicle obstructions system to assist in the enforcement of right-of-way pursuant to §§ 4130 and 4179(c) of this title. This section does not establish a new violation.

(b) *Definitions. —*

As used in this section:

(1) "Electronic traffic monitoring for vehicle obstructions system" means a device with 1 or more motor vehicle sensors that is capable of producing a recorded image of a motor vehicle whose position within an intersection violates right-of-way regulations.

(2) "Electronic traffic monitoring for vehicle obstructions system operator" means an individual who has been trained and certified to operate an electronic traffic monitoring for vehicle obstructions system.

(3) "Owner" means the registered owner of such vehicle on record with this or any other state; provided, however, that in the event that the owner is a vehicle leasing company, the "owner," for purposes of this section, shall mean the person shown on the records to be the lessee of such vehicle. "Owner" does not include vehicle rental companies.

(4) "Recorded image" means an image recorded by an electronic traffic monitoring for vehicle obstructions system and includes any of the following:

a. A photograph.

b. A microphotograph.

c. A digital image.

d. A video.

e. Any other medium used to store images or sounds to be seen or heard later.

(c) This section does not apply to an authorized emergency vehicle operating in compliance with § 4106 of this title.

(d) (1) An electronic traffic monitoring for vehicle obstructions system may be installed or used to record images of a motor vehicle traveling through an intersection within the State.

(2) An electronic traffic monitoring for vehicle obstructions system may be installed or used to record images of a motor vehicle traveling on roadways with a principal arterial or other arterial functional classification as defined by the Department of Transportation, under all of the following conditions:

a. A study approved by the Department of Transportation showing that intersection blockages are frequent is required for an intersection to be eligible under this chapter. The intersection will remain eligible for up to 1 year after the acceptance of the study by the Department of Transportation.

b. Prior to the implementation of the system at a specific location, all of the following is required:

1. Within a municipality, the municipality must approve the intersection eligible for monitoring under this chapter, consistent with this chapter.

2. The Department of Transportation and applicable police agency must provide notice on a publicly accessible website of the intended use of the system at least 14 days prior to implementation.

(e) A vendor shall be selected through an open competitive procurement process to administer the system. To assure integrity and propriety, a person involved in the administration or enforcement of the vehicle obstructing traffic monitoring system may not own any direct interest or equity in the vendor used.

(f) *Funding; revenue. —*

(1) The Department of Transportation may initiate tasks with the selected vendor utilizing eligible funding sources. No separate funding is allocated through this section.

(2) Revenue generated through the use of the system may be used to pay eligible costs to the vendor, staff required to implement this section, and consultant fees for administration of the programs.

(3) Any revenue collected above and beyond those required for the operation of the program as noted above may only be used for education, enforcement, or engineering purposes, related to transportation safety.

(g) *Liability for failure of owner to comply with right-of-way regulations. —*

(1) The Department of Safety and Homeland Security shall provide for the establishment of a program imposing monetary liability on the owner of a motor vehicle for failure to comply with right-of-way regulations in accordance with the provisions of this section. This section allows the State and municipalities to install and operate electronic traffic monitoring for vehicle obstructions systems.

(2) The owner or operator of a vehicle which has failed to comply with right-of-way regulations, as evidenced by information obtained from the system, shall be subject to a civil or administrative assessment consistent with those established under § 4205 of this title. Court costs or similar administrative fees not to exceed $35 may also be assessed against an owner or operator who requests a hearing to contest the violation and is ultimately found or pleads responsible for the violation or who fails to pay or contest the violation in a timely manner. No assessments and court costs other than those specified in this subsection may be imposed. A violation for which a civil assessment is imposed under this subsection shall not be classified as a criminal offense and shall not be made a part of the operating record of the person upon whom such liability is imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance.

(h) *Electronic traffic monitoring for vehicle obstructions system requirements. —*

(1) An operator shall complete training by the manufacturer of the system in the procedures for setting up, testing, and operating the vehicle obstructing traffic monitoring system.

(2) Upon completion of the training, the manufacturer shall issue a signed certificate to the operator.

(3) The certificate of training shall be admitted into evidence in any court proceeding for a violation of this section.

(4) An operator shall fill out and sign a daily set-up log for the system that does all of the following:

a. States the date and time when and the location where the system was set up.

b. States that the operator successfully performed, and the device passed, the manufacturer-specified self-tests of the system before producing a recorded image.

c. Is kept on file.

d. Is admitted into evidence in any court proceeding for a violation of this section.

(5) The system shall undergo an annual calibration check performed by an independent calibration laboratory which shall issue a signed certificate of calibration after the annual calibration check that shall be kept on file and be admitted into evidence in any court proceeding for a violation of this section.

(i) *Violation criteria. —*

For a violation to occur, a motor vehicle must be located within a conflicting left-turn or through vehicle's path of travel following the termination of the violating vehicle's right-of-way and subsequent all-red clearance interval.

(j) *Summons and notice of violation. —*

Any nonresident owner or operator of any motor vehicle which is operated or driven on the public streets, roads, turnpikes or highways of this State is deemed to have submitted to the jurisdiction of the Delaware courts for purposes of this section. Notwithstanding any other provision of the Delaware Code, a summons for a violation of this section may be executed by mailing to any Delaware resident or nonresident by first class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Division of Motor Vehicles of this or any other state, as appropriate. Collection actions, including default judgment and execution, may proceed based upon jurisdiction obtained through the mailing by first class mail of a summons and subsequent court notices pursuant to this subsection. Every initial mailing shall include all of the following:

(1) Name and address of the owner of the vehicle.

(2) Registration number of the motor vehicle involved in the violation.

(3) Violation charges.

(4) Location where the violation occurred.

(5) Date and time of the violation.

(6) Copies of 2 or more photographs, or microphotographs or other recorded images, taken as proof of the violation.

(7) Amount of the civil assessment imposed and the date by which the civil assessment should be paid.

(8) Information advising the summonsed person of the matter, time and place by which liability as alleged in the notice may be contested, and warning that the failure to pay the civil assessment or to contest liability in a timely manner is an admission of liability and may result in a judgment being entered against the summonsed person and/or the denial of the registration or the renewal of the registration of any of the owner's vehicles.

(9) Notice of the summonsed person's ability to rebut the presumption that the summonsed person was the operator of the vehicle at the time of the alleged violation and the means for rebutting such presumption.

(k) *Payment by voluntary assessment. —*

Persons electing to pay by voluntary assessment shall make payments to the entity designated on the summons for payment. Such entity may be the Justice of the Peace Court or an entity designated by the Court or the Department of Safety and Homeland Security. Procedures for payment under this subsection shall be as provided by court rule or policy directive of the Justice of the Peace Court or by regulation of the Department of Safety and Homeland Security and shall be in lieu of the procedures set forth in § 709 of this title.

(*l*) *Procedures to contest the violation. —*

A person receiving the summons pursuant to this section may request a hearing to contest the violation by notifying, in writing, the entity designated on the summons within 20 days of the date. Upon receipt of a timely request for a hearing a civil hearing shall

be scheduled and the defendant notified of the hearing date by first class mail. A civil hearing shall be held by the Justice of the Peace Court or such other entity as designated by the Department of Safety and Homeland Security. The hearing may be informal and shall be held in accordance with Justice of the Peace Court rules or policy directive or regulation of the Department of Safety and Homeland Security. Additional administrative collection processes may be established by court rule, policy directive, regulation, code or ordinance, as applicable. Costs for such hearing shall not be assessed against the prevailing party. There shall be no right of transfer to the Court of Common Pleas.

(m) *Failure to pay or successfully contest the violation. —*

(1) If the owner or an operator identified by the owner fails to pay the civil penalty by voluntary assessment, request a hearing within the required time or submit an affidavit stating that the owner or operator identified was not the driver, the Division of Motor Vehicles may refuse to renew the registration of the owner's vehicle operated at the time the summons was issued. If the owner or an operator identified by the owner is found responsible at a hearing and fails to pay as ordered by the Court, or requests a hearing and fails to appear, the Division of Motor Vehicles shall suspend the license of the owner or operator.

(2) Upon receiving a record of failure to comply, the Clerk may enter a civil traffic judgment against the owner or operator in the amount of the civil penalty, costs, and any applicable penalty amounts, giving credit for any amount paid. Such judgment may, upon motion, be transferred by the Court to the civil docket. Any judgment so transferred may be executed and enforced or transferred in the same manner as other judgments of the Court and the Division of Public Safety or its designee, shall have authority to seek such execution, enforcement or transfer.

(n) *Proof of violation. —*

Proof of a violation of this section shall be evidenced by information obtained from the electronic traffic monitoring for vehicle obstructions system authorized pursuant to this section. A certificate, or facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by an electronic traffic monitoring for vehicle obstructions system shall constitute prima facie evidence of the facts contained therein, if the certificate, or facsimile thereof, is sworn to or affirmed by a technician employed to impose assessments pursuant to this section, or a technician employed by a state agency or entity designated by a state agency for the purposes of this section. Any photographs, microphotographs, videotape or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to regulation, ordinance or other law adopted pursuant to this section.

(o) *Presumptions. —*

(1) The owner of any vehicle found to be in violation of this section shall be held prima facie responsible for such violation in the same manner as provided for under § 7003 of this title, unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody or control of another person. Such presumption shall be rebutted if the owner does either of the following:

a. Furnishes an affidavit by regular mail to the entity indicated on the summons that the owner was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person or company who leased, rented or otherwise had the care, custody or control of the vehicle, or attaches a certified copy of a police report showing that the vehicle or license plate or plates thereof had been reported to the police as stolen prior to the time of the alleged violation of this section.

b. Provides proof in court or to the entity handling the administrative appeal process that the owner was not the operator of the vehicle at the time of the alleged violation.

(2) A summons may be issued to a person identified by affidavit or evidence in court as the actual operator of the vehicle shown to have violated the right-of-way regulations. There shall be a presumption that the person so identified was the driver. The presumption may be rebutted as described in this subsection.

(p) Notwithstanding any other provision in this section to the contrary, if the motor vehicle which is found by the electronic traffic monitoring for vehicle obstructions system to have failed to comply with the right-of-way regulations is commercially licensed, then the owner of that vehicle shall be sent notice of the date, time and location of the violation with 2 photographs thereof. Within 10 days of the receipt of said notice, the owner of the vehicle shall provide the law-enforcement agency which has issued the summons with the name and address of the driver of the vehicle at the date, time and location of the violation and, within the same time period, shall provide the driver of the vehicle with the photographs of the violation. After receipt by the law-enforcement agency which has issued the summons of the name and address of the driver of the vehicle at the time of the violation, the driver of the vehicle shall be prima facie responsible for such violation in the same manner as provided for under § 7003 of this title and shall be subject to the provisions of this section. Failure of the owner of the vehicle found to be in violation of subsection (e) of this section to provide the name and address of the driver at the time of the violation within the period prescribed shall cause the owner to be held responsible as set forth in paragraph (e)(5) of this section.

(q) Any person found responsible for a civil traffic offense shall have a right of appeal only in those cases in which the civil penalty imposed exceeds $100, upon giving bond with surety satisfactory to the judge before whom such person was found responsible, such appeal to be taken and bond given within 15 days from the time of the finding of responsible. Such appeal shall operate as a stay or supersedeas of all proceedings in the court below in the same manner that a certiorari from the Superior Court operates. The taking of such appeal shall constitute a waiver by the appellant of the appellant's right to a writ of certiorari in the Superior Court.

(83 Del. Laws, c. 494, § 1.)

Subchapter V
Pedestrians' Rights and Duties

§ 4140. Certain offenses not entered on motor vehicle record.

Arrests and or convictions for offenses in §§ 4141, 4143, 4145-4150 of this title shall not be entered on a driver's motor vehicle record.

(64 Del. Laws, c. 32, § 1.)

§ 4141. Pedestrian obedience to traffic-control devices and traffic regulations.

(a) A pedestrian shall obey the instructions of a traffic-control device specifically applicable to the pedestrian, unless otherwise directed by a police officer or uniformed adult school crossing guard. This section shall not operate to relieve the responsibilities and duties set forth in other sections of this subchapter.

(b) Pedestrians shall be subject to traffic and pedestrian control signals as provided in §§ 4108 and 4109 of this title.

(c) At all other places, pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this chapter.

(21 Del. C. 1953, § 4141; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 30; 70 Del. Laws, c. 186, § 1.)

§ 4142. Pedestrians' right-of-way in crosswalks.

(a) When traffic-control signals are not in place or not in operation or when the operator of a vehicle is making a turn at an intersection, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(b) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close as to constitute an immediate hazard.

(c) Subsection (a) of this section shall not apply under the conditions stated in § 4143(b) of this title.

(d) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(21 Del. C. 1953, § 4142; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 31; 68 Del. Laws, c. 438, § 1.)

§ 4143. Crossing at other than crosswalks.

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

(d) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements.

(21 Del. C. 1953, § 4143; 54 Del. Laws, c. 160, § 1.)

§ 4144. Drivers to exercise due care.

Notwithstanding any other provisions of this chapter every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any obviously confused or incapacitated person, or a person wholly or partially blind, carrying a cane or walking stick white in color, or white tipped with red or accompanied by a guide dog upon a roadway.

(21 Del. C. 1953, § 4144; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 32; 84 Del. Laws, c. 233, § 49.)

§ 4145. Pedestrians to use right half of crosswalks.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

(21 Del. C. 1953, § 4145; 54 Del. Laws, c. 160, § 1.)

§ 4146. Pedestrians on highways; penalty.

(a) Where a sidewalk is provided and is accessible, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(b) Where a sidewalk is not available, any pedestrian walking along and upon a highway shall walk facing traffic only on a shoulder, as far as practicable from the edge of the roadway.

(c) Where neither a sidewalk nor a shoulder is available, any pedestrian walking along and upon a highway shall walk as near as practicable to an outside edge of the roadway, and shall walk facing traffic.

(d) Except as otherwise provided in this chapter, any pedestrian upon a highway shall yield the right-of-way to all vehicles upon the highway.

(e) This section shall not require that pedestrians on one-way roadways of controlled-access highways walk facing traffic to the nearest emergency reporting device.

(f) Whoever violates this section shall for the first offense be fined not less than $10 nor more than $28.75. For each subsequent like offense, the person shall be fined not less than $25 nor more than $50.

(g) A foot race or walking event on a highway shall not be unlawful when the event has been approved by the Department or the local authorities in their respective jurisdictions. Approval of a foot race or walking event on a highway shall be granted only under conditions which ensure reasonable safety for all participants, spectators and other highway users, and which prevent unreasonable interference with traffic flow which would seriously inconvenience other highway users. By agreement with the approving authority, participants in an approved foot race or walking event on a highway may be exempted from compliance with any traffic laws otherwise applicable thereto, provided that traffic control is adequate to ensure the safety of all highway users.

(21 Del. C. 1953, § 4146; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 700, § 5; 65 Del. Laws, c. 503, § 17; 68 Del. Laws, c. 9, § 27; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 191, § 1.)

§ 4147. Pedestrians soliciting rides or business.

(a) No person shall stand in a highway for the purpose of soliciting any employment, business or contributions from the occupant of any vehicle.

(b) No person shall stand on or in proximity to a highway for the purpose of soliciting the watching or guarding of any vehicle while parking or about to be parked on a highway.

(c) No person shall stand in a highway for the purpose of soliciting a ride.

(d) No person shall at any time be jailed solely for violation of subsection (c) of this section.

(e) The prohibition against soliciting contributions contained in subsection (a) of this section shall not apply on the Saturday immediately prior to Father's Day each year to solicitations by charitable organizations, defined as those organizations previously qualified as such under the federal Internal Revenue Code [26 U.S.C. § 1 et seq.], when those solicitations take place only during daylight hours, at intersections with traffic control signals in place, using only existing median strips or other off-street facilities, using individuals no younger than 18 years of age to conduct the solicitation, without using any devices to alter or impede the traffic flow.

(21 Del. C. 1953, § 4147; 54 Del. Laws, c. 160, § 1; 58 Del. Laws, c. 54, § 1; 60 Del. Laws, c. 700, § 6; 67 Del. Laws, c. 39, § 1.)

§ 4148. Carrying of lights or reflector device by pedestrians; penalty.

(a) No pedestrian shall walk upon any roadway or shoulders of any roadway of this State that is used for motor or vehicle traffic, beyond the corporate limits of any city or town, without carrying a lighted lantern, lighted flashlight or other similar light or reflector type device during the period of time from sunset to sunrise and at any other time when there is not sufficient light to render clearly visible any person or vehicle on the highway.

(b) Whoever violates subsection (a) of this section shall for the first offense be fined not less than $2.30 nor more than $28.25. For each subsequent like offense within 1 year, the person shall be fined not less than $11.50 nor more than $28.25.

(21 Del. C. 1953, § 4148; 54 Del. Laws, c. 160, § 1; 58 Del. Laws, c. 54, § 2; 65 Del. Laws, c. 353, § 1; 68 Del. Laws, c. 9, § 28; 70 Del. Laws, c. 186, § 1.)

§ 4149. Walking on highways under influence of drugs or liquor.

No person shall walk or be upon a highway of this State while under the influence of intoxicating liquor and/or narcotic drugs to a degree which renders the person a hazard.

(21 Del. C. 1953, § 4149; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 33; 70 Del. Laws, c. 186, § 1.)

§ 4150. Use of certain canes restricted to blind pedestrians.

No persons except those wholly or partially blind shall carry in a raised or extended position on any street or highway a cane or walking stick which is white in color or white tipped in red.

(21 Del. C. 1953, § 4150; 54 Del. Laws, c. 160, § 1.)

§ 4151. Pedestrians' right-of-way on sidewalks.

The driver of a vehicle shall yield the right-of-way to any pedestrian on a sidewalk.

(60 Del. Laws, c. 701, § 34.)

Subchapter VI

Turning and Starting and Signals on Stopping and Turning

§ 4152. Required position and method of turning at intersections.

(a) The driver of a vehicle intending to turn at an intersection shall do so as follows:

(1) *Right Turns.* — Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) *Left Turns on 2-Way Roadways.* — At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center thereof and by passing to the right of such center line where it enters the intersection and, after entering the intersection, the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(3) *Left Turns on Other Than 2-Way Roadways.* — At any intersection where traffic is restricted to 1 direction on 1 or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

(b) Traffic-control devices may be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when traffic-control devices are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by traffic-control devices.

(21 Del. C. 1953, § 4152; 54 Del. Laws, c. 160, § 1; 57 Del. Laws, c. 670, § 13A; 60 Del. Laws, c. 701, § 35.)

§ 4153. Limitations on turning around.

(a) No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within 500 feet.

(b) The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction unless such movement can be made in safety and without interfering with other traffic.

(21 Del. C. 1953, § 4153; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 36.)

§ 4154. Starting parked vehicles.

No person shall cause a vehicle to be moved which is stopped, standing or parked unless and until such movement can be made with reasonable safety.

(21 Del. C. 1953, § 4154; 54 Del. Laws, c. 160, § 1.)

§ 4155. Turning movements and required signals.

(a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in § 4152 of this title, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway or turn so as to proceed in an opposite direction unless and until such movement can be made with safety without interfering with other traffic. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided.

(b) A signal of intention to turn or move right or left when required shall be given continuously during not less than the last 300 feet or more than $^1/_2$ mile traveled by the vehicle before turning.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

(d) The signals provided for in § 4156 of this title shall be used to indicate an intention to turn, change lanes or start from a parked position and shall not be flashed on 1 side only on a parked or disabled vehicle, or flashed as a courtesy or “do pass” signal to operators of other vehicles approaching from the rear.

(21 Del. C. 1953, § 4155; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 37.)

§ 4156. Signals by hand and arm or signal device.

(a) Any stop or turn signal when required herein shall be given either by means of the hand and arm or by a signal lamp or lamps or mechanical signal device, except as otherwise provided in subsection (b) of this section.

(b) Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, a signal lamp or lamps or mechanical signal device when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds 24 inches or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles.

(21 Del. C. 1953, § 4156; 54 Del. Laws, c. 160, § 1.)

§ 4157. Method of giving hand and arm signals.

All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

(1) *Left turn.* — Hand and arm extended horizontally.

(2) *Right turn.* — Hand and arm extended upward.

(3) *Stop or decrease speed.* — Hand and arm extended downward.

(21 Del. C. 1953, § 4157; 54 Del. Laws, c. 160, § 1; 66 Del. Laws, c. 167, § 1; 70 Del. Laws, c. 384, § 1.)

Subchapter VII

Special Stops Required

§ 4161. Obedience to signal indicating approach of train or other on-track equipment, drawbridge, or automatic signal system controlling the flow of traffic.

(a) Whenever any person driving a vehicle approaches a railroad grade crossing, drawbridge or automatic signal system controlling the flow of traffic under any of the circumstances stated in this section, the driver of such vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such railroad, and may not proceed until the driver can do so safely. The foregoing requirements apply to all of the following:

(1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train or other on-track equipment.

(2) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train or other on-track equipment.

(3) A railroad train or other on-track equipment approaching within approximately 1,500 feet of the highway crossing emits a signal audible from such distance and such railroad train or other on-track equipment, by reason of its speed or nearness to such crossing, is an immediate hazard.

(4) An approaching railroad train or other on-track equipment is plainly visible and is in hazardous proximity to such crossing.

(b) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

(21 Del. C. 1953, § 4161; 54 Del. Laws, c. 160, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 362, § 1.)

§ 4162. [Reserved.]

§ 4163. Certain vehicles must stop at all railroad grade crossings.

(a) Except as provided by subsection (b) of this section, the driver of any motor vehicle carrying passengers for hire or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at any grade or any track of a railroad, shall stop such vehicle within 50 feet but not less than 15 feet from the nearest rail of such railroad and while stopped, shall listen and look in both directions along such track for any approaching train or other on-track equipment and for signals indicating the approach of a train or other on-track equipment, and may not proceed until the driver can do so safely. After stopping as required by this subsection, and upon proceeding when it is safe to do so, the driver of any vehicle referenced in this subsection shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing, and the driver may not shift gears while crossing the track.

(b) Subsection (a) of this section does not apply at any of the following:

(1) A railroad grade crossing at which traffic is controlled by a police officer or human flagger.

(2) A railroad grade crossing at which traffic is regulated by a traffic-control signal.

(3) A railroad grade crossing protected by crossing gates or an alternately flashing light signal intended to give warning of the approach of a railroad train or other on-track equipment.

(4) A railroad grade crossing at which an official traffic-control device gives notice that the stopping requirement imposed by this section does not apply.

(c) Except as provided by subsection (d) of this section, the driver of any school bus, before crossing at any grade or any track of a railroad, shall stop such vehicle within 50 feet but not less than 15 feet from the nearest rail of such railroad and while stopped, shall listen and look in both directions along such track for any approaching train or other on-track equipment and for signals indicating the approach of a train or other on-track equipment, and may not proceed until the driver can do so safely. After stopping as required by this subsection, and upon proceeding when it is safe to do so, the driver of any school bus may cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing, and the driver may not shift gears while crossing the track.

(d) Subsection (c) of this section shall not apply at any of the following:

(1) A railroad grade crossing at which traffic is controlled by a police officer or human flagger.

(2) A railroad grade crossing at which an official traffic-control device gives notice that the stopping requirement imposed by this section does not apply.

(21 Del. C. 1953, § 4163; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 39; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 312, § 3; 80 Del. Laws, c. 122, § 1; 81 Del. Laws, c. 362, § 2.)

§ 4163A. Railroad crossing violations for operators of commercial vehicles only.

In addition to the existing railroad crossing violations in § 4163 of this title, the following railroad crossing infractions apply to commercial motor vehicle operators:

(1) Every commercial motor vehicle operator other than those listed in § 4163 of this title shall, upon approaching a railroad-highway grade crossing, do all of the following:

a. Slow down and check that the tracks are clear of an approaching train or other on-track equipment.

b. Stop before reaching the crossing if the tracks are not clear.

(2) The driver of a commercial motor vehicle shall obey a traffic control device and comply with a lawful order or direction of a police officer or other enforcement official who is guiding, directing, controlling, or regulating traffic at a railroad-highway grade crossing.

(3) The driver of a commercial motor vehicle may not cross a railroad-highway grade crossing unless the vehicle has sufficient undercarriage clearance.

(4) The driver of a commercial motor vehicle may not cross a railroad-highway grade crossing unless the vehicle has sufficient space and can be driven completely through the crossing without stopping.

(77 Del. Laws, c. 311, § 9; 81 Del. Laws, c. 362, § 3.)

§ 4164. Stop signs and yield signs.

(a) Except when directed to proceed by police officers or traffic-control devices, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at a marked stop line, but if none, before entering the crosswalk on the near side of the intersection or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection.

(b) The operator of any vehicle who has come to a full stop as provided in subsection (a) of this section shall yield the right-of-way to any vehicle or pedestrian in the intersection or to any vehicle approaching on another roadway so closely as to constitute an immediate hazard and shall not enter into, upon or across such roadway or highway until such movement can be made in safety.

(c) Whenever a yield sign notifying drivers to yield the right-of-way has been erected, it shall be unlawful for a driver of any vehicle on the highway whose traffic is regulated by such a sign to fail to yield the right-of-way to any vehicle approaching on or from another highway or merging roadway or to a pedestrian legally crossing a roadway. If required for safety to stop, the stop shall be made at a marked stop line, but if none, before entering the crosswalk on the near side of the intersection or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. Any such driver having so yielded to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard or to a pedestrian legally crossing a roadway shall not enter into, upon or across such roadway or highway until such movement can be made in safety.

(21 Del. C. 1953, § 4164; 54 Del. Laws, c. 160, § 1; 57 Del. Laws, c. 670, § 13A; 60 Del. Laws, c. 701, § 40.)

§ 4165. Emerging from alley, driveway, private road or building.

The driver of a vehicle emerging from an alley, driveway, private road or building where there is no official traffic-control device shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway, driveway or private road and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and before entering the roadway shall yield the right-of-way to all vehicles approaching on the roadway.

(21 Del. C. 1953, § 4165; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 41.)

§ 4166. Overtaking and passing school bus; stop signal devices.

(a) *School bus.* — (1) It shall be unlawful to operate or permit to be operated a vehicle which purports to be a school bus and which does not meet the following requirements:

a. Carries a valid school bus inspection sticker;

b. Meets all requirements set by the Department of Transportation; and

c. Complies with §§ 4362-4364 of this title [repealed].

(2) If licensed in another state, these requirements still prevail except that an inspection sticker is not required.

(3) It shall be unlawful for the driver of any vehicle which does not meet the requirements of this section to attempt to or to control traffic while stopped on the roadway to pick up and discharge passengers.

(b) *School bus flashing lamps.* — (1) School bus flashing lamps are intended to identify the vehicle as a school bus and to inform other users of the highway that such vehicle is about to stop or is stopped on the roadway or shoulder to take on or discharge school children. They are separate from the brake lamps and shall not be used in lieu of or to supplement the brake lamps.

(2) a. The amber warning lamps shall be activated approximately 10 seconds prior to the red stop lamps to give motorists advance notice that the bus is preparing to stop or has stopped to pick up and discharge pupils. The lamps shall always be used prior to the red when available and shall be used only after the bus is relatively parallel with the travelway. The bus may be in motion when the amber warning lamps are activated.

b. The provisions of subsection (b)(2) a. of this section shall not apply to Red Clay School District school buses equipped with, and operating stop arm cameras.

(3) The red stop lamps shall be activated only when the bus is stopped, but only when the bus is stopped on the shoulder or roadway to pick up and discharge pupils. The red stop lamps shall not be displayed while the bus is in motion either before or after a stop.

(4) The amber warning lamps and/or the red stop lamps shall not be activated:

a. In designated school bus loading zones;

b. At intersections or other places where traffic is controlled by traffic-control signals or police officers;

c. When the bus is not being used as a school bus; provided, however, the amber warning lights and/or the red stop lamps may be used any time the bus is transporting children under the age of 18.

(c) *School bus words.* — The words "SCHOOL BUS" shall be displayed whenever the bus is operated as a school bus. The words shall be covered, or concealed or removed when the bus is not in actual service as a school bus.

(d) (1) *Overtaking and passing school bus.* — When a school bus is stopped and displays flashing lamps in accordance with subsection (b) of this section, the driver of any vehicle approaching the school bus from the front or from the rear shall stop before passing the bus and remain stopped until such bus begins to move or no longer has the red stop lamps activated. On roadway or roadways with 4 or more lanes, the driver approaching from the front shall not stop.

(2) The provisions of § 4101(a) of this title or any other statute notwithstanding, the provisions of this subsection shall apply upon highways and elsewhere throughout the State.

(e) *Stopping of school bus.* — Whenever practical, a school bus driver shall stop as far to the right as possible to pick up and discharge passengers.

(f) *Identification of violators.* — If any vehicle is witnessed by a police officer, school bus operator or school crossing guard to be in violation of subsection (d) of this section and the identity of the operator is not otherwise apparent, it shall be a rebuttable presumption that the person in whose name such vehicle is registered committed such violation of subsection (d) of this section.

(g) *Bus operators, bus aides or crossing guards as witnesses.* — Whenever a school bus operator, a bus aide or a crossing guard is required to prepare, with legal counsel, for an appearance or to appear in any court as witness against a person who is alleged to have violated subsection (d) of this section, the witness shall be advised by the prosecutor assigned to the case by the Attorney General. If a witness is required to prepare for or to appear in court during working hours, as an operator, aide or guard, in a case as herein described, the witness shall not suffer any loss of wages, salary or leave time as an employee of the school district, bus contractor or other employing agency, because of such appearance, except as provided in this section. If the preparation or appearance occurs at a time other than regular working hours, then the witness shall be paid by the employer for the time involved. Payment for such time shall be at the rate regularly paid to that employee, except that such payment shall not exceed $8.00 per hour. Employers shall be reimbursed for wages and employment costs paid upon presentation of appropriate documentation to the Secretary of Education.

(h) *Penalties.* — Whoever violates subsection (d) of this section shall, for the first offense, be fined not less than $115 nor more than $230 or imprisoned not less than 30 days nor more than 60 days or both. For each subsequent like offense occurring within 3 years from the former offense, such person shall be fined not less than $115 nor more than $575, and imprisoned not less than 60 days nor more than 6 months. The minimum fine levied for a violation of subsection (d) of this section shall not be subject to suspension.

(i) *Suspension of license.* — Upon receiving a conviction for a violation of subsection (d) of this section, the Department shall suspend the driver's license and/or driving privileges for a period of not less than 1 month, nor more than 1 year. If the driver's license is suspended, a conditional license may be issued pursuant to regulations adopted by the Department.

(21 Del. C. 1953, § 4166; 54 Del. Laws, c. 160, § 1; 56 Del. Laws, c. 367; 60 Del. Laws, c. 701, § 42; 63 Del. Laws, c. 157, §§ 1, 2; 63 Del. Laws, c. 402, § 3; 64 Del. Laws, c. 311, § 1; 67 Del. Laws, c. 21, § 1; 68 Del. Laws, c. 9, § 29; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 65, § 26; 73 Del. Laws, c. 211, §§ 1, 2; 74 Del. Laws, c. 110, § 86; 77 Del. Laws, c. 312, §§ 4, 5; 85 Del. Laws, c. 64, § 183; 85 Del. Laws, c. 233, § 11.)

§ 4167. Moving heavy equipment at railroad grade crossings.

(a) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller or any equipment or structure having a normal operating speed of 10 or less miles per hour or a vertical body or load clearance of less than $^1/_2$ inch per foot of the distance between any 2 adjacent axles or in any event of less than 9 inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(b) Notice of any such intended crossing shall be given to a station agent of such railroad and a reasonable time be given to such railroad to provide proper protection at such crossing.

(c) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than 15 feet nor more than 50 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train and shall not proceed until the crossing can be made safely.

(d) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagger or otherwise of the immediate approach of a railroad train or car. If a flagger is provided by the railroad, movement over the crossing shall be under the flagger's direction.

(21 Del. C. 1953, § 4167; 54 Del. Laws, c. 160, § 1; 70 Del. Laws, c. 186, § 1.)

Subchapter VIII
Speed Restrictions

§ 4168. General speed restrictions.

(a) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and without having regard to the actual and potential hazards then existing. In every event, speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway, in compliance with legal requirements and the duty of all persons to use due care.

(b) The driver of every vehicle shall, consistent with the requirements of subsection (a) of this section, drive at an appropriate speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(21 Del. C. 1953, § 4168; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 43.)

§ 4169. Specific speed limits; penalty.

(a) Where no special hazard exists, the following speeds shall be lawful, but any speed in excess of such limits shall be absolute evidence that the speed is not reasonable or prudent and that it is unlawful [for] all types of vehicles:

(1) 25 miles per hour in any business district;

(2) 25 miles per hour in any residential district;

(3) 20 miles per hour at all school zones where 20 mph regulatory signs are posted and state the time periods or conditions during which the speed limit is in effect; such conditions may include when children are present or while 1 or more warning lights flash;

(4) 50 miles per hour on 2-lane roadways;

(5) 55 miles per hour on 4-lane roadways and on divided roadways.

(b) Whenever the Department of Transportation shall determine, on the basis of engineering studies and traffic investigations or upon the basis of a federal law or directive by the Congress or the President, that a maximum speed limit set pursuant to subsection (a) of this section in any particular place on the state maintained highway system is greater or less than is reasonable or safe, the Department shall declare a reasonable and safe maximum limit thereat, which limit shall be effective when posted. Such maximum limit may be declared to be effective either part or all of the time and differing limits may be established for different times of the day, for different types of vehicles, for different weather conditions and when other significant factors differ. Such maximum limits may be posted on fixed or variable signs. Any speed in excess of such displayed limits shall be absolute evidence that the speed is not reasonable or prudent and that it is unlawful.

(c) Penalties for violation of this section are as follows:

(1) Whoever violates this section shall for the first offense be fined $20. For each subsequent offense, the person shall be fined $25. A subsequent violation, before being punishable as such, shall have been committed within 24 months after the commission of the prior offense.

(2) Any person violating this section who exceeds the maximum speed limit by more than 5 miles per hour but less than 16 miles per hour shall pay an additional fine of $1.00 per mile, if such violation is a first offense, or $2.00 per mile, if such violation is a subsequent offense, for each mile in excess of the maximum speed limit.

(3) Any person violating this section who exceeds the maximum speed limit by more than 15 miles per hour but less than 20 miles per hour shall pay an additional fine of $2.00 per mile, if such violation is a first offense, or $3.00 per mile, if such violation is a subsequent offense, for each mile in excess of the maximum speed limit.

(4) Any person violating this section who exceeds the maximum speed limit by more than 19 miles per hour shall pay an additional fine of $3.00 per mile, if such violation is a first offense, or $4.00 per mile, if such violation is a second offense, for each mile in excess of the maximum speed limit.

(d) The Department of Transportation shall designate a maximum speed limit of 65 miles per hour for all portions of Delaware State Route 1 located between the Red Lion Creek and the Appoquinimink River, except for the delineated nonhighway speed toll plaza area. Such maximum limits may be posted on fixed or variable signs. Any speed in excess of such displayed limits shall be absolute evidence that the speed is not reasonable or prudent and that it is unlawful.

(21 Del. C. 1953, § 4169; 54 Del. Laws, c. 160, § 1; 55 Del. Laws, c. 362, §§ 1, 2; 56 Del. Laws, c. 172; 56 Del. Laws, c. 302; 57 Del. Laws, c. 670, §§ 13A, 13C; 60 Del. Laws, c. 700, § 7; 61 Del. Laws, c. 458, § 1; 65 Del. Laws, c. 503, § 18; 66 Del. Laws, c. 333, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 403, § 1; 75 Del. Laws, c. 323, § 1; 77 Del. Laws, c. 411, § 2; 78 Del. Laws, c. 208, § 7; 80 Del. Laws, c. 134, § 1.)

§ 4170. Speed limits set by local authorities.

(a) Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that the absolute speed permitted under this chapter is greater than is reasonable or safe under the conditions found to exist, such local

authority, subject to subsection (c) of this section, shall determine and declare a reasonable and safe absolute speed limit, which shall be effective when appropriate signs giving notice thereof are erected.

(b) Local authorities in their respective jurisdictions may at their discretion, but subject to subsection (c) of this section, authorize by ordinance higher absolute speeds than those stated in this chapter upon through highways or upon highways or portions thereof where there are no intersections or between widely spaced intersections provided signs are erected giving notice of the authorized speed, but local authorities shall not modify or alter the basic rule set forth in § 4168(a) of this title.

(c) Alteration of absolute limits on state-maintained highways in any municipality by local authorities shall not be effective until such alteration has been approved by the Department of Transportation.

(21 Del. C. 1953, § 4170; 54 Del. Laws, c. 160, § 1; 57 Del. Laws, c. 670, § 13A; 74 Del. Laws, c. 110, § 138; 79 Del. Laws, c. 224, § 1.)

§ 4170A. Electronic speed monitoring system [For application of this section, see 85 Del. Laws, c. 64, § 136] [Expires June 30, 2028, pursuant to 84 Del. Laws, c. 74, § 2].

(a) *Purpose and administration. —*

(1) This section establishes an electronic speed monitoring system to assist the State, counties and municipalities in the enforcement of speed limits under §§ 4169 and 4170 of this title.

(2) The Department of Transportation, or the governing body of New Castle County or any municipality, may provide by regulation or ordinance, for the establishment of a program imposing monetary liability on the owner of a motor vehicle for failure to comply with designated posted speeds, as monitored by an electronic speed monitoring system in accordance with this section.

(3) This section does not apply to any authorized emergency vehicles being operated in compliance with § 4106 of this title.

(b) *Definitions. —*

For purposes of this section:

(1) “Business district” means as defined in § 101 of this title.

(2) “Electronic speed monitoring system” means a device with 1 or more motor vehicle sensors that can produce a recorded image of a motor vehicle whose speed exceeds the posted speed limit.

(3) “Electronic speed monitoring system operator” means an individual who has been trained and certified to operate an electronic speed monitoring system.

(4) “Owner” means the registered owner of the vehicle on record with this or any other state provided, however, that in the event that the owner is a vehicle leasing company the “owner,” for purposes of this section, shall mean the person shown on the records to be the lessee of the vehicle. Vehicle rental companies are excluded from the definition of “owner.”

(5) “Recorded image” means an image recorded by an electronic speed monitoring system and includes any of the following:

a. A photograph.

b. A microphotograph.

c. A digital image.

d. A video.

e. Any other medium used to store images or sounds.

(6) “Residence district” means as defined in § 101 of this title.

(7) “Work zone” means any area of roadway designated as a work zone by the Department of Transportation and in accordance with § 4105 (f)(2) of this title.

(c) *Conditions for installation and operation of electronic speed monitoring system. —*

(1) The Department of Transportation may approve the installation and use of an electronic speed monitoring system to be installed and used to record images of a motor vehicle travelling in a work zone, or in a residence district in either New Castle County or a municipality, if all of the following conditions are met:

a. If in a residence district, unless in a designated work zone, a study, which is no more than 1 year old and approved by the Department of Transportation, documents that the eighty-fifth percentile speed on the road is 5 miles per hour or greater than the posted speed limit.

b. If in a residence district the police agency with jurisdiction over the road has agreed to participate in the use of the system.

c. If the road is within the boundaries of a municipality the municipality must approve the road and extent of the road eligible for electronic speed monitoring.

d. The police agency, with jurisdiction over the road, must notify the Department of Transportation of the intent to use the electronic speed monitoring system at least 30 days in advance of implementation.

e. The Department of Transportation and police agency with jurisdiction must provide notice on their publicly-accessible web sites of the intended use of the electronic speed monitoring system at least 14 days prior to its implementation.

f. At least 1 sign must be installed advising motorists that the electronic speed monitoring system is in use.

(2) Once a road is approved for an electronic speed monitoring system the use of an electronic speed monitoring system will be at the discretion of the police agency with jurisdiction over the residence district or work zone where the system will be implemented. The police agency may consider crash data in prioritizing locations where the system is to be implemented.

(3) The Delaware State Police shall have enforcement authority over the electronic speed monitoring system in all work zones.

(4) The Department of Transportation shall develop guidelines related to the safe positioning of portable and permanent electronic speed monitoring equipment within the road right-of-way.

(d) *System vendor, calibration and operator. —*

(1) *System vendor. —*

The Department of Transportation shall select the system vendor to provide electronic speed monitoring systems for the State, counties and municipalities. The system vendor must be selected through an open competitive procurement process. To ensure integrity in the selection process a person involved in the administration or enforcement of the electronic speed monitoring system may not own any direct interest or equity in any selected vendor.

(2) *System calibration. —*

Every electronic speed monitoring system in use on the roads in this State must undergo an annual calibration check to be performed by an independent calibration laboratory.

a. The independent calibration laboratory must issue a signed certificate of calibration after the annual calibration check which:

1. Must be kept on file by the police agency within the jurisdiction where the electronic speed monitoring system is located; and

2. May be entered into evidence in any court proceeding for a violation of this section.

(3) *System operator. —*

Every electronic speed monitoring system operator must complete training by the manufacturer of the electronic speed monitoring system in the procedures for setting up, testing, and operating the electronic speed monitoring system.

a. On completion of the training, the manufacturer must issue a signed certificate to the electronic speed monitoring system operator.

b. The certificate of training may be entered into evidence in any court proceeding for a violation of this section.

c. An electronic speed monitoring system operator must fill out and sign a daily set-up log for the electronic speed monitoring system which:

1. States the date and time when the system was set up.

2. States that the operator successfully performed, and the device passed, the manufacturer’s specified self-test of the system before producing a recorded image.

3. Must be kept on file by the police agency within the jurisdiction where the electronic speed monitoring system is located.

4. May be entered into evidence in any court proceeding for a violation of this section.

(e) *Violation and proof of violation. —*

(1) For a violation to occur, a motor vehicle must exceed the posted speed limit by 11 miles per hour or more in the residence district or work zone.

(2) Proof of a violation of this section may be evidenced by information obtained from an electronic speed monitoring system approved under this section. A certificate, or facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by an electronic speed monitoring system shall constitute prima facie evidence of the facts contained therein, if the certificate, or facsimile thereof, is sworn to or affirmed by an operator or a technician employed by a state agency or entity designated by a state agency for the purpose of carrying out this subsection. Any photographs, microphotographs, videotape or other recoded images evidencing a violation shall be made available for inspection in any proceeding to adjudicate liability for violation of this section.

(f) *Notice of violation, procedure to contest violation, and orders subject to appeal. —*

(1) Any resident or nonresident owner or operator of any motor vehicle driven on the public streets, roads, turnpikes or highways of this State will be deemed to have submitted to the jurisdiction of the courts in this State for purposes of this section. Notwithstanding any other provision of the Code, a summons for a violation of this section may be executed by mailing to any resident or nonresident, by first-class mail, a copy thereof to the address of the owner of the vehicle as shown in the records of the Division of Motor Vehicles of this or any other state. Collection actions, including default judgment and execution, may proceed based upon jurisdiction obtained through the mailing, by first-class mail, of a summons and subsequent court notices pursuant to this subsection. Every initial mailing shall include the following:

a. Name and address of the owner of the vehicle.

b. Registration number of the motor vehicle involved in the violation.

c. Violation charges.

d. Location where the violation occurred.

e. Date and time of the violation.

f. Copies of 2 or more photographs, microphotographs, or other recoded images, taken as proof of the violation.

g. Amount of the civil penalty imposed and the date by which the civil penalty should be paid.

h. The length of time and location for contesting liability and notice that the failure to pay the civil penalty or to contest liability, in a timely manner, is an admission of liability and may result in a judgment being entered against the summonsed person and the denial of the registration or renewal of registration of any of the owner's vehicles.

i. The ability to rebut the presumption under this section that the summonsed person was the operator of the vehicle at the time of the violation and the manner of rebutting said presumption.

(2) A person receiving the summons pursuant to this subsection may request a hearing to contest the violation by notifying, in writing, the entity designated on the summons within 20 days of the date of the summons. Upon receipt of a timely request for a hearing, a civil hearing shall be scheduled, and the defendant notified of the hearing date by first-class mail. A civil hearing shall be held by the Justice of the Peace Court or other court with competent jurisdiction as designated by the Department of Safety and Homeland Security or county or municipality in which the speed camera was located. There shall be no right of transfer to the Court of Common Pleas.

(3) Any person found, by the court, to be responsible for a speeding violation, under this subsection, shall have a right of appeal only in those cases in which the civil penalty exceeds $100, upon giving bond with surety satisfactory to the judge before whom such person was found responsible, such appeal to be taken and bond given within 15 days from the court's order. Such appeal shall operate as a stay or supersedeas of all proceedings in the court below in the same manner that a certiorari from the Superior Court operates. The taking of such appeal shall constitute a waiver by the appellant of the appellant's right to a writ of certiorari in the Superior Court.

(g) *Civil penalties. —*

(1) The owner or operator of a vehicle who has failed to comply with the posted speed limit, as evidenced by information obtained from an electronic speed monitoring system, shall be subject to a civil penalty consistent with those established under § 4169(c) of this title. Assessments defined under § 4105 of this title, §§ 4101 and 9016 of Title 11 and § 8505 of Title 10, shall only be assessed for violations occurring in a "work zone" as defined in subsection (b) of this section.

(2) Court costs, or similar administrative fees, not to exceed $35, may be imposed against an owner or operator of a motor vehicle who requests a hearing to contest a violation and is either found at fault or admits to fault at the hearing. No costs may be assessed against a prevailing party.

(3) No additional assessments or court costs, other than those specified in this subsection, shall be assessed or collected against the owner or operator of a vehicle who has violated this section.

(4) Persons electing to pay by voluntary assessment shall make payments to the entity designated on the summons for payment. Such entity may be the Department of Safety and Homeland Security, or the city or county in which the speed camera was located. Procedures for payment under this subsection shall be as provided by court rule or policy directive of the Justice of the Peace Court, or by regulation of the Department of Safety and Homeland Security, or by regulation, code, or ordinance of the applicable city or county, and shall be in lieu of the procedures set forth in § 709 of this title.

(5) A violation for which a civil penalty is imposed under this section is not a criminal offense and is not to be made a part of the operating record of the person upon whom such liability is imposed.

(6) A violation for which a civil penalty is imposed under this section shall not be used for insurance purposes in the provision of motor vehicle insurance.

(h) *Presumption of ownership. —*

(1) The owner of any vehicle found to be in violation of this section shall be held prima facie responsible for such violation in the same manner as under § 7003 of this title unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody or control of another person. Such presumption may be rebutted if the owner:

a. Provides an affidavit, by regular mail, to the entity indicated on the summons that the owner was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person or company who leased, rented, or otherwise had care, custody or control of the vehicle, or attaches a certified copy of a police report showing that the vehicle or license plate or plates thereof had been reported to the police as stolen prior to the alleged violation of this section; or

b. Provides proof in court or to the entity handling the administrative appeal process that the owner was not the operator of the vehicle at the time of the alleged violation and identifies the operator at the time of the violation. If the owner granted multiple persons permission to use the vehicle and is unable to identify the person who was operating the vehicle at the time of the violation, the owner will remain liable for the violation.

(2) A summons may be issued to any person identified by affidavit or evidence in court as the actual operator of the vehicle alleged to have violated the speed limit. There shall be a presumption that the person so identified was the operator; this presumption may be rebutted as described under this subsection.

(3) Notwithstanding any other provision in this section, if the motor vehicle which is documented by the electronic speed monitoring system in violation of subsection (e) of this section is commercially licensed, then the owner of that vehicle shall be sent notice of the date, time, and location of the violation with 2 photographs thereof. Within 10 days of the receipt of said notice, the owner of

the vehicle shall provide the law-enforcement agency which has issued the summons with the name and address of the driver of the vehicle at the date, time, and location of the violation and, within the same time period, shall provide the driver of the vehicle with the photographs of the violation. After receipt by the law-enforcement agency which has issued the summons of the name and address of the driver of the vehicle at the time of the violation, the driver of the vehicle shall be prima facie responsible for such violation in the same manner as provided for under § 7003 of this title and shall be subject to the provisions of this section. Failure of the owner of the vehicle found to be in violation of this section to provide the name and address of the driver, within the prescribed time period, shall cause the owner to be held responsible as set forth in this subsection.

(i) Failure to pay civil penalty. —

(1) If the owner or operator identified by the owner fails to pay the civil penalty by voluntary assessment, request a hearing within the required time or submit an affidavit stating that the owner or operator identified was not the driver, the Division of Motor Vehicles shall refuse to renew the registration of the owner's vehicle operated at the time the summons was issued. If the owner or operator identified by the owner is found responsible at a hearing and fails to pay the fine as ordered by the court, or requests a hearing and fails to appear, the Division of Motor Vehicles shall suspend the license of the owner or operator.

(2) Upon receiving a record of failure to comply, a court clerk may enter a civil traffic judgement against the owner or operator in the amount of the civil penalty, costs, and any applicable additional assessment, giving credit for any amount paid. Such judgement may, upon motion, be transferred by the court to the civil docket. Any judgement so transferred may be executed and enforced or transferred in the same manner as other judgements of the court and the Division of Public Safety, or its designee, shall have authority to seek such execution, enforcement or transfer.

(j) Funding sources and use of revenue. —

(1) The Department of Transportation, New Castle County, and any municipality, may contract with the approved system vendor for carrying out any tasks related to the use of an electronic speed monitoring system by using any eligible funding source.

(2) Revenue generated through the use of electronic speed monitoring systems may be used to pay costs of the system vendor, staff required to implement this section, and any consultant fees for administration of the electronic speed monitoring system.

(3) Any revenue collected above what is required for the operation of the electronic speed monitoring system, as set forth in this subsection, shall be managed by the Office of Highway Safety and may be used only for transportation safety purposes under any of the following categories:

a. Education.

b. Enforcement.

c. Engineering.

d. Administrative expenses.

(k) *Annual report.* —

(1) The Department of Transportation shall be responsible for preparing an annual report on the electronic speed monitoring system as implemented statewide. The report shall include all of the following:

a. Where and when the system was used.

b. Citation data.

c. Crash data.

d. Readily-available speed data.

e. Financial data including expenditures and revenues.

(2) Police agencies shall cooperate with the Department of Transportation regarding the collection of data necessary to prepare the annual report. In the event a police agency does not provide requested information, in a timely manner, to the Department of Transportation, the police agency will no longer be eligible for use of the electronic speed monitoring system.

(84 Del. Laws, c. 74, § 1.)

§ 4171. Minimum speed.

(a) No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(b) A minimum speed limit, below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law, may be displayed on appropriate traffic-control devices.

(21 Del. C. 1953, § 4171; 54 Del. Laws, c. 160, § 1; 57 Del. Laws, c. 670, § 13A; 60 Del. Laws, c. 700, § 8; 60 Del. Laws, c. 701, § 44.)

§ 4172. Speed exhibitions; drag races and other speed contests.

(a) No person shall drive any vehicle in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration and no person shall aid, abet, promote, assist or in any manner participate in any such race, competition, contest, test or exhibition.

(b) No person shall accelerate or try to accelerate a vehicle, or any of its tires, regardless of whether the vehicle is stationary or in motion, at a rate which causes the drive wheels to spin or slip on the road surface, to produce smoke from tire slippage, or to leave visible tire acceleration marks on a highway, ground, or other surface. This subsection shall not apply during periods of inclement weather, unless such conduct is done in wilful or wanton disregard for the safety of persons or property.

(c) No owner or person in charge of a vehicle shall permit that vehicle or any vehicle under the person's control to be used by another person for any of the purposes listed in subsection (a) or (b) of this section. If any vehicle is used in violation of this section and the identity of the operator is not otherwise apparent, the person in whose name such vehicle is registered as the owner shall be held prima facie responsible for such violation.

(d) (1) A violation of this section is an unclassified misdemeanor for the first offense. For a first offense, any sentence shall also include 16 hours of community service either as a condition of probation or pursuant to § 4204(m) of Title 11. A subsequent like offense is a class A misdemeanor. For a subsequent offense, any sentence shall also include 40 hours of community service either as a condition of probation or pursuant to § 4204(m) of Title 11. Any fine imposed may not be suspended. Upon receiving notice of a conviction for a first offense, the Secretary shall forthwith suspend the driver's license of the person convicted, for a period of 6 months. Upon receiving notice of a conviction of a subsequent like offense, the Secretary shall suspend the driver's license for a 1-year period. Notwithstanding the foregoing, there shall not be a suspension of driver's license upon conviction for a first offense under subsection (b) of this section.

(2) a. Whenever a person is arrested or issued a citation for a violation of this section, the issuing or arresting law-enforcement agency shall impound the vehicle used in the offense. A law-enforcement officer may elect not to impound the vehicle, if there is an emergency or medical necessity jeopardizing life or limb, or if the law-enforcement officer is presented with exigent circumstances, including resource constraints.

b. A vehicle impounded pursuant to this section shall be impounded for a period of 72 hours after the time of arrest or citation, or until such later time as the person claiming the vehicle meets the conditions for release listed in paragraph (d)(2)d. of this section. This section does not otherwise limit any other provisions of the Code that govern the lawful seizure of vehicles or evidence.

c. A vehicle impounded pursuant to this section may be released to a person other than the arrestee prior to the end of the impoundment period only under 1 of the following conditions:

1. The arrestee does not own and has not leased the vehicle, and the person who owns or leases the vehicle claims the vehicle and meets the conditions of release set forth in paragraph (d)(2)d. of this section.

2. The vehicle is owned or leased by the arrestee and the arrestee gives permission to another person, who has provided written acknowledgment that such person is responsible for not allowing the arrestee to drive the motor vehicle during the balance of the impoundment period, and the conditions for release in paragraph (d)(2)d. of this section are met. Should another person obtain the early release of an impounded vehicle under this paragraph and the arrestee thereafter drives, operates, or is in actual physical control of the vehicle during the balance of the 72-hour period of impoundment, the person that obtained the early release of the vehicle shall be guilty of a violation and subject to a $200 fine, which shall not be suspended. In any such prosecution under this paragraph, the State does not need to present a copy of the written acknowledgement.

d. A vehicle impounded pursuant to this section shall not be released unless all of the following conditions are met:

1. The claimant presents a valid driver's license or other photo identification, proof of ownership or lawful authority to operate the motor vehicle, and proof of valid motor vehicle insurance for that vehicle. If the vehicle will be driven out of impoundment, the claimant must have a valid driver's license or be accompanied by a person with a valid driver's license. If the vehicle is an ATV or OHV, proof of insurance is not necessary.

2. The claimant is able to operate the vehicle in a safe manner and would not be in violation of § 4177(a) of this title.

3. Any other conditions for release established by the law-enforcement agency have been met.

4. All reasonable towing and storage fees connected to the vehicle have been paid. The State and the arresting law-enforcement agency shall not be liable for any expenses incurred in connection with the towing and storage of said vehicle.

(e) (1) This section applies on highways and elsewhere throughout the State including all of the following:

a. On any driveway or premises of a church, school, recreational facility, or business or governmental property open to the public.

b. On the premises of any industrial establishment providing parking space for customers, patrons, or employees.

c. On any highway under construction or not yet open to the public.

(2) This section does not apply on any raceway, drag strip, or other place customarily and lawfully used for speed exhibitions or contests, or any nonresidential commercial, industrial, or other property where the participants have received express permission from the owner or the owner's agent.

(3) For the purpose of this section, the term "vehicle" includes "all terrain vehicle," "ATV," "Off-highway vehicle," and "OHV" as those terms are defined in § 101 of this title.

(4) For purposes of this section, a "subsequent offense" means a new violation of either subsection (a) or (b) of this section occurring within 5 years of the date of any former offense under this section.

(f) (1) If a person is found in violation of this section and the vehicle used in the violation is registered to that person or where the registrant permits the use of the vehicle, the court, at the time of sentencing the operator for violating this section, may, upon motion by

the State, order said vehicle be impounded for up to 90 days for the first violation of this section, and for up to 1 year for a subsequent violation, provided that a public or private secure storage area may be obtained by the arresting law-enforcement agency for said vehicle. The court shall permit any party with a legal or equitable interest in the vehicle an opportunity to show cause why the impoundment of such vehicle should cease. Prior to releasing said vehicle, the person to whom the vehicle is released shall pay all reasonable towing and storage fees connected therewith. The State and the arresting law-enforcement agency shall not be liable for any expenses incurred in connection with the towing and storage of said vehicle.

(2) In lieu of impoundment under paragraph (f)(1) of this section, the court may order that the number plate or registration plate of any Delaware-registered vehicle used in connection with a violation of subsection (a) of this section be surrendered to the Department within 72 hours of the issuance of the order, or in accordance with the Department's procedures, for up to 90 days for the first violation of this section, and for up to 1 year for a subsequent violation. The court shall permit any party with a legal or equitable interest in the vehicle an opportunity to show cause why the surrender of said plate should cease. After a person is convicted for a violation of this section, no person shall sell, transfer, or encumber the title to a Delaware-registered vehicle that the person knows is subject to a court order, except in the case of salvage, repossession, or unless first approved by the court that issued the order. The Department may not issue any alternate number plate or registration plate to that vehicle during the period of surrender, unless approved by the court that entered the order or upon presentment of proof of salvage or repossession. Anyone convicted of a violation of this section is prohibited from driving, operating, or being in physical control of the vehicle during the period of surrender absent specific court approval, regardless of any legal or equitable interest they might have in the vehicle.

(g) Whenever any vehicle has been used in, or in connection with, the commission of a violation of this section, or in connection with the flight or escape of any person convicted of a violation of this section, and any vehicle involved causes serious physical injury or death to another person during the course of the violation, or its operator is in violation of § 4177(a) of this title as a second offense or higher, the State, pursuant to the procedure governing set forth in Chapter 23 of Title 11 may seek to have forfeited any vehicle involved, whether it be the vehicle or an accomplice vehicle.

(h) Nothing in this section shall be construed to preclude or otherwise limit prosecution of or conviction for a violation of this chapter or any other provision of law. A person may be prosecuted and convicted of both the offenses of speed exhibitions, drag races and other speed contests and any other offenses as defined elsewhere by the laws of the State.

(i) (1) Except as provided under paragraph (i)(2) of this section, the Court of Common Pleas has exclusive original jurisdiction of a violation of this section.

(2) If a violation of this section may be joined properly with a felony or other offense within the jurisdiction of the Superior Court, the violation of this section is within the jurisdiction of the Superior Court.

(21 Del. C. 1953, § 4172; 54 Del. Laws, c. 160, § 1; 56 Del. Laws, c. 315; 57 Del. Laws, c. 670, § 13B; 60 Del. Laws, c. 702, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 60, § 12; 83 Del. Laws, c. 294, § 1; 84 Del. Laws, c. 41, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 484, § 1.)

§ 4172A. Malicious mischief by motor vehicle.

(a) No person shall operate a motor vehicle in such a manner as to cause wilful, wanton or reckless damage to or destruction of property owned by another person, party, company or corporation.

(b) No owner or person in charge of a motor vehicle shall permit that motor vehicle or any motor vehicle under the person's control to be operated by another person in such a manner as to cause wilful, wanton or reckless damage to or destruction of property owned by another person, party, company or corporation, nor so as to cause or threaten to cause injury or death to any person.

(c) Whoever being an operator violates this section shall be guilty of an unclassified misdemeanor, and shall be fined for the first offense not less than $25 nor more than $200, or imprisoned not less than 10 days nor more than 30 days or both. Upon receiving the notice of such conviction, the Secretary shall forthwith suspend the driver's license of the person convicted, for a period of not longer than 6 months. For each subsequent like offense, the person shall be fined not less than $50 nor more than $400, or imprisoned not less than 15 days nor more than 60 days or both. Upon receiving a court record of conviction for a subsequent like offense, the Secretary shall suspend the driver's license for a 1-year period.

(d) Whoever being the owner or person in charge of a motor vehicle who permitted such motor vehicle to be operated in violation of this section shall be guilty of an unclassified misdemeanor, and shall be fined for the first offense not less than $28.75 nor more than $230, or imprisoned not less than 10 days nor more than 30 days or both. For each subsequent like offense the person shall be fined not less than $57.50 nor more than $460, or imprisoned not less than 15 days nor more than 60 days or both.

(e) This section shall apply to the operation of motor vehicles on public highways and elsewhere throughout the State.

(60 Del. Laws, c. 702, § 4; 62 Del. Laws, c. 153, § 1; 68 Del. Laws, c. 9, § 30; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 60, § 13.)

§ 4173. Speed and weight limits on elevated structures.

(a) No person shall drive a vehicle over any bridge or elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such bridge has traffic-control devices displayed.

(b) No person shall drive a vehicle over any bridge or elevated structure constituting a part of a highway when such vehicle's gross weight, including carried load, is greater than the maximum weight which can be maintained with safety to such bridge or structure, when such structure has traffic-control devices displayed.

(c) The existence of traffic-control devices shall be conclusive evidence of the maximum speed or gross weight, including carried load, which can, with safety to any such structures, be maintained thereon.

(21 Del. C. 1953, § 4173; 54 Del. Laws, c. 160, § 1; 57 Del. Laws, c. 670, § 13A; 60 Del. Laws, c. 701, § 45.)

§ 4174. Complaint and summons in speed violations.

In every charge of violation of any speed regulation in this chapter, except §§ 4168 and 4172 of this title, the complaint and the summons or notice to appear shall specify the speed at which the defendant is alleged to have driven and the maximum or minimum speed applicable at the location.

(21 Del. C. 1953, § 4174; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 46.)

Subchapter IX

Reckless Driving; Driving While Intoxicated

§ 4175. Reckless driving.

(a) No person shall drive any vehicle in wilful or wanton disregard for the safety of persons or property.

(b) No person shall drive any vehicle on a public roadway at a speed of 90 miles an hour or more.

(c) Whoever violates subsection (a) of this section shall for the first offense be fined not less than $100 nor more than $300, or be imprisoned not less than 10 nor more than 30 days, or both. For each subsequent like offense occurring within 3 years of a former offense, the person shall be fined not less than $300 nor more than $1,000, or be imprisoned not less than 30 nor more than 60 days, or both. No person who violates subsection (a) of this section shall receive a suspended sentence. However, for the first offense, the period of imprisonment may be suspended. Whoever is convicted of violating subsection (a) of this section and who has had the charge reduced from the violation of § 4177(a) of this title shall, in addition to the above, be ordered to complete a course of instruction or program of rehabilitation established under § 4177D of this title and to pay all fees in connection therewith. In such cases, the court disposing of the case shall note in the court's record that the offense was alcohol-related or drug-related and such notation shall be carried on the violator's motor vehicle record.

(d) Whoever violates subsection (b) of this section shall, unless suspended by the court:

(1) For a first offense, be fined not less than $150 nor more than $300, or be required to complete a traffic safety course approved by the Division of Motor Vehicles, or both.

(2) For a second offense committed within 3 years of a prior offense, be fined not less than $300 nor more than $800, or be required to perform at least 10 but not more than 30 hours of community service picking up litter along a public roadway, or both.

(3) For a third offense committed within 3 years of 2 prior offenses, be fined not less than $500 nor more than $1000, or be required to perform at least 30 but not more than 90 hours of community service picking up litter along a public roadway, or both.

(21 Del. C. 1953, § 4175; 54 Del. Laws, c. 160, § 1; 65 Del. Laws, c. 503, § 19; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 315, § 6; 84 Del. Laws, c. 70, § 1.)

§ 4175A. Aggressive driving.

(a) No person shall drive any vehicle in an aggressive manner, as defined by this section, and such offense shall be known as aggressive driving.

(b) For purposes of this section, "aggressive manner" shall mean that an individual engages in continuous conduct which violates 3 or more of the following sections:

(1) Section 4107 of this title, relating to obedience to traffic-control devices;

(2) Section 4108 of this title, relating to traffic control signals;

(3) Section 4117 of this title, relating to overtaking on the right;

(4) Section 4122 of this title, relating to driving within a traffic lane;

(5) Section 4123 of this title, relating to following too closely;

(6) Section 4132 of this title, relating to yielding to the right-of-way;

(7) Section 4133 of this title, relating to vehicles entering the roadway;

(8) Section 4155 of this title, relating to use of turn signals;

(9) Section 4164 of this title, relating to stop signs and yield signs;

(10) Section 4166(d) of this title, relating to overtaking and passing school buses;

(11) Section 4168 of this title, relating to speed restrictions; and

(12) Section 4169, relating to specific speed limits.

(c) Whoever violates this section shall for the first offense be fined not less than $100 nor more than $300 or be imprisoned not less than 10 nor more than 30 days, or both. For each subsequent like offense occurring within 3 years of a former offense, the person shall be fined not less than $300 nor more than $1,000 or be imprisoned not less than 30 nor more than 60 days, or both, and the person shall have their driving privileges suspended for a period of 30 days.

(d) In addition to the penalties imposed pursuant to subsection (c) of this section, whoever violates this section shall be ordered to complete a course of instruction established by the Secretary to address behavior modification or attitudinal driving. The Secretary shall administer such courses and programs and adopt rules and regulations therefor, and shall establish a schedule of fees for enrollment in such courses and programs that shall not exceed the maximum fine imposed pursuant to subsection (c) of this section.

(e) Nothing in this section shall be construed to preclude or otherwise limit a prosecution of or conviction for a violation of this chapter or any other provision of law. A person may be prosecuted and convicted of both the offense of aggressive driving and 1 or more underlying offenses as defined elsewhere by the laws of the State.

(72 Del. Laws, c. 216, § 1; 73 Del. Laws, c. 113, § 1; 74 Del. Laws, c. 285, § 1.)

§ 4176. Careless or inattentive driving.

(a) Whoever operates a vehicle in a careless or imprudent manner, or without due regard for road, weather and traffic conditions then existing, shall be guilty of careless driving.

(b) Whoever operates a vehicle and who fails to give full time and attention to the operation of the vehicle, or whoever fails to maintain a proper lookout while operating the vehicle, shall be guilty of inattentive driving.

(c) Whoever violates this section shall for the first offense be fined not less than $25 nor more than $75. For each subsequent like offense occurring within 3 years of a former offense, the person shall be fined not less than $50 nor more than $95.

(d) [Repealed.]

(21 Del. C. 1953, § 4175A; 56 Del. Laws, c. 305; 60 Del. Laws, c. 701, § 47; 65 Del. Laws, c. 503, § 20; 68 Del. Laws, c. 9, § 31; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 464, § 1; 78 Del. Laws, c. 208, §§ 8-10; 81 Del. Laws, c. 195, § 2.)

§ 4176A. Operation of a vehicle causing death; unclassified misdemeanor.

(a) A person is guilty of operation of a vehicle causing death when, in the course of driving or operating a motor vehicle or OHV in violation of any provision of this chapter other than § 4177 of this title, the person's driving or operation of the vehicle or OHV causes the death of another person.

(b) Operation of a vehicle causing death is an unclassified misdemeanor.

(c) Notwithstanding any provision of law to the contrary, a person convicted of operation of a vehicle causing death shall for the first offense be fined not more than $1,150 and imprisoned not more than 30 months. For each subsequent conviction under this section the person shall be fined not more than $2,300 and imprisoned not more than 60 months.

(d) The Superior Court has original and exclusive jurisdiction over a violation of this section by a person 18 years of age or older. Notwithstanding any provision of law to the contrary, an offense which is within the original and/or exclusive jurisdiction of another court and which may be joined properly with a violation of this section is deemed to be within the original and exclusive jurisdiction of the Superior Court.

(74 Del. Laws, c. 99, § 1.)

§ 4176B. Cell phone use by school bus drivers; penalties.

(a) No driver shall operate a school bus on any highway while using a cell telephone while such vehicle is in motion and such vehicle is transporting 1 or more children; provided, that this section shall not apply to communications made to and from a central dispatch, school transportation department or its equivalent when the bus is not equipped with a functioning 2-way radio.

(b) For the purposes of this section, "cell telephone" means a cellular, analog, wireless or digital telephone.

(c) Whoever violates this section shall for the first offense be fined not less than $50 nor more than $100. For each subsequent offense the person shall be fined not less than $100 nor more than $200 and shall have that person's school bus endorsement removed from that person's driver's license for a period of at least 6 months.

(d) It is an affirmative defense to prosecution under this section that the driver's use of a cell telephone was necessitated by a bona fide emergency.

(74 Del. Laws, c. 318, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4176C. Electronic communication devices; penalties.

(a) No person shall drive a motor vehicle on any highway while using an electronic communication device while such motor vehicle is in motion.

(b) For the purposes of this section, the following terms shall mean:

(1) “Cell telephone” shall mean a cellular, analog, wireless or digital telephone.

(2) “Electronic communication device” shall mean a cell telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, 2-way messaging device, electronic game, or portable computing device.

(3) “Engages or engaging in a call” shall mean when a person talks into or listens on an electronic communication device, but shall not mean when a person dials or punches a phone number on an electronic communication device.

(4) “Hands-free electronic communication device” shall mean an electronic communication device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such electronic communication device, by which a user engages in a call without the use of either hand or both hands.

(5) “Hands-free equipment” shall mean the internal feature or function of a hands-free electronic communication device or the attachment or addition to a hands-free electronic communication device by which a user may engage in a call without the use of either hand or both hands.

(6) “Using” shall mean holding in a person’s hand or hands an electronic communication device while:

a. Viewing or transmitting images or data;

b. Playing games;

c. Composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving e-mail, text messages or other electronic data; or

d. Engaging in a call.

(c) Subsection (a) of this section shall not apply to:

(1) A law-enforcement officer, a firefighter, an emergency medical technician, a paramedic or the operator of an authorized emergency vehicle in the performance of their official duties;

(2) A person using an electronic communication device to report to appropriate authorities a fire, a traffic accident, a serious road hazard, or medical or hazardous materials emergency, or to report the operator of another motor vehicle who is driving in a reckless, careless or otherwise unsafe manner or who appears to be driving under the influence of alcohol or drugs, or to report any crime;

(3) A person using a cell telephone who is operating a school bus and covered under § 4176B of this title;

(4) A person engaging in a call with a hands-free electronic communication device while utilizing hands-free equipment and such person does not hold the hands-free electronic communication device in such person’s hand or hands;

(5) The activation or deactivation of hands-free equipment or a function of hands-free equipment;

(6) A person driving or operating an unregistered farm tractor, farm truck or farm equipment;

(7) Use of an amateur radio by an FCC-licensed amateur radio operator; and

(8) A person who during their course of employment with a business or government entity uses a 2-way radio mounted or attached to a motor vehicle to communicate with a central dispatch, base of operation, or with other employees of such business or government entity.

(d) Whoever violates this section shall for the first offense be subject to a civil penalty of $100. For each subsequent like offense occurring within 2 years of the former offense the person shall be subject to a civil penalty of not less than $200 nor more than $300. For each civil penalty of $100 that is assessed under this subsection, $20 shall be paid over to the State Treasury to be deposited into the Volunteer Ambulance Company Fund, in addition to the $10 penalty assessed pursuant to § 4101(j) of Title 11. For each civil penalty between $200 and $300 that is assessed under this subsection, 20% shall be paid over to the State Treasury to be deposited into the Volunteer Ambulance Company Fund, in addition to the $10 penalty assessed pursuant to § 4101(j) of Title 11.

(e) No motor vehicle points shall be assessed for a violation of this section.

(77 Del. Laws, c. 343, § 1; 77 Del. Laws, c. 344, § 1; 77 Del. Laws, c. 345, § 1; 78 Del. Laws, c. 279, § 1; 80 Del. Laws, c. 405, § 1; 81 Del. Laws, c. 221, § 1.)

§ 4176D. Operation of a motor vehicle during an emergency.

(a) No person may operate a motor vehicle on a highway, express highway, roadway or private road as defined in § 101 of this title when a Level 3 Driving Ban or a Level 2 Driving Restriction has been activated during an emergency, unless the person is a first responder, “first informer,” or “essential personnel,” as those terms are defined under § 3102 of Title 20, or a waiver has been granted under § 3116(b)(12)b. of Title 20.

(b) Whoever violates this section shall for the first offense be fined not less than $25 nor more than $115. For each subsequent like offense, the person shall be fined not less than $50 nor more than $200, or imprisoned not less than 10 nor more than 30 days, or both.

(77 Del. Laws, c. 447, § 1; 85 Del. Laws, c. 25, § 3.)

§ 4176E. Operation of a vehicle causing serious physical injury to a vulnerable user.

(a) As used in this section, “vulnerable user” means any of the following:

(1) A pedestrian who is lawfully on or within a highway, crosswalk, improved or unimproved shoulder of a highway, or sidewalk.

(2) An individual actively engaged in work upon a highway, in work upon utility facilities upon or along a highway, or in the provision of emergency services upon, within, or adjacent to a highway.

(3) An individual riding an animal or driving an animal-drawn carriage, or a passenger of the individual, lawfully on or within a highway or improved or unimproved shoulder of a highway.

(4) An individual operating or a passenger on or in any of the following, when any of the following is lawfully on or within a highway, crosswalk, improved or unimproved shoulder of a highway, or sidewalk:

a. A farm tractor or similar vehicle designed primarily for farm use.

b. A skateboard.

c. Roller skates.

d. In-line skates.

e. A scooter.

f. A moped.

g. A bicycle or a device that is an extension of a bicycle, such as an extend-a-bike, a bicycle trailer, or a child's bicycle seat.

h. A motorcycle.

i. A nonmotorized or motorized wheelchair.

j. An electric personal assistive mobility device.

k. An electric bicycle.

(b) A person is guilty of operation of a vehicle causing serious physical injury to a vulnerable user when, in the course of driving or operating a motor vehicle or OHV in violation of any provision of this chapter other than § 4177 of this title, the person's driving or operation of the vehicle or OHV causes serious physical injury, as defined in § 222 of Title 11, to a vulnerable user.

(c) The Superior Court has original and exclusive jurisdiction over a violation of this section by a person 18 years of age or older. Notwithstanding any provision of law to the contrary, an offense which is within the original or exclusive jurisdiction of another court and which may be joined properly with a violation of this section is deemed to be within the original and exclusive jurisdiction of the Superior Court.

(d) A person who violates this section is guilty of a violation. Unless suspended under subsection (e) of this section, the Superior Court must impose upon a person convicted under this section all of the following:

(1) A fine of $550.

(2) A suspension of the person's license or driving privileges, or both, for up to 1 year.

(3) A requirement that the person complete a traffic safety course approved by the Division of Motor Vehicles.

(4) A requirement that the person perform not less than 10, nor more than 100, hours of community service which must include activities related to driver improvement and providing public education on traffic safety.

(e) The Superior Court may suspend up to $500 of the fine and the imposition of the suspension of the person's license or driving privileges, or both. Any sentence suspended under this subsection must be suspended on the condition that the person completes the remaining provisions of the sentence. If any sentence is suspended, the Superior Court shall set a hearing date at a time within 1 year of the date of sentencing. At that hearing, the Superior Court shall do one of the following:

(1) If the person has successfully completed the requirements described in paragraphs (d)(3) and (d)(4) of this section, dismiss the penalties suspended under this subsection.

(2) If the person has not successfully completed the requirements described in paragraphs (d)(3) and (d)(4) of this section do 1 of the following:

a. Grant the person an extension based on good cause shown. The Court may not grant more than 1 extension for good cause shown.

b. Impose those portions of the sentence suspended under subsection (e) of this section.

(f) Nothing in this section is deemed to preclude prosecution under any other provision of this chapter.

(81 Del. Laws, c. 195, § 1; 83 Del. Laws, c. 505, § 2.)

§ 4177. Driving a vehicle while under the influence or with a prohibited alcohol or drug content; evidence; arrests; and penalties.

(a) No person shall drive a vehicle:

(1) When the person is under the influence of alcohol;

(2) When the person is under the influence of any drug;

(3) When the person is under the influence of a combination of alcohol and any drug;

(4) When the person's alcohol concentration is .08 or more; or

(5) When the person's alcohol concentration is, within 4 hours after the time of driving .08 or more. Notwithstanding any other provision of the law to the contrary, a person is guilty under this subsection, without regard to the person's alcohol concentration

at the time of driving, if the person's alcohol concentration is, within 4 hours after the time of driving .08 or more and that alcohol concentration is the result of an amount of alcohol present in, or consumed by the person when that person was driving;

(6) When the person's blood contains, within 4 hours of driving, any amount of an illicit or recreational drug that is the result of the unlawful use or consumption of such illicit or recreational drug or any amount of a substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug prior to or during driving.

(b) In a prosecution for a violation of subsection (a) of this section:

(1) Except as provided in paragraph (b)(3)b. of this section, the fact that any person charged with violating this section is, or has been, legally entitled to use alcohol or a drug shall not constitute a defense.

(2) a. No person shall be guilty under paragraph (a)(5) of this section when the person has not consumed alcohol prior to or during driving but has only consumed alcohol after the person has ceased driving and only such consumption after driving caused the person to have an alcohol concentration of .08 or more within 4 hours after the time of driving.

b. No person shall be guilty under paragraph (a)(5) of this section when the person's alcohol concentration was .08 or more at the time of testing only as a result of the consumption of a sufficient quantity of alcohol that occurred after the person ceased driving and before any sampling which raised the person's alcohol concentration to .08 or more within 4 hours after the time of driving.

(3) a. No person shall be guilty under paragraph (a)(6) of this section when the person has not used or consumed an illicit or recreational drug prior to or during driving but has only used or consumed such drug after the person has ceased driving and only such use or consumption after driving caused the person's blood to contain an amount of the drug or an amount of a substance or compound that is the result of the use or consumption of the drug within 4 hours after the time of driving.

b. No person shall be guilty under paragraph (a)(6) of this section when the person has used or consumed the drug or drugs detected according to the directions and terms of a lawfully obtained prescription for such drug or drugs.

c. Nothing in this subsection nor any other provision of this chapter shall be deemed to preclude prosecution under paragraph (a)(2) or (a)(3) of this section.

(4) The charging document may allege a violation of subsection (a) of this section without specifying any particular paragraph of subsection (a) of this section and the prosecution may seek conviction under any of the paragraphs of subsection (a) of this section.

(c) For purposes of subchapter III of Chapter 27 of this title and this subchapter, the following definitions shall apply:

(1) "Alcohol concentration of .08 or more" shall mean:

a. An amount of alcohol in a sample of a person's blood equivalent to .08 or more grams of alcohol per 100 milliliters of blood; or

b. An amount of alcohol in a sample of a person's breath equivalent to .08 or more grams per 210 liters of breath.

(2) "Alcohol concentration of .15 or more" shall mean:

a. An amount of alcohol in a sample of a person's blood equivalent to .15 or more grams of alcohol per 100 milliliters of blood; or

b. An amount of alcohol in a sample of a person's breath equivalent to .15 or more grams per 210 liters of breath.

(3) "Alcohol concentration of .20 or more" shall mean:

a. An amount of alcohol in a sample of a person's blood equivalent to .20 or more grams of alcohol per 100 milliliters of blood; or

b. An amount of alcohol in a sample of a person's breath equivalent to .20 or more grams per 210 liters of breath.

(4) "Chemical test" or "test" shall include any form or method of analysis of a person's blood, breath or urine for the purposes of determining alcohol concentration or the presence of drugs which is approved for use by the Forensic Sciences Laboratory, Division of Forensic Science, the Delaware State Police Crime Laboratory, any state or federal law-enforcement agency, or any hospital or medical laboratory. It shall not, however, include a preliminary screening test of breath performed in order to estimate the alcohol concentration of a person at the scene of a stop or other initial encounter between an officer and the person.

(5) "Drive" shall include driving, operating, or having actual physical control of a vehicle.

(6) "Drug" shall include any substance or preparation defined as such by Title 11 or Title 16 or which has been placed in the schedules of controlled substances pursuant to Chapter 47 of Title 16. "Drug" shall also include any substance or preparation having the property of releasing vapors or fumes which may be used for the purpose of producing a condition of intoxication, inebriation, exhilaration, stupefaction or lethargy or for the purpose of dulling the brain or nervous system.

(7) "Illicit or recreational drug" as that phrase is used in paragraph (a)(6) of this section means any substance or preparation that is:

a. Any material, compound, combination, mixture, synthetic substitute or preparation which is enumerated as a Schedule I controlled substance under § 4714 of Title 16; or

b. Cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of Title 16; or

c. Amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of Title 16; or

d. Methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of Title 16; or

e. Phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of Title 16; or

f. A designer drug as defined in § 4701 of Title 16; or

g. A substance or preparation having the property of releasing vapors or fumes which may be used for the purpose of producing a condition of intoxication, inebriation, stupefaction or lethargy or for the purpose of dulling the brain or nervous system.

(8) "Unlawful use or consumption" as that phrase is used in paragraph (a)(6) of this section means that the person used or consumed a drug without legal authority to do so as provided by Delaware law. This Code describes the procedure by which a person may lawfully obtain, use or consume certain drugs. In a prosecution brought under paragraph (a)(6) of this section, the State need not present evidence of a lack of such legal authority. In a prosecution brought under paragraph (a)(6) of this section, if a person claims that such person lawfully used or consumed a drug, it is that person's burden to show that person has complied with and satisfied the provisions of this Code regarding obtaining, using or consumption of the drug detected.

(9) "Substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug" as that phrase is used in paragraph (a)(6) of this section shall not include any substance or compound that is solely an inactive ingredient or inactive metabolite of such drug.

(10) "Vehicle" shall include any vehicle as defined in § 101(93) of this title, any "off-highway vehicle" as defined in § 101 of this title and any "moped" as defined in § 101 of this title.

(11) "While under the influence" shall mean that the person is, because of alcohol or drugs or a combination of both, less able than the person would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving of a vehicle.

(d) Whoever is convicted of a violation of subsection (a) of this section shall:

(1) For the first offense, be fined not less than $500 nor more than $1,500 or imprisoned not more than 12 months or both. Any period of imprisonment imposed under this paragraph may be suspended.

(2) For a second offense occurring at any time within 10 years of a prior offense, be fined not less than $750 nor more than $2,500 and imprisoned not less than 60 days nor more than 18 months. The minimum sentence for a person sentenced under this paragraph may not be suspended. The sentencing Court may suspend the minimum sentence set forth in this subsection upon the condition that the offender shall successfully graduate from the Superior Court's Veterans' Treatment Court or successfully complete the Court of Common Pleas Driving Under the Influence Treatment Program in which the offender shall complete a minimum of 30 days of community service.

(3) For a third offense occurring at any time after 2 prior offenses, be guilty of a class G felony, be fined not more than $5,000 and be imprisoned not less than 1 year nor more than 2 years. The provisions of § 4205(b)(7) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 3 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to 9 months of any minimum sentence set forth in this paragraph provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section.

(4) For a fourth offense occurring any time after 3 prior offenses, be guilty of a class E felony, be fined not more than $7,000, and imprisoned not less than 2 years nor more than 5 years. The provisions of § 4205(b)(5) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 6 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to 18 months of any minimum sentence set forth in this paragraph provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section.

(5) For a fifth offense occurring any time after 4 prior offenses, be guilty of a class E felony, be fined not more than $10,000 and imprisoned not less than 3 years nor more than 5 years.

(6) For a sixth offense occurring any time after 5 prior offenses, be guilty of a class D felony, be fined not more than $10,000 and imprisoned not less than 4 years nor more than 8 years.

(7) For a seventh offense occurring any time after 6 prior offenses, or for any subsequent offense, be guilty of a class C felony, be fined not more than $15,000 and imprisoned not less than 5 years nor greater than 15 years.

(8) For the fifth, sixth, seventh offense or greater, the provisions of § 4205(b) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, at least $^1/_2$ of any minimum sentence shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to $^1/_2$ of any minimum sentence set forth in this section provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section. No conviction for a violation of this section, for which a sentence is imposed pursuant to this paragraph or paragraph (d)(3) or (d)(4) of this section, shall be considered a predicate felony for conviction or sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph or paragraph (d)(3) or (d)(4) of this section is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11.

(9) Any minimum sentence suspended pursuant to paragraph (d)(3), (d)(4), or (d)(8) of this section shall be upon the condition that the offender shall complete a program of supervision which shall include:

a. A drug and alcohol abstinence program requiring that the offender maintain a period of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device or through periodic breath or urine analysis. In addition to such monitoring, the offender shall participate in periodic, random breath or urine analysis during the entire period of supervision.

b. An intensive inpatient or outpatient drug and alcohol treatment program for a period of not less than 3 months as approved by the Court or the Department of Correction.

1. Such treatment and counseling may be completed either while an offender is serving any level of supervision as defined by § 4204(c)(2) through (5) of Title 11 or after arrest but before adjudication of the offense.

2. Notwithstanding paragraph (d)(9)b.1. of this section, the offender must complete the required drug and alcohol treatment program within 9 months from the date the offender is sentenced or from the date of release following a Level V or Level IV sentence.

3. If an offender fails to complete the required drug and alcohol treatment program as required under paragraph (d)(9)b.2. of this section, the court shall impose the portion of the minimum sentence suspended by the court under paragraphs (d)(3), (d)(4), or (d)(8) of this section for the offender's participation in the program.

4. On petition by the offender, or the Department of Correction, filed before the expiration of the 9-month period under paragraph (d)(9)b.2. of this section, the court may, for good cause shown, extend the 9-month period to accommodate the completion of the required drug and alcohol treatment program.

c. Any other terms or provisions deemed appropriate by the sentencing court or the Department of Correction.

(10) In addition to the penalties otherwise authorized by this subsection, any person convicted of a violation of subsection (a) of this section, committed while a person who has not yet reached the person's seventeenth birthday is on or within the vehicle shall:

a. For the first offense, be fined an additional minimum of $500 and not more than an additional $1,500 and sentenced to perform a minimum of 40 hours of community service in a program benefiting children.

b. For each subsequent like offense, be fined an additional minimum of $750 and not more than an additional $2,500 and sentenced to perform a minimum of 80 hours of community service in a program benefiting children.

c. Violation of this paragraph shall be considered as an aggravating circumstance for sentencing purposes for a person convicted of a violation of subsection (a) of this section. Nothing in this paragraph shall prevent conviction for a violation of both subsection (a) of this section and any offense as defined elsewhere by the laws of this State.

d. Violation of or sentencing pursuant to this paragraph shall not be considered as evidence of either comparative or contributory negligence in any civil suit or insurance claim, nor shall a violation of or sentencing pursuant to this paragraph be admissible as evidence in the trial of any civil action.

(11) A person who has been convicted of prior or previous offenses of this section, as defined in § 4177B(e) of this title, need not be charged as a subsequent offender in the complaint, information or indictment against the person in order to render the person liable for the punishment imposed by this section on a person with prior or previous offenses under this section. However, if at any time after conviction and before sentence, it shall appear to the Attorney General or to the sentencing court that by reason of such conviction and prior or previous convictions, a person should be subjected to paragraph (d)(3), (d)(4), (d)(5), (d)(6) or (d)(7) of this section, the Attorney General shall file a motion to have the defendant sentenced pursuant to those provisions. If it shall appear to the satisfaction of the court at a hearing on the motion that the defendant falls within paragraph (d)(3), (d)(4), (d)(5), (d)(6) or (d)(7) of this section, the court shall enter an order declaring the offense for which the defendant is being sentenced to be a felony and shall impose a sentence accordingly.

(12) The Court of Common Pleas and Justice of the Peace Courts shall not have jurisdiction over offenses which must be sentenced pursuant to paragraph (d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8) or (d)(9) of this section.

(13) The Justice of the Peace Court shall have jurisdiction to accept pleas of guilt and to impose sentence for violations of this section that are not subject to sentencing pursuant to paragraphs (d)(3) through (d)(9) of this section and to enter conditional adjudications of guilt requiring or permitting a person to enter a first offender election pursuant to § 4177B of this title. The Justice of the Peace Court shall not have jurisdiction to try any violations of this section. If an offense or criminal case within the exclusive jurisdiction of a justice of the peace or alderman or mayor of any incorporated city or town, except the City of Newark, is or may be joined properly with a violation of this section, such offense or criminal case shall remain joined with any violation of this section for the purpose of trial.

(14) If a person enters a guilty plea in a court of competent jurisdiction to a violation of subsection (a) of this section, such action shall constitute a waiver of the right to an administrative hearing as provided for in § 2742 of this title and shall act to withdraw any request previously made therefor.

(15) Notwithstanding any law to the contrary, the phrase "all crimes" as used in the Truth in Sentencing Act of 1989 shall include felonies under this section, and any amendments thereto.

(e) In addition to any penalty for a violation of subsection (a) of this section, the court shall prohibit the person convicted from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device; the terms of installation of the device and licensing of the individual to drive shall be as set forth in § 4177C and § 4177G of this title. A person who is prohibited from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device under this title at the

time of an offense under subsection (a) of this section shall, in addition to any other penalties provided under law, pay a fine of $2,000 and be imprisoned for 60 days.

(f) In addition to any penalty for a violation of subsection (a) of this section, the court shall order the person to complete an alcohol evaluation and to complete a program of education or rehabilitation pursuant to § 4177D of this title which may include inpatient treatment and be followed by such other programs as established by the treatment facility, not to exceed a total of 15 months and to pay a fee not to exceed the maximum fine; provided however, that successful graduation from the Superior Court's Veterans' Treatment Court or the successful completion of the Court of Common Pleas Driving Under the Influence Treatment Program shall satisfy this requirement.

(g) For purposes of a conviction premised upon subsection (a) of this section, or any proceeding pursuant to this Code in which an issue is whether a person was driving a vehicle while under the influence, evidence establishing the presence and concentration of alcohol or drugs in the person's blood, breath or urine shall be relevant and admissible. Such evidence may include the results from tests of samples of the person's blood, breath or urine taken within 4 hours after the time of driving or at some later time. In any proceeding, the resulting alcohol or drug concentration reported when a test, as defined in paragraph (c)(3) of this section, is performed shall be deemed to be the actual alcohol or drug concentration in the person's blood, breath or urine without regard to any margin of error or tolerance factor inherent in such tests.

(1) Evidence obtained through a preliminary screening test of a person's breath in order to estimate the alcohol concentration of the person at the scene of a stop or other initial encounter between a law-enforcement officer and the person shall be admissible in any proceeding to determine whether probable cause existed to believe that a violation of this Code has occurred. However, such evidence may only be admissible in proceedings for the determination of guilt when evidence or argument by the defendant is admitted or made relating to the alcohol concentration of the person at the time of driving.

(2) Nothing in this section shall preclude conviction of an offense defined in this Code based solely on admissible evidence other than the results of a chemical test of a person's blood, breath or urine to determine the concentration or presence of alcohol or drugs.

(3) A jury shall be instructed by the court in accordance with the applicable provisions of this subsection in any proceeding pursuant to this Code in which an issue is whether a person was driving a vehicle while under the influence of alcohol or drugs or a combination of both.

(h) (1) For the purpose of introducing evidence of a person's alcohol concentration or the presence or concentration of any drug pursuant to this section, a report signed by the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist who performed the test or tests as to its nature is prima facie evidence, without the necessity of the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist personally appearing in court:

a. That the blood delivered was properly tested under procedures approved by the Division of Forensic Science, or the Delaware State Police Crime Laboratory;

b. That those procedures are legally reliable;

c. That the blood was delivered by the officer or persons stated in the report; and,

d. That the blood contained the alcohol, drugs or both therein stated.

(2) Any report introduced under paragraph (h)(1) of this section must:

a. Identify the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist as an individual certified by the Division of Forensic Science, the Delaware State Police Crime Laboratory or any county or municipal police department employing scientific analysis of blood, as qualified under standards approved by the Division of Forensic Science, or the Delaware State Police Crime Laboratory to analyze the blood;

b. State that the person made an analysis of the blood under the procedures approved by the Division of Forensic Science or the Delaware State Police Crime Laboratory; and,

c. State that the blood, in that person's opinion, contains the resulting alcohol concentration or the presence or concentration of any drug within the meaning of this section.

Nothing in this subsection precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the report entered pursuant to paragraphs (h)(1) and (2) of this section.

(3) For purposes of establishing the chain of physical custody or control of evidence defined in this section which is necessary to admit such evidence in any proceeding, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery stated, without the necessity of a personal appearance in court by the person signing the statement, in accordance with the same procedures outlined in § 4331(3) of Title 10.

(4) In a criminal proceeding, the prosecution shall, upon written demand of a defendant filed in the proceedings at least 15 days prior to the trial, require the presence of the Forensic Toxicologist, Forensic Chemist, State Police Forensic Analytical Chemist, or any person necessary to establish the chain of custody as a witness in the proceeding. The chain of custody or control of evidence defined in this section is established when there is evidence sufficient to eliminate any reasonable probability that such evidence has been tampered with, altered or misidentified.

(i) In addition to any other powers of arrest, any law-enforcement officer is hereby authorized to arrest without a warrant any person who the officer has probable cause to believe has violated the provisions of this section, regardless of whether the alleged violation was

committed in the presence of such officer. This authority to arrest extends to any hospital or other medical treatment facility located beyond the territorial limits of the officer's jurisdiction provided there is probable cause to believe that the violation of this section occurred within the officer's jurisdiction. This authority to arrest also extends to any place where the person is found within 4 hours of the alleged driving of a vehicle if there is reason to believe the person has fled the scene of an accident in which that person was involved, and provided there is probable cause to believe that the violation of this section occurred within the officer's jurisdiction.

(j) Any court in which a conviction of or guilty plea to a driving under the influence offense shall include the blood alcohol concentration of the defendant (if any is on record) when forwarding notice of said conviction or guilty plea to the Division of Motor Vehicles.

(21 Del. C. 1953, § 4176; 54 Del. Laws, c. 160, § 1; 57 Del. Laws, c. 71, §§ 1-3; 57 Del. Laws, c. 526, §§ 1, 2; 57 Del. Laws, c. 613, § 1; 57 Del. Laws, c. 670, § 13B; 58 Del. Laws, c. 80, § 3; 59 Del. Laws, c. 46, §§ 1, 2; 60 Del. Laws, c. 701, §§ 48, 49; 60 Del. Laws, c. 702, § 2; 61 Del. Laws, c. 474, § 2; 64 Del. Laws, c. 13, § 13; 67 Del. Laws, c. 437, §§ 1, 2; 68 Del. Laws, c. 9, § 32; 68 Del. Laws, c. 125, § 1; 69 Del. Laws, c. 325, §§ 2, 3; 70 Del. Laws, c. 26, §§ 1-8; 70 Del. Laws, c. 34, § 1; 70 Del. Laws, c. 62, §§ 1-8; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 265, § 2; 70 Del. Laws, c. 474, § 1; 70 Del. Laws, c. 553, § 2; 71 Del. Laws, c. 209, §§ 1, 2; 71 Del. Laws, c. 222, §§ 2, 3; 72 Del. Laws, c. 36, §§ 1-3, 5, 6; 73 Del. Laws, c. 352, §§ 1, 11; 73 Del. Laws, c. 432, § 4; 74 Del. Laws, c. 182, §§ 1-3; 74 Del. Laws, c. 285, § 4; 74 Del. Laws, c. 333, §§ 1, 2; 75 Del. Laws, c. 315, §§ 1-5; 75 Del. Laws, c. 397, § 15; 77 Del. Laws, c. 162, §§ 1-6; 78 Del. Laws, c. 167, §§ 1-18; 78 Del. Laws, c. 349, § 1; 79 Del. Laws, c. 265, § 16; 79 Del. Laws, c. 378, §§ 3, 5; 79 Del. Laws, c. 396, § 2; 80 Del. Laws, c. 75, § 2; 80 Del. Laws, c. 120, § 1; 80 Del. Laws, c. 136, § 1; 80 Del. Laws, c. 168, § 1; 80 Del. Laws, c. 289, § 1; 81 Del. Laws, c. 51, § 1; 82 Del. Laws, c. 93, § 1; 83 Del. Laws, c. 17, § 1; 83 Del. Laws, c. 505, § 1; 84 Del. Laws, c. 292, § 2; 84 Del. Laws, c. 332, § 1; 85 Del. Laws, c. 40, § 1; 85 Del. Laws, c. 161, § 1.)

§ 4177A. Revocation of license for violation of § 4177 of this title.

(a) The Secretary shall forthwith revoke the driver's license or driving privileges of a person convicted of a violation of § 4177 of this title or any offense under the laws of any state or of the United States or local jurisdiction or the District of Columbia which prohibits driving under the influence of alcohol or drugs. The Secretary shall revoke the person's driver's license or driving privileges for 1 of the following periods, as applicable:

(1) *First offense. —*

12 months; except that if the person's blood alcohol concentration was .15 or greater, but less than .20, the revocation period must be 18 months, or if the person's blood alcohol concentration was .20 or greater, or the person refused a chemical test, the revocation period must be 24 months.

(2) *Second offense. —*

18 months; except that if the person's blood alcohol concentration was .15 or greater, but less than .20, the revocation period must be 24 months, or if the person's blood alcohol concentration was .20 or greater, or the person refused a chemical test, the revocation period must be 30 months.

(3) *Third offense. —*

24 months; except that if the person's blood alcohol concentration was .15 or greater, but less than .20, the revocation period must be 30 months, or if the person's blood alcohol concentration was .20 or greater, or the person refused a chemical test, the revocation period must be 36 months.

(4) *Fourth or further subsequent offenses. —*

60 months regardless of the person's blood alcohol concentration.

(b) (1) The Secretary shall reinstate the driver's license or driving privileges of a person sentenced under § 4177(d) of this title if the person does 1 of the following:

a. Completes the requirements for reinstatement under § 4177C(d) of this title.

b. Completes the requirements for reinstatement under the Court of Common Pleas Driving Under the Influence Treatment Program under § 4177C(g) of this title.

c. Successfully graduates from the Superior Court's Veterans' Treatment Court.

(2) The Secretary shall reinstate the driver's license or driving privileges of a person sentenced under § 4177(d) of this title who is not eligible for the IID Program under § 4177G of this title, or who did not apply to obtain an IID license or participate in the IID Program under §§ 4177C and 4177G of this title and whose license revocation period under this section has elapsed, if the person does all of the following:

a. Pays all fees under the schedule adopted by the Secretary.

b. Satisfactorily completes a course or program established under § 4177D of this title.

c. Does not operate a vehicle during the person's revocation period.

(c) (1) Notwithstanding the requirement in subsection (b) of this section that the Secretary reinstate the driver's license or driving privileges of a person sentenced under § 4177(d) of this title if the person complies with the requirements for reinstatement, the Secretary may refuse to reinstate the person's driver's license or driving privileges if the Secretary finds that the person has not been of good behavior for the entire period of the revocation.

(2) The Secretary must provide the person, in writing, with the basis for the finding and the conditions to be met to reinstate the person's driver's license or driving privileges.

(3) If the Secretary refuses to reinstate the person's driver's license or driving privileges under this subsection after the person's revocation period has ended and the person has paid all fines or fees, the person may appeal the Secretary's decision to the Superior Court for the county in which the person resides.

(61 Del. Laws, c. 474, § 2; 63 Del. Laws, c. 430, §§ 13, 14; 64 Del. Laws, c. 13, §§ 14, 15; 69 Del. Laws, c. 125, § 2; 69 Del. Laws, c. 190, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 352, § 2; 73 Del. Laws, c. 432, § 1; 75 Del. Laws, c. 397, §§ 1-3, 16-18; 78 Del. Laws, c. 167, § 20; 79 Del. Laws, c. 378, § 2; 79 Del. Laws, c. 396, § 2; 82 Del. Laws, c. 235, § 1; 84 Del. Laws, c. 292, § 4.)

§ 4177B. First offenders; election in lieu of trial.

(a) (1) A person qualifies for the first offenders election under this section if the person meets all of the following:

a. Has never had a previous or prior conviction or offense as defined in paragraph (e)(1) of this section.

b. Had not accumulated 3 or more moving violations within 2 years of the date of the offense in question on the person's driving record according to the records of the Division of Motor Vehicles of the person's state of residence.

c. Was not, with respect to the offense in question, involved in an accident resulting in injury to any person other than the person's own self.

d. Did not have an alleged blood alcohol concentration of .15 or more at the time of driving or within 4 hours of driving.

e. Was not driving without a valid license or under a suspended or revoked license at the time of the offense in question.

f. Is not subject to the enhanced penalties of § 4177(d)(10) of this title for carrying a child on or within that person's vehicle while driving under the influence.

(2) If a person applies and qualifies for the first offenders election under this section, all of the following apply:

a. The court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and shall place the accused on probation upon terms and conditions, including enrollment in a course of instruction or program of rehabilitation established under § 4177D of this title.

b. The application constitutes a waiver of the right to speedy trial.

c. The application and acceptance of the first offenders election constitutes agreement to pay the costs of prosecution for the case. The court shall assess such costs and impose them as a condition of probation. For the purposes of this section, costs of prosecution are $250 and any additional costs as established by the appropriate court schedules.

d. The application constitutes a waiver of the right to an administrative hearing under § 2742 of this title and acts to withdraw any request previously made for such a hearing.

(3) If a person elects not to apply for the first offender election under this section, or is not qualified, the court shall promptly arraign the person for a violation of § 4177 of this title.

(b) If a person is alleged to have violated a term or condition of probation, including failure to appear for evaluation at an assigned evaluating agency, the court shall hold a hearing to determine if a term or condition has been violated and, if so, shall enter an adjudication of guilt and proceed as otherwise provided under § 4177 of this title.

(1) The court shall provide notice of the hearing required under this section and the alleged violation of a term or condition of probation to the person.

(2) If the person fails to appear for the hearing required under this section, the court may proceed with the hearing.

(c) (1) If a person fulfills the terms and conditions of probation, including satisfactory completion of the course of instruction or program of rehabilitation, and payment of all fees, the court shall do both of the following:

a. Discharge the person and the proceedings against the person.

b. Submit to the Division of Motor Vehicles a written report specifying the name of the person and the nature of the proceedings against the person.

(2) The Division of Motor Vehicles shall retain the report issued under paragraph (c)(1)b. of this section for further proceedings, if required.

(d) The Secretary shall forthwith revoke the driver's license or driving privileges of a person who applies for the first offender election under subsection (a) of this section for a period of 1 year.

(1) If the person qualifies for and accepts the first offender election, the revocation period is for 1 year from the date of the initial revocation.

(2) If the person does not qualify for, or is not accepted into, the first offender election, or if the person is found by the court to be in violation of a term or condition of probation, the revocation period under this section continues until sentence is imposed. This revocation period is not concurrent with or part of any other revocation period established under this subchapter and is effective as of the date of sentencing for a period of 1 year.

(e) (1) *Prior or previous conviction or offense. —*

For purposes of §§ 2742 and 4177 of this title and this section, § 4215A of Title 11 does not apply. Instead, all of the following constitute a prior or previous conviction or offense:

a. A conviction or other adjudication of guilt or delinquency under § 4175(c) or § 4177 of this title or a similar statute of any state or local jurisdiction, any federal or military reservation, or the District of Columbia.

b. A conviction or other adjudication of guilt or delinquency under a criminal statute encompassing death or injury caused to another person by the person's driving where driving under the influence or with a prohibited blood alcohol concentration or an illicit or recreational drug content was an element of the offense, whether such conviction was under this Code or the law of any state or local jurisdiction, any federal or military reservation, or the District of Columbia.

c. Participation in a course of instruction or program of rehabilitation or education under § 4175(c) or § 4177 of this title, this section, or a similar statute of any state or local jurisdiction, any federal or military reservation, or the District of Columbia, regardless of the existence or validity of any accompanying attendant plea or adjudication of guilt.

d. A conditional adjudication of guilt, court order, or agreement sanctioned by a court requiring or permitting a person to apply for, enroll in, or otherwise accept first offender treatment or any other diversionary program under this section or a similar statute of any state or local jurisdiction, any federal or military reservation, or the District of Columbia.

(2) *Time limitations. —*

For the purpose of determining the applicability of enhanced penalties under § 4177 of this title, the time limitations on use of prior or previous convictions or offenses under this subsection are as follows:

a. For sentencing under § 4177(d)(2) of this title, the second offense must have occurred within 10 years of a prior or previous offense.

b. For sentencing under § 4177(d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8), or (d)(9) of this title, there is not a time limitation and all prior or previous convictions or offenses as defined in paragraph (e)(1) of this section must be considered for sentencing.

c. For any subsection that does not have a time limitation prescribed, all prior or previous convictions or offenses as defined in paragraph (e)(1) of this section must be considered.

(3) *Computation of time limitations. —*

For the purpose of computing the periods of time under § 2742 or § 4177 of this title or this section, the period runs from the date of the commission of the prior or previous offense to the date of the commission of the charged offense. However, in any case in which the prior or previous offense is defined in paragraph (e)(1)c. or d. of this section, the date of the driving incident which caused the adjudication or program participation is the date of the prior or previous offense.

(4) *Separate and distinct offenses. —*

For the purpose of determining the applicability of enhanced penalties under § 4177 of this title, prior or previous convictions or offenses used to determine eligibility for such enhanced penalties must be separate and distinct offenses; that is, each must be successive to the other with some period of time having elapsed between sentencing or adjudication for an earlier offense or conviction and the commission of the offense resulting in a subsequent conviction.

(5) *Challenges to use of prior offenses. —*

In any proceeding under § 2742 or § 4177 of this title or this section, a person may not challenge the validity of any prior or previous conviction, unless that person first successfully challenges the prior or previous conviction in the court in which the conviction arose and provides written notice of the specific nature of the challenge in the present proceeding to the prosecution at least 20 days before trial.

(f) (1) The Attorney General may move the sentencing court to apply this section to a person who would otherwise be disqualified from consideration under this section because of the applicability of any of the following:

a. Paragraph (a)(1)a. of this section, if any prior or previous offense as defined in subsection (e) of this section is not within 10 years of the offense for which the person is being sentenced.

b. Paragraphs (a)(1)b., (a)(1)c., (a)(1)d., (a)(1)e., and (a)(1)f. of this section.

c. [Repealed.]

(2) If the Attorney General makes a motion under paragraph (f)(1) of this section, the court may apply the terms of this section to the person.

(g) [Repealed.]

(61 Del. Laws, c. 474, § 2; 63 Del. Laws, c. 430, § 15; 64 Del. Laws, c. 13, § 16; 69 Del. Laws, c. 134, § 1; 70 Del. Laws, c. 26, §§ 9, 10; 70 Del. Laws, c. 34, §§ 2, 3; 70 Del. Laws, c. 62, §§ 9, 10; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 209, §§ 3-5; 72 Del. Laws, c. 92, §§ 1, 2; 74 Del. Laws, c. 182, § 4; 74 Del. Laws, c. 333, § 3; 74 Del. Laws, c. 345, § 8; 75 Del. Laws, c. 397, § 4; 77 Del. Laws, c. 160, §§ 1, 2; 77 Del. Laws, c. 162, § 7; 78 Del. Laws, c. 167, §§ 21-27; 79 Del. Laws, c. 396, § 2; 82 Del. Laws, c. 235, § 2; 84 Del. Laws, c. 70, § 1.)

§ 4177C. Ignition interlock licenses; reinstatement of license.

(a) A person who enters a first offender election under § 4177B of this title is immediately eligible to apply for an ignition interlock device (IID) license under § 4177G(f) of this title if all of the following apply:

(1) All licenses have been surrendered to the Division of Motor Vehicles before issuance of the IID license.

(2) The person has an IID installed on each vehicle the person will, or does, operate during the period under paragraph (d)(4) of this section, regardless of whether the vehicle is owned by the person.

(b) A person who, as a first offender, is sentenced under § 4177(d) of this title, and is enrolled in a course of instruction or program of rehabilitation under § 4177D of this title is eligible to apply for an IID license under § 4177G(f) of this title if all of the following apply:

(1) The following time period has elapsed since the effective date of the person's revocation period:

a. At least 30 days, if the person's blood alcohol concentration was below .15.

b. At least 45 days, if the person's blood alcohol concentration was .15 or greater.

(2) All licenses have been surrendered to the Division of Motor Vehicles before issuance of the IID license.

(3) The person has an IID installed on each vehicle the person will, or does, operate during the period under paragraph (d)(4) of this section, regardless of whether the vehicle is owned by the person.

(c) A person who, as a second or subsequent offender, is sentenced under § 4177(d) of this title is eligible to apply for an IID license under § 4177G(f) of this title if all of the following apply:

(1) The following time period has elapsed since the effective date of the person's revocation period:

a. At least 60 days, for a person sentenced as a second offender under § 4177(d) of this title.

b. At least 90 days, for a person sentenced as a third offender under § 4177(d) of this title.

c. At least 6 months, for a person sentenced as a fourth or subsequent offender under § 4177(d) of this title.

(2) The person is enrolled in or has satisfactorily completed a course of instruction or program of rehabilitation under § 4177D of this title.

(3) All licenses have been surrendered to the Division of Motor Vehicles before issuance of the IID license.

(4) The person has an IID installed on each vehicle the person will, or does, operate during the period under paragraph (d)(4) of this section, regardless of whether the vehicle is owned by the person.

(d) *Reinstatement of license. —*

Notwithstanding §§ 4177A(a) and 4177B(d) of this title, the Secretary shall reinstate the driver's license or driving privileges of a person who has done all of the following:

(1) Paid all fees under the schedule adopted by the Secretary.

(2) Satisfactorily completed a course or program established under § 4177D of this title.

(3) Satisfactorily completed the IID program under § 4177G of this title or, if disqualified from the program under § 4177G(f)(4) of this title, did both of the following during the entire balance of the person's revocation period plus any extensions under § 4177G(f)(3) of this title:

a. Not operate a vehicle.

b. Kept an IID on each vehicle on which it was installed on the date of disqualification from the IID program.

(4) Meets 1 of the following:

a. For a person who enters a first offenders election under § 4177B of this title, at least 4 months have elapsed since the IID was installed on each vehicle as required under paragraph (a)(2) of this section and the IID license was issued.

b. For a person sentenced for a first offense under § 4177 of this title, whose blood alcohol concentration was below .15, at least 12 months have elapsed since the IID was installed on each vehicle as required under paragraph (b)(3) of this section and the IID license was issued.

c. For a person sentenced for a first offense under § 4177 of this title, whose blood alcohol concentration was .15 or greater, but less than .20, at least 17 months have elapsed since the IID was installed on each vehicle as required under paragraph (b)(3) of this section and the IID license was issued.

d. For a person sentenced for a first offense under § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 23 months have elapsed since the IID was installed on each vehicle as required under paragraph (b)(3) of this section and the IID license was issued.

e. For a person sentenced for a second offense under § 4177 of this title, whose blood alcohol concentration was below .15, at least 16 months have elapsed since the IID was installed on each vehicle as required under paragraph (c)(4) of this section and the IID license was issued.

f. For a person sentenced for a second offense under § 4177 of this title, whose blood alcohol concentration was .15 or greater, but less than .20, at least 22 months have elapsed since the IID was installed on each vehicle as required under paragraph (c)(4) of this section and the IID license was issued.

g. For a person sentenced for a second offense under § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 28 months have elapsed since the IID was installed on each vehicle as required under paragraph (c)(4) of this section and the IID license was issued.

h. For a person sentenced for a third offense under § 4177 of this title, whose blood alcohol concentration was below .15, at least 21 months have elapsed since the IID was installed on each vehicle as required under paragraph (c)(4) of this section and the IID license was issued.

i. For a person sentenced for a third offense under § 4177 of this title, whose blood alcohol concentration was .15 or greater, but less than .20, at least 27 months have elapsed since the IID was installed on each vehicle as required under paragraph (c)(4) of this section and the IID license was issued.

j. For a person sentenced for a third offense under § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 33 months have elapsed since the IID was installed on each vehicle as required under paragraph (c)(4) of this section and the IID license was issued.

k. For a person sentenced for a fourth or further subsequent offense under § 4177 of this title, at least 54 months have elapsed since the IID was installed on each vehicle as required under paragraph (c)(4) of this section and the IID license was issued.

(e) Notwithstanding any other provision to the contrary, a person whose blood alcohol concentration is less than .08, and does not otherwise have an illicit or recreational drug content in the person's blood, must be granted a conditional license immediately upon application, if otherwise eligible, and may not be required to complete a course of instruction established under § 4177D of this title before the issuance of the conditional license if the person meets any of the following:

(1) Is convicted of a first offense under § 4177 of this title.

(2) Makes a first offenders election under § 4177B of this title.

(3) Has a license revoked for a first offense under Chapter 27 of this title, where it is not established that the person was under the influence of any other intoxicating or impairing substance or with an illicit or recreational drug content in the person's blood.

(f) (1) Notwithstanding any other provision to the contrary, a person charged with a driving under the influence offense who has been permitted to participate in the Court of Common Pleas Driving Under the Influence Treatment Program (Treatment Program), or the Superior Court's Veterans' Treatment Court (Treatment Court), and is enrolled in a program of education or rehabilitation treatment under § 4177(f) or § 4177D of this title supervised by that Court, is eligible to have an IID license in accordance with this subsection.

(2) Notwithstanding paragraph (f)(1) of this section, a person may enter the Treatment Program or Treatment Court without seeking an IID license.

(3) If a person chooses to obtain an IID license, or has any registered vehicles, the person must install an IID on each vehicle registered in that person's name.

(4) Notwithstanding paragraph (f)(3) of this section, a person must install an IID on a vehicle owned by another person, with the permission of that person, if there are no vehicles registered in the person's name.

(5) An IID must be immediately installed on eligible vehicles following the effective date of a person's entry into the Treatment Program or Treatment Court. The IID must remain installed on the vehicles for a minimum period of 12 months from the effective date of revocation or longer if the Court directs.

(6) A person in the Treatment Program or Treatment Court is eligible to apply for an IID license under § 4177G(f) of this title if all of the following apply:

a. At least 30 days have elapsed since the effective date of the revocation.

b. All licenses have been surrendered to the Division of Motor Vehicles before issuance of the IID license.

c. The person is not in violation of any terms of the Treatment Program or Treatment Court.

(g) Notwithstanding § § 4177A(a) and 4177B(d) of this title, the Secretary shall reinstate the driver's license or driving privileges of a person who has successfully completed and graduated from the Court of Common Pleas Driving Under the Influence Treatment Program or the Superior Court's Veterans' Treatment Court and has done all of the following:

(1) Paid all fees under the schedule adopted by the Secretary.

(2) Paid all court fines, costs, and fees.

(3) Had at least 9 months elapse since 1 of the following occurred:

a. The IID was installed on a vehicle as required under this subsection and the IID license was issued.

b. The person's driving privileges were revoked if the person did not seek an IID license.

(61 Del. Laws, c. 474, § 2; 63 Del. Laws, c. 430, §§ 16, 17; 64 Del. Laws, c. 13, §§ 17, 18; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 92, § 4; 73 Del. Laws, c. 352, §§ 3-5; 74 Del. Laws, c. 333, § 6; 75 Del. Laws, c. 397, §§ 5, 6; 77 Del. Laws, c. 160, §§ 3-6; 78 Del. Laws, c. 167, § 28; 79 Del. Laws, c. 378, § 1; 79 Del. Laws, c. 396, § 2; 80 Del. Laws, c. 75, § 1; 82 Del. Laws, c. 235, § 3; 84 Del. Laws, c. 292, § 5.)

§ 4177D. Courses of instruction; rehabilitation programs.

The Secretary of the Department of Health and Social Services, through the Division of Substance Abuse and Mental Health, shall establish courses of instruction and programs of rehabilitation for persons whose drivers' licenses have been revoked for driving a vehicle while under the influence of alcohol or any drug, or both. The Secretary of the Department of Health and Social Services shall administer

such courses and programs and adopt rules and regulations for such courses and programs. The Secretary of the Department of Health and Social Services shall establish a schedule of fees for enrollment in such courses and programs. The schedule of fees may not exceed the maximum fine imposed for an offense under § 4177 of this title. A person's successful graduation from the Superior Court's Veterans' Treatment Court or the successful completion of the Court of Common Pleas Driving Under the Influence Treatment Program is equivalent to a course of instruction or program of rehabilitation approved under this section.

(61 Del. Laws, c. 474, § 2; 63 Del. Laws, c. 430, § 18; 64 Del. Laws, c. 13, § 19; 74 Del. Laws, c. 110, § 87; 79 Del. Laws, c. 378, § 4; 81 Del. Laws, c. 331, § 1; 84 Del. Laws, c. 292, § 6.)

§ 4177E. Issuance of conditional license upon revocation of driver's license [Repealed].

(63 Del. Laws, c. 56, § 1; 68 Del. Laws, c. 9, § 33; 70 Del. Laws, c. 553, § 3; 77 Del. Laws, c. 60, § 14; repealed by 79 Del. Laws, c. 396, § 2.)

§ 4177F. Ignition Interlock Device Program [Repealed].

(67 Del. Laws, c. 437, § 4; 68 Del. Laws, c. 125, §§ 2-5; 70 Del. Laws, c. 553, § 1; 72 Del. Laws, c. 92, §§ 5-12, 14; 73 Del. Laws, c. 352, §§ 6-8; 74 Del. Laws, c. 110, § 88; 75 Del. Laws, c. 397, §§ 7, 11; repealed by 79 Del. Laws, c. 396 § 2.)

§ 4177G. Ignition Interlock Device Program.

(a) *Participation. —*

An offender must participate in the Ignition Interlock Device Program as provided under this section.

(b) *Definitions. —*

For the purpose of this section:

(1) "Ignition interlock device" (IID) means ignition equipment approved by the Director of the Division of Motor Vehicles under this section, designed to prevent a vehicle from being operated by a person who has consumed alcoholic beverages.

(2) "Lockout" means any time an offender attempts to use a vehicle equipped with an IID and any percentage of alcoholic beverages is measured by the IID.

(3) "Offender" means a person who has accepted a first offender election under § 4177B of this title or been convicted of violating § 4177 of this title.

(4) "Offense" means a first offenders election under § 4177B of this title or a conviction under § 4177 of this title.

(5) "Service provider" means a legal entity which the Director of the Division of Motor Vehicles finds complies with the requirements of this section and approves to install IIDs on vehicles operated by offenders.

(c) *IID Standards. —*

The Division of Motor Vehicles shall establish the required calibration setting and shall provide standards for the certification, installation, setting, repair, and removal of the IIDs.

(d) *Requirements. —*

(1) An offender who is eligible under subsection (f) of this section is subject to the ignition interlock requirements of this section and § 4177C of this title during the offender's revocation period for an offense.

(2) An offender covered under paragraph (d)(1) of this section must have the IID installed on each vehicle the offender will, or does, operate during the period under § 4177C(d)(4) of this title before the Secretary is authorized to reinstate that person's driver's license or driving privileges, regardless of whether the vehicle is owned by the person.

(3) An offender's driving record maintained by the Division of Motor Vehicles must indicate any revocation period to be served under the IID program. The Division of Motor Vehicles shall issue an IID license to an otherwise eligible offender. The offender's IID license, the registration of the vehicle on which the IID is installed, and the offender's driving record maintained by the Division of Motor Vehicles must indicate that the offender may not operate any vehicle except when such vehicle is equipped with an IID.

(e) *Installment payment of costs; indigent program. —*

The Division of Motor Vehicles shall establish a payment plan for all persons obtaining an IID under this section. The plan must be administered by the service provider and the person obtaining the IID shall make all payments under the plan to the service provider. The Division of Motor Vehicles shall further develop and implement an indigent plan for impoverished persons. Any person who makes application for an indigent plan must meet certain criteria and provide specific documentation to be approved by the Division of Motor Vehicles.

(f) *IID license. —*

(1) The Secretary shall issue an IID license to an offender if the offender is eligible to, and does, apply for the license under § 4177C(a), (b), (c), or (f)(6) of this title and the offender meets all of the following:

a. At the time of the offense is a Delaware resident with a valid Delaware license.

b. Has an IID installed on each vehicle the offender will, or does, operate during the period under § 4177C(d)(4) of this title, regardless of whether the vehicle is owned by the person.

c. Does not have a driver's license or driving privileges that are suspended, revoked, denied, or unavailable for any other violation of the law of any jurisdiction that would prohibit the issuance of the IID license, unless it is determined by the Secretary or the Secretary's designee that the offender is eligible for reinstatement.

d. Does not have a driver's license or driving privileges that are revoked under § 1009 of Title 10 or a similar law of another jurisdiction.

e. [Repealed.]

f. Own a vehicle in which the IID is to be installed or file the notarized approval of installation by the owner of a vehicle in which the IID is to be installed with the Division of Motor Vehicles.

g. Provide proof of insurance for a vehicle on which the IID is to be installed.

h. Meet any other eligibility criteria established by § 4177C of this title or by regulations of the Division of Motor Vehicles.

(2) The Secretary shall revoke an offender's IID license if the offender does any of the following:

a. Fails to abide by the terms of the IID lease with the service provider as approved by the Division of Motor Vehicles.

b. Fails to comply with the Division of Motor Vehicles' regulations concerning offender IID license restrictions.

c. Attempts, allows, or causes an attempt to bypass, tamper with, disable, or remove the IID or its wires in connection.

d. Attempts to operate a vehicle without possessing registration and an IID license that complies with this section.

e. Violates any section of this title relating to the use, possession, or consumption of alcohol or intoxicating or impairing substances.

f. Accumulates more than 5 points per year.

g. Fails to continue to meet all eligibility criteria identified in paragraph (f)(1) of this section.

h. Fails to provide proof to the Division of Motor Vehicles that an approved IID has been installed before being issued an IID license.

i. Fails or refuses to take random tests at such times and by such means as the Division of Motor Vehicles requires.

j. Fails to keep scheduled appointments with the Division of Motor Vehicles and the service provider.

k. Fails to report to the service provider on a monthly basis for service of the approved IID.

(3) *Extension of program participation.* — a. The Secretary or the Secretary's designee shall extend the offender's revocation period or participating requirement in the IID program upon a determination by the Secretary or the Secretary's designee that the offender has failed to comply with the requirements of subsection (d) of this section for any of the following actions:

1. Each BAC reading of .05 or above.

2. Running retest violation.

3. Each missed monitoring appointment.

4. Start up violation; IE lock-out failure.

5. Tampering with or bypassing the interlock system.

6. Intentional circumvention of the interlock system or program requirements.

7. Any other noncompliance of program requirements specified in paragraph (f)(2) of this section as deemed by the Secretary or the Secretary's designee.

b. The Secretary shall extend the offender's revocation period or participating requirement in the IID program as follows:

1. For 2 months for any combination of 3 of the actions under paragraph (f)(3)a. of this section.

2. For 4 months for any combination of 5 of the actions under paragraph (f)(3)a. of this section.

3. For 6 months for any combination of 8 of the actions under paragraph (f)(3)a. of this section.

4. An additional 1 month for each action under paragraph (f)(3)a. of this section in excess of 8.

(4) *Disqualification.* —

The Secretary or the Secretary's designee, upon 10 days prior notice by certified mail, may disqualify an offender at any time upon a determination by the Secretary that the participant has failed to comply with any of the requirements of paragraph (f)(3)a.7. of this section. Upon disqualification, the IID must remain on the offender's vehicle, or a vehicle on which the IID was installed, for the balance of the period required based on the offender's revocation period and extensions under paragraph (f)(3)b. of this section, however, no driving authority will be granted during this remaining period. The offender is responsible for all fees for the IID during this period.

(73 Del. Laws, c. 352, § 9; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 89; 75 Del. Laws, c. 397, §§ 8, 9, 13; 77 Del. Laws, c. 183, § 1; 79 Del. Laws, c. 396, § 2; 81 Del. Laws, c. 204, §§ 2, 3; 82 Del. Laws, c. 235, § 4.)

§ 4177H. Certification and approval of devices.

(a) The Division of Motor Vehicles shall adopt and publish rules setting forth the requirements for obtaining certification of an ignition interlock device. No ignition interlock device shall be certified unless it meets the requirements specified and published by the Division. Such requirements shall include provisions for setting a calibration range which complies with § 4177F of this title [repealed] and any other applicable law; and which shall include, but not be limited to, specifications that the device:

(1) Does not impede the safe operation of the vehicle;

(2) Has features that make circumvention difficult, but which do not interfere with the normal use of the vehicle; and

(3) Resists tampering, and shows evidence of tampering if tampering is attempted.

(b) The cost of certification shall be borne by each manufacturer of an ignition interlock device who desires to have such device certified in this State.

(67 Del. Laws, c. 437, § 4; 79 Del. Laws, c. 396, § 2.)

§ 4177I. Applicability of conforming statutes or ordinances.

Any references to § 4177, § 4177A, § 4177B, § 4177C, § 4177D, § 4177E [repealed], or § 4177L of this title shall include all conforming statutes of any other state or the District of Columbia, or local ordinances in conformity therewith.

(63 Del. Laws, c. 430, § 19; 64 Del. Laws, c. 13, § 20; 70 Del. Laws, c. 36, § 9; 79 Del. Laws, c. 396, § 2.)

§ 4177J. Drinking while driving prohibited.

(a) No person shall consume an alcoholic beverage while driving a motor vehicle upon the highways of this State. "Consume," as used in this subsection, shall mean the ingestion of a substance containing alcohol while in the act of operating a motor vehicle in the presence of, or in the view of, a police officer.

(b) Whoever violates this section shall be fined for the first offense not less than $25 nor more than $200. For each subsequent like offense occurring within 1 year of the previous offense, the person shall be fined not less than $50 nor more than $400.

(66 Del. Laws, c. 366, § 1.)

§ 4177K. Revocation of license for persons convicted of all drug offenses [Repealed].

(67 Del. Laws, c. 148, § 1; 67 Del. Laws, c. 429, §§ 6-8; 69 Del. Laws, c. 125, §§ 3, 4; 69 Del. Laws, c. 190, § 2; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 408, § 2; 73 Del. Laws, c. 414, § 2; 74 Del. Laws, c. 273, § 2; 76 Del. Laws, c. 94, §§ 1, 2; 78 Del. Laws, c. 13, § 70; repealed by 79 Del. Laws, c. 295 § 1, eff. July 9, 2014.)

§ 4177L. Driving by persons under the age of 21 after consumption of alcohol; penalties.

(a) Whoever, being under the age of 21 years, drives, operates or has actual physical control of a vehicle, an off-highway vehicle or a moped while consuming or after having consumed alcoholic liquor shall have that person's driver's license and/or privileges revoked for a period of 2 months for the first offense and not less than 6 months nor more than 12 months for each subsequent offense. If the underage person does not have a driver's license and/or privileges, the person shall be fined $200 for the first offense and not less than $400 nor more than $1,000 for each subsequent offense.

(b) In any proceeding under this section, evidence may be admitted of the amount of alcohol in the blood or breath of such underage person as determined by a specimen taken within 4 hours of the time when such person is alleged to have driven, operated or been in control of a vehicle after having consumed alcoholic liquor as shown by an analysis of that person's breath, blood, urine, or saliva. Evidence that there was at the time of the test an alcohol concentration of .02 or more in that person's blood or breath is per se evidence that the person had consumed alcoholic liquor. "Alcohol concentration of .02 or more in that person's blood or breath" shall mean (1) an amount of alcohol in a sample of a person's blood equivalent to .02 or more grams of alcohol per hundred milliliters of blood; or (2) an amount of alcohol in a sample of a person's breath equivalent to .02 or more grams per 210 liters of breath. This provision shall not preclude a conviction based upon other admissible evidence.

(c) In addition to any other powers of arrest, any police officer is hereby authorized to arrest without a warrant any person who the officer has probable cause to believe has violated the provisions of this section, regardless of whether the alleged violation was committed in the presence of such officer.

(d) In addition to any penalty for a violation of subsection (a) of this section, the court shall order the person to complete a drug and alcohol evaluation and to complete a program of education or rehabilitation pursuant to § 4177D of this title.

(70 Del. Laws, c. 36, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 450, § 1; 78 Del. Laws, c. 167, § 29.)

§ 4177M. Operating a commercial motor vehicle with a prohibited blood alcohol concentration or while impaired by drugs.

(a) No person shall drive, operate, or have actual physical control of a commercial motor vehicle with an alcohol concentration of .04 or more in that person's blood or breath or having used a controlled substance or any drug which impairs driving ability. Any person who violates this section shall be guilty of an unclassified misdemeanor, and shall be subject to the provisions of Chapter 26 of this title. Prosecution under this section does not preclude prosecution under any other section of the Code. "Alcohol concentration of .04 or more" shall mean:

(1) An amount of alcohol in a sample of a person's blood equivalent to .04 or more grams of alcohol per 100 milliliters of blood; or,

(2) An amount of alcohol in a sample of a person's breath equivalent to .04 or more grams per 210 liters of breath.

(b) In addition to any penalty for a violation of subsection (a) of this section, the court shall order the person to complete a drug and alcohol evaluation and to complete a program of education or rehabilitation pursuant to § 4177D of this title.

(70 Del. Laws, c. 134, § 5; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 60, § 15; 78 Del. Laws, c. 167, § 30.)

Subchapter X

Stopping, Standing and Parking

§ 4178. Violations of offenses prohibiting stopping, standing or parking.

Any violation of this subchapter or any municipal or county ordinance, code or regulation prohibiting stopping, standing or parking shall be subject to a civil penalty only. Such violation shall not be classified as a criminal offense and shall not qualify as a prior conviction for purposes of § 4218(c)(1)f. of Title 11, whether or not such violation occurred prior to July 10, 2006.

(21 Del. C. 1953, § 4177; 54 Del. Laws, c. 160, § 1; 56 Del. Laws, c. 314; 60 Del. Laws, c. 701, § 50; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 405, § 7.)

§ 4179. Stopping, standing or parking.

(a) Upon any highway outside of a business or residential district, no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the roadway, except when necessary to avoid conflict with other traffic or where it is necessary for public utility vehicles to temporarily stop along the highway to make alterations in or repairs to utility facilities, so long as proper traffic-control devices are posted or where it is in compliance with the directions of a police officer or traffic-control device.

(b) Whenever any person authorized to issue a summons under this title finds a vehicle standing upon the highway in violation of subsection (a), (e) or (f) of this section, the authorized person may move such vehicle or require the driver or other person in charge of the vehicle to move same to a position off the highway.

(c) Any person authorized to issue a summons under this title is hereby authorized to remove or cause to be removed any unattended vehicle illegally left standing upon any highway, bridge, causeway, or in any tunnel in such a position or under such circumstances as to obstruct the normal movement of traffic.

(d) Subsections (a) and (b) of this section shall not apply to the driver of any vehicle which is disabled while on the roadway in such a manner and to such an extent that it is impossible to avoid stopping and temporarily leaving such vehicle in such position.

(e) No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control device, including all state-owned and/or state leased property; in any of the following places:

(1) On a sidewalk;

(2) In front of a public or private driveway;

(3) Within an intersection;

(4) Within 15 feet of a fire hydrant;

(5) On a crosswalk;

(6) Within 20 feet of a crosswalk;

(7) Within 30 feet upon the approach to any flashing beacon, stop sign or traffic-control signal;

(8) Between a safety zone or island and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone or island, unless a different length is indicated by traffic-control devices;

(9) Within 50 feet of the nearest rail or railroad crossing, unless a different length is indicated by traffic-control devices;

(10) Within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of the entrance when properly designated by traffic-control devices;

(11) Alongside or opposite any street excavation or obstruction when such stopping, standing or parking would obstruct traffic;

(12) Upon the roadway of any highway when it is practical to stop, stand or park off the roadway;

(13) On the roadway side of any vehicle stopped or parked on the shoulder or at the edge or curb of a highway;

(14) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;

(15) At any place where official traffic-control devices prohibit stopping, standing or parking;

(16) At any place where such parking, standing or stopping obstructs the free passage of other traffic;

(17) Wherever a curb is marked yellow or a yellow line is placed at the edge of a roadway or shoulder;

(18) In the area between roadways of a divided highway, including crossovers;

(19) In any area owned by, leased by or under the control of the State, when such area has been designated by the Director of the Office of Management and Budget as a reserved parking space for members of the General Assembly, their staff, state-owned vehicles, specific state offices or state employees. Such parking spaces will be conspicuously marked as such;

(20) In any areas which in any manner restricts access to or ingress or egress from the areas defined in paragraph (19) of this subsection.

(f) No person shall move a vehicle not lawfully under the person's control into such prohibited area or away from a curb such distance as is unlawful.

(g) The Superintendent of the State Police is hereby authorized to appoint cadets who shall have authority to enforce violations of the section within the unincorporated areas of each county. Cadets appointed pursuant to this section must be at least 18 years of age. The Superintendent may establish such other qualifications as are deemed necessary or desirable.

(h) A summons issued by a cadet appointed by the Superintendent pursuant to this section shall have the same force and effect as a summons issued by the State Police.

(21 Del. C. 1953, § 4178; 54 Del. Laws, c. 160, § 1; 56 Del. Laws, c. 74; 57 Del. Laws, c. 541; 57 Del. Laws, c. 670, § 13A; 58 Del. Laws, c. 462; 60 Del. Laws, c. 701, § 51; 66 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 16(4); 75 Del. Laws, c. 405, §§ 8-10; 79 Del. Laws, c. 96.)

§ 4180. Additional parking regulations; penalty.

(a) Except as otherwise provided in this section, every vehicle stopped or parked upon a 2-way roadway shall be so stopped or parked with the right-hand wheels parallel to and within 12 inches of the right-hand curb or outside edge of the shoulder.

(b) Except when otherwise provided by local ordinance, every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within 12 inches of the right-hand curb or outside edge of the shoulder, or its left wheels within 12 inches of the left-hand curb or outside edge of the shoulder.

(c) Local authorities within their respective jurisdictions may, by ordinance, permit angle parking on any highway, except that angle parking shall not be permitted on a federal aid or state highway unless the Department of Transportation has determined that the highway is of sufficient width to permit angle parking without interfering with the free movement of traffic on the roadway.

(d) The Department of Transportation may place signs prohibiting or restricting the stopping, standing or parking of vehicles on any highway where, in its opinion, such stopping, standing or parking is dangerous to those using the highways or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic thereon. Such prohibitions or restrictions may be declared to be effective either part or all of the time, and differing limits may be established for different times of the day, for different types of vehicles, for different weather conditions and when other significant factors differ.

(e) No person shall park a vehicle in any area owned by, leased by or under the control of a retail store and immediately adjacent to such retail store, when such area has been designated by the management of the retail store as a loading zone and is conspicuously marked as such.

(f) Whoever violates this section shall be assessed a civil penalty not less than $100 nor more than $500.

(21 Del. C. 1953, § 4179; 54 Del. Laws, c. 160, § 1; 57 Del. Laws, c. 670, §§ 13A, 13D; 60 Del. Laws, c. 701, § 52; 61 Del. Laws, c. 168, §§ 1, 2; 63 Del. Laws, c. 350, § 3; 75 Del. Laws, c. 405, § 11; 83 Del. Laws, c. 430, § 1.)

§ 4181. Summons for unattended vehicle; civil penalties.

(a) A summons in appropriate form to be adopted by the Department of Safety and Homeland Security may be attached to an unattended vehicle found in violation of any of the provisions of this subchapter or of any local code or regulation regulating stopping, standing or parking by any officer authorized by this Code or local ordinance, code, or regulation to issue summonses for such violations.

(b) The Department of Safety and Homeland Security may adopt a schedule of civil penalties, between a minimum of $11.50 and a maximum of $28.75, for all violations under this subchapter.

(21 Del. C. 1953, § 4179A; 56 Del. Laws, c. 138; 57 Del. Laws, c. 120; 57 Del. Laws, c. 670, §§ 13A, 13E; 63 Del. Laws, c. 350, § 4; 68 Del. Laws, c. 9, § 34; 74 Del. Laws, c. 110, § 138; 75 Del. Laws, c. 405, § 12; 83 Del. Laws, c. 283, § 36.)

§ 4181A. Establishment of voluntary assessment centers for payment of civil penalties for parking; payment by voluntary assessment; procedures for contesting; presumptions; failure to pay or contest.

(a) *Establishment of municipal voluntary assessment centers.* — (1) An incorporated city or town may establish a voluntary assessment center for the payment of civil penalties for violations of their respective municipal ordinances, codes or regulations involving stopping, standing or parking.

(2) An incorporated city or town may, by ordinance, establish the amount of the civil penalty for each stopping, standing or parking offense.

(3) An incorporated city or town which establishes a voluntary assessment center may, by ordinance, provide for the imposition of 1 or more increases in the amount of the civil penalty if the fine is not timely paid.

(4) An incorporated city or town which establishes a voluntary assessment center may, by ordinance, provide for a reduction in the amount of the civil penalty due if such civil penalty is paid during a specified time period which is prior to the summons due date.

(b) *Payment by voluntary assessment.* — An owner or operator shall pay the amount on the summons to the voluntary assessment center listed on the summons, which center may be either a municipal voluntary assessment center or the Justice of the Peace Court Voluntary Assessment Center. No court costs or other administrative fee shall be assessed if a civil penalty is paid by voluntary assessment. In lieu of

payment, an owner or operator may notify the applicable voluntary assessment center, within the time period specified on the summons, that such owner or operator requests a hearing in the Justice of the Peace Court.

(c) *Presumptions.* — (1) If any vehicle found to be in violation of this subchapter or any ordinance, code or regulation regulating stopping, standing or parking is unattended at the time the violation is discovered and the identity of the operator is not otherwise apparent, the person in whose name such vehicle is registered as the owner shall be held responsible for such violation, unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody or control of another person. Such presumption shall be rebutted if the owner:

a. Prior to the due date furnishes to the voluntary assessment center either:

1. An affidavit stating that the owner was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person, or company who leased, rented or otherwise had the care, custody or control of the vehicle; or

2. Attaches a certified copy of a police report showing that the vehicle or license plate or plates thereof had been reported to the police as stolen prior to the time of the alleged violation; or

b. Provides proof in Court that the owner was not the operator of the vehicle at the time of the alleged violation.

(2) A summons may be issued by the prosecuting agency to a person identified by affidavit or evidence in court as the actual operator of the vehicle shown to have violated this subchapter or an ordinance, code or regulation regulating stopping, standing or parking. There shall be a presumption that the person so identified was the driver. The presumption may be rebutted as described in this subsection.

(d) *Procedure for contesting.* — (1) A request for a hearing must be made no later than the due date indicated on the summons, which date shall not be sooner than 20 days from the date the summons was issued.

(2) The voluntary assessment center shall notify the Justice of the Peace Court when a hearing is requested. Such notification shall be in accordance with policies and procedures developed by the Justice of the Peace Court.

(e) *Failure to pay or contest the violation.* — If the owner or operator:

(1) Fails to respond to the summons on or before the due date in any of the manners permitted by this section, or

(2) Requests a hearing and fails to appear,

the Court may, upon motion, enter a default judgment against such owner or operator. However, when the default judgment is sought for a failure to respond to the summons, no default judgment shall be entered until notice by first class mail is sent by the Court to such owner or operator providing the owner or operator with 10 days to pay the civil penalty to the Court or request a hearing to contest the charge. A default judgment may include any applicable increases in the amount of the civil penalty for failure to timely pay or contest. The applicable city, county, or state agency may seek execution on any judgment entered by the Court.

In addition, the applicable city, county or state agency may tow the vehicle if it is located in its jurisdiction and levy on it for the amount of unpaid tickets plus towing charges.

(75 Del. Laws, c. 405, § 13; 70 Del. Laws, c. 186, § 1.)

Subchapter XI

Miscellaneous Rules

§ 4182. Unattended motor vehicle.

(a) No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway.

(b) The requirements of subsection (a) of this section do not apply to an operator who starts the engine of a vehicle by using a remote starter or other similar device that remotely starts the vehicle's engine without placing the key in the ignition and requires the key to be placed in the ignition or physically present in the vehicle before the vehicle can be operated.

(21 Del. C. 1953, § 4180; 54 Del. Laws, c. 160, § 1; 63 Del. Laws, c. 214, § 1; 81 Del. Laws, c. 158, § 1.)

§ 4183. Parking areas for vehicles being used by persons with disabilities.

(a) For purposes of this section:

(1) "Accessible parking space" means any parking space or parking zone designated by an owner or lessee of any public or private property for use by a vehicle being used by a person with a disability.

(2) "Vehicle being used by a person with a disability" means a vehicle that meets both of the following criteria:

a. Displays a valid special license plate issued pursuant to § 2134 of this title on the rear of the vehicle, or that displays a valid parking placard issued pursuant to § 2135 of this title on the front windshield rearview mirror of the vehicle or, if there is no mirror, on the dashboard, or that displays a valid plate, placard or other item issued under a similar statute in another state or country.

b. The person for whom the plate or placard is issued is either the operator or a passenger or, in the case of an organization, in which a person who is entitled to obtain a permanent or temporary placard is a passenger.

(b) With the exception of a vehicle being used by a person with a disability, it is unlawful to park on public or private property any vehicle in any area that is designated as an accessible parking space.

(c) Upon the discovery on private property of a vehicle, other than a vehicle being used by a person with a disability, in an accessible parking space, the owner or lessee of the private property may cause the illegally parked vehicle to be removed to a private storage area maintained for the safe storage of vehicles. Any costs of removal and storage must be borne by the owner or operator of the vehicle. Upon the discovery of a vehicle illegally parked in an accessible parking space that is under the control of the Department of Transportation or local authorities, the State Police, county police, or municipal police having jurisdiction may cause the illegally parked vehicle to be removed to a private storage area maintained for the safe storage of vehicles. Any costs of removal and storage must be borne by the owner or operator of the vehicle.

(d) In addition to unlawful parking on public or private property in an accessible parking space, all of the following acts are prohibited on both public and private property and may be enforced pursuant to this section:

(1) Creating or using a counterfeit license plate or parking placard, as described in § 2134 or § 2135 of this title.

(2) Altering a license plate or parking placard issued pursuant to § 2134 or § 2135 of this title.

(3) Parking on a striped area or access aisle within or adjacent to an accessible parking space.

(4) Being the person or organization to whom a license plate or parking placard has been issued pursuant to § 2134 or § 2135 of this title, allowing another to use the plate or placard.

(5) Parking a vehicle with a license plate or placard issued pursuant to § 2134 or § 2135 of this title in an accessible parking space, unless a person on whose behalf a special license plate or placard has been issued is being transported.

(e) A uniform parking summons may be attached to an unattended vehicle found in violation of this section by a person authorized to issue a summons for a violation of this section. It is prima facie evidence that the person or organization in whose name the unattended vehicle is registered is responsible for the violation. The owner or operator of the unattended vehicle may mail or deliver the summons and the designated fine and costs directly to the court identified on the summons instead of appearing before the court for arraignment on the charge, provided that the owner or operator self identifies and that the summons and fine and costs are received by the court at least 2 days before the arraignment date designated on the summons.

(f) (1) A person or organization who violates this section must receive a mandatory fine of $250 for a first offense, and for a subsequent like offense, a mandatory fine of $500 or a term of community service.

(2) In addition, a person or organization who holds a valid special license plate or parking placard issued under § 2134 or § 2135 of this title and who violates paragraph (d)(1), (2), or (4) of this section may receive an additional penalty of up to a 6-month suspension or the permanent revocation of the plate or placard. If a plate is suspended or revoked under this subsection, the person may apply for and be issued a regular license plate.

(3) Minor variations of accessible parking space features, including the absence of a sign, are not a defense to prosecution under this section if the space is otherwise conspicuously marked.

(g) The Superintendent of the State Police is authorized to appoint State Police Academy cadets to enforce this section within the unincorporated areas of each county. Cadets appointed pursuant to this subsection must be at least 18 years of age. The Superintendent may establish other qualifications considered necessary or desirable.

(h) A summons issued by a cadet appointed by the Superintendent pursuant to subsection (f) of this section has the same force and effect as a summons issued by the State Police.

(i) Fines collected from summonses issued by the State Police or by cadets appointed pursuant to subsection (f) of this section must be deposited into the General Fund.

(j) The authority of the State Police or a cadet appointed by the Superintendent to enforce this section is not limited by any jurisdictional agreement between the State Police and any local law-enforcement agency.

(21 Del. C. 1953, § 4180A; 55 Del. Laws, c. 398, § 2; 62 Del. Laws, c. 102, §§ 1-3; 63 Del. Laws, c. 214, § 1; 63 Del. Laws, c. 441, § 3; 64 Del. Laws, c. 203, § 1; 66 Del. Laws, c. 329, § 1; 67 Del. Laws, c. 162, § 1; 67 Del. Laws, c. 163, § 1; 68 Del. Laws, c. 287, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 287, § 1; 73 Del. Laws, c. 356, § 1; 73 Del. Laws, c. 397, § 3; 78 Del. Laws, c. 223, §§ 1, 2; 82 Del. Laws, c. 27, § 1; 84 Del. Laws, c. 42, § 1; 85 Del. Laws, c. 225, § 1.)

§ 4183A. Requirements for the design, construction, signage, and maintenance of accessible parking spaces.

(a) For purposes of this section, “accessible parking space” means as defined in § 4183 of this title.

(b) Where an accessible parking space is required under Titles II and III of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., the accessible parking space must be designed and constructed in compliance with:

(1) The 2010 ADA Standards for Accessible Design issued by the Department of Justice on September 15, 2010, and its accompanying guidance.

(2) Any applicable county, municipal, or Delaware building code or law.

(c) No new accessible parking spaces may be installed, and no existing accessible parking spaces may be restriped, repainted, resurfaced or otherwise altered, until the county or municipal authority having jurisdiction over the construction or alteration of commercial buildings has issued a permit authorizing such action and confirming that any accessible parking spaces are in compliance with subsection (b) of this section. A county or municipal authority may allow subsequent restriping, repainting, or resurfacing of a lot that has been permitted

in accordance with this section at least once without a permit where no change is made to the parking plan and the property remains compliant with the requirements of this section.

(d) Upon completion of the work subject to permit, the public agency issuing the permit shall verify compliance by either conducting an on-site inspection or independently confirming compliance by use of documentation and photographic evidence submitted by the entity to whom the permit was issued, provided that the documentation and photographic evidence is sufficient to adequately assess such compliance. The enforcement agency may adopt a model form published by the State Council for Persons with Disabilities in consultation with the Architectural Accessibility Board to standardize submission of verifying documentation and photographic evidence. If the submitted documentation and photographic evidence is not sufficient to confirm compliance, an on-site inspection must be conducted.

(e) All existing parking spaces that are not in compliance with subsection (b) of this section by September 25, 2030, are in violation of this section.

(f) In lieu of a permit under subsection (c) of this section, any facility covered under the Architectural Accessibility Act, Chapter 73 of Title 29, must receive a letter of approval from the Architectural Accessibility Board that confirms compliance with this section.

(g) A county or municipal government may assess a civil penalty of up to $500 for a violation of this section. Before imposing a fine, the county or municipal government must allow 90 days for the responsible party to cure the violation.

(h) Nothing in this section requires a county or municipality to conduct code inspections apart from its usual and customary practice for promoting building code compliance. Nothing in this section prohibits a county or municipality from charging fees associated with permits and compliance verification.

(i) Nothing in this section prohibits any state, municipal, or local government or agency from adopting more stringent standards for accessible parking than those imposed by this section and applicable federal law, nor shall it prohibit any private or public entity from providing more accessible parking spaces than are required by this section or other applicable code or regulation.

(j) Each accessible parking space sign that is required under this section must display the current maximum fines established in § 4183(f) of Title 21.

(85 Del. Laws, c. 225, § 2.)

§ 4184. Limitations on backing.

The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.

(21 Del. C. 1953, § 4181; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 53.)

§ 4185. Operating or riding as a passenger on a motorcycle; helmet and eye protection requirements for operating or riding as a passenger on a motorcycle.

(a) A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than 1 person in which event a passenger may ride upon the permanent and regular seat if designed for 2 persons or upon another seat firmly attached to the rear or side of the operator and said motorcycle shall be equipped with passenger footrests.

(b) (1) Except as provided under paragraphs (b)(2) and (b)(3) of this section, a person operating or riding as a passenger on a motorcycle on the roadways of this State shall have in that person's possession a safety helmet approved by the Secretary of the Department of Safety and Homeland Security ("Secretary") through the Office of Highway Safety and shall wear eye protection approved by the Secretary.

(2) A person up to 19 years of age operating or riding as a passenger on a motorcycle on the roadways of this State shall wear a safety helmet and eye protection approved by the Secretary.

(3) a. For the purposes of this paragraph (b)(3), a "newly-endorsed person" means a person who obtains an endorsement for a motorcycle on or after July 30, 2023.

b. A newly-endorsed person who is operating a motorcycle on the roadways of this State, or a person riding as a passenger on a motorcycle operated on the roadways of this State by a newly-endorsed person, shall wear a safety helmet and eye protection approved by the Secretary for the first 2 years after the newly-endorsed person obtains endorsement.

(4) A person operating or riding as a passenger on a motorcycle on the roadways of this State who fails to comply with this subsection is subject to a civil or administrative assessment of not less than $25 nor more than $50. An assessment or court cost other than those specified in this subsection may not be imposed. A violation of this subsection may not be classified as a criminal offense.

(c) The operator of a motorcycle shall keep at least 1 hand on a handgrip of the handlebars at all times when moving.

(d) A person shall ride upon a motorcycle only while sitting astride the seat, facing forward, with 1 leg on each side of the motorcycle.

(e) No person shall operate a motorcycle while carrying any package, bundle or other article which prevents the person from keeping both hands on the handlebars.

(f) No operator shall carry any person, nor shall any person ride, in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

(21 Del. C. 1953, § 4182; 56 Del. Laws, c. 333; 60 Del. Laws, c. 701, § 54; 61 Del. Laws, c. 314, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 90; 75 Del. Laws, c. 75, § 1; 84 Del. Laws, c. 71, § 1.)

§ 4186. Obstruction to driver's view of driving mechanism.

(a) No person shall drive a vehicle when it is so loaded or when there are in the front seat such a number of persons, exceeding 3, as to obstruct the view of the driver to the front or sides of the vehicles or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides or to interfere with the driver's control over the driving mechanism of the vehicle.

(c) Every person riding in a passenger car shall occupy a seating position designed and intended for that person's use.

(21 Del. C. 1953, § 4183; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 55; 70 Del. Laws, c. 186, § 1.)

§ 4187. Coasting prohibited.

(a) The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears or transmission of such vehicle in neutral.

(b) The driver of any motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged.

(21 Del. C. 1953, § 4184; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 56.)

§ 4188. Following fire apparatus; driving vehicle over fire hose.

(a) No driver of any vehicle, other than on official business, shall follow any fire apparatus traveling in response to a fire alarm closer than 500 feet or drive into or park such vehicle within 500 feet where fire apparatus has stopped in answer to a fire alarm. No person shall be deemed to have violated this subsection with regard to parking if the act of parking was done prior to the giving of alarm of such fire.

(b) No person shall drive any vehicle over any line of hose which has been laid for the purpose of extinguishing a fire without the consent of the fire department official in command.

(c) Whoever violates this section shall be fined not less than $28.75 nor more than $115.

(21 Del. C. 1953, § 4185; 54 Del. Laws, c. 160, § 1; 56 Del. Laws, c. 75; 60 Del. Laws, c. 701, § 57; 68 Del. Laws, c. 9, § 35.)

§ 4189. Putting glass or other items on a highway prohibited.

(a) A person may not throw or deposit on a highway or adjacent property any glass bottle, glass, nails, tacks, wire, cans, or any other substance likely to injure a person, animal, or vehicle on the highway or adjacent property.

(b) A person who drops, or permits to be dropped or thrown, on a highway or adjacent property any destructive or injurious material shall immediately remove the destructive or injurious material or cause it to be removed.

(c) A person may not throw or deposit any goods, merchandise, bundles, or litter of any kind, including yard waste, on a highway.

(d) A person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped on the highway from the wrecked or damaged vehicle.

(e) A person may not leave, drop, throw away, or otherwise dispose of trash of any description, including yard waste, in quantity to exceed 5 pounds or 1 cubic foot on or alongside a highway.

(f) If a person witnesses the violation of subsection (a), (b), or (c) of this section by a person in a vehicle, and the identity of the offender is not otherwise apparent, there is a rebuttable presumption that the registered owner, if the driver's identity cannot be ascertained, or the driver of the vehicle is responsible for the violation.

(g) A person who violates this section is guilty of an unclassified misdemeanor, and is subject to a fine as follows:

(1) Not less than $115 nor more than $287.50 and up to 8 hours of community service for a first offense.

(2) Not less than $125 nor more than $287.50 and up to 25 hours of community service for a second or subsequent offense within 2 years.

(3) A violation of this section, whether a first, second, or subsequent offense, that takes place on or along a "Delaware byway," as defined in § 101 of Title 17, is subject to a mandatory penalty of $500, which must be imposed in addition to the fine.

(h) The rebuttable presumption set forth in subsection (f) of this section does not apply to operators of buses carrying 9 or more persons. A person who violates subsection (e) of this section is guilty of an unclassified misdemeanor, and is subject to a fine of not less than $460 nor more than $690. For each subsequent offense occurring within 3 years of a former offense, the person is subject to a fine of not less than $575 nor more than $1,150. The minimum fines for a violation of this section are not subject to suspension. A violation of this section, whether a first, second, or subsequent offense, that takes place on or along a "Delaware byway," as defined in § 101 of Title 17, is subject to a mandatory penalty of $500, which must be imposed in addition to the fine.

(i) As used in this section, "yard waste" means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings.

(j) Placing yard waste on a highway in compliance with state, county, municipal, or private program requirements for collection and disposal of yard waste is not a violation of this section.

(21 Del. C. 1953, § 4186; 54 Del. Laws, c. 160, § 1; 59 Del. Laws, c. 563, § 1; 62 Del. Laws, c. 375, §§ 1-4, 6; 68 Del. Laws, c. 9, §§ 36, 37; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 325, § 2; 77 Del. Laws, c. 60, § 16; 77 Del. Laws, c. 350, § 6; 83 Del. Laws, c. 212, § 1; 83 Del. Laws, c. 283, § 37.)

§ 4190. Opening and closing vehicle doors.

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so and can be done without interfering with the movement of other traffic nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

(21 Del. C. 1953, § 4187; 54 Del. Laws, c. 160, § 1.)

§ 4191. Trailers and towed vehicles.

(a) No vehicle shall be driven upon any highway drawing or having attached thereto more than 1 other vehicle, provided that a vehicle with semitrailer may draw in addition thereto 1 other vehicle, and provided further that driveway operations in transit may transport by means of saddlemount and fullmount mechanisms, utilizing the motive power of 1 of the vehicles in combination. This subsection shall not apply to farm tractors.

(b) The draw bar or other connection between any 2 vehicles 1 of which is towing or drawing the other on a highway shall not exceed 15 feet in length from 1 vehicle to the other. Whenever such connection consists of a chain, rope or cable, there shall be displayed upon such connection a red flag or other signal or cloth not less than 12 inches both in length and width.

(c) It shall be unlawful to ride in a towed vehicle except when necessary to steer the towed vehicle.

(d) This section shall not apply to:

(1) Vehicles in a parade when the vehicles are drawn or towed at a speed of less than 20 miles per hour;

(2) Trailers which have been designed or modified to carry passengers for sightseeing or public transportation purposes provided that such activity complies with the requirements of the Transportation Authority as provided in Chapter 18 of Title 2.

(21 Del. C. 1953, § 4189; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, §§ 58, 59; 61 Del. Laws, c. 318, § 1; 62 Del. Laws, c. 53, § 1.)

§ 4191A. Trespass by motor vehicle or OHV.

(a) No person shall knowingly operate a motor vehicle or OHV on private real property or upon a private road or driveway without consent of the owner or lessee of the real property. There shall be a rebuttable presumption that a person has knowingly violated this subsection if the owner or lessee has placed, at or near the points of entry from public or private vehicular access, a gate, fence or similar obstruction or a readily visible sign that would reasonably convey that the unauthorized operation of motor vehicles on the private road or driveway is prohibited.

(b) Penalties:

(1) A person who violates subsection (a) of this section shall be subject to the following penalties:

a. A fine of not more than $100 for a first conviction.

b. A fine of not more than $1,000 plus suspension of operating privileges for a period of 6 months for a second or subsequent conviction of the offense. If a person is under 16 years of age at the time of the second or subsequent conviction of this offense, the period of suspension shall commence upon the person's sixteenth birthday.

(2) In addition, restitution shall be made for the value of damage to real or personal property which results from the violation of this section.

(68 Del. Laws, c. 96, § 1.)

§ 4191B. Coal rolling is prohibited.

(a) Except as provided in subsection (b) of this section, no person shall retrofit any diesel-powered vehicle with any device, smoke stack, or other equipment that enhances the vehicle's capacity to emit soot, smoke, or other particulate emissions, or shall not purposely release clearly visible quantities of soot, smoke, or other particulate emissions into the air and onto roadways and other vehicles while operating the vehicle, colloquially referred to as "coal rolling."

(b) This section does not apply to a person operating:

(1) A diesel-powered vehicle that discharges visible exhaust as the result of normal acceleration or towing;

(2) A construction vehicle operating at a construction site.

(c) Any person who violates the prohibition in subsection (a) of this section shall be subject to a penalty of not more than $500 per violation.

(81 Del. Laws, c. 411, § 1.)

Subchapter XII
Operation of Bicycles and Other Human-Powered Vehicles; Operation of Electric Personal Assistive Mobility Devices

§ 4192. Responsibility of parent or guardian.

The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this subchapter.

(21 Del. C. 1953, § 4190; 54 Del. Laws, c. 160, § 1; 66 Del. Laws, c. 167, § 2.)

§ 4193. Applicability of traffic laws.

Every person propelling a vehicle by human power or riding a bicycle shall have all of the rights and all of the duties applicable to the driver of any other vehicle by this title, except as to special regulations in this subchapter and except as to those provisions of this title which by their nature can have no application.

(21 Del. C. 1953, § 4191; 54 Del. Laws, c. 160, § 1; 66 Del. Laws, c. 167, § 2.)

§ 4194. Passengers and trailers.

(a) No bicycle shall be used to carry more persons at 1 time than the number for which it is designed or equipped, except that an adult rider may carry a child securely attached to the person in a backpack or sling.

(b) A trailer or semitrailer designed for attachment to a bicycle may be used when securely attached thereto.

(21 Del. C. 1953, § 4192; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 60; 66 Del. Laws, c. 167, § 2; 70 Del. Laws, c. 186, § 1.)

§ 4195. Clinging to vehicles.

No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or personally be attached to any vehicle upon a highway.

(21 Del. C. 1953, § 4193; 54 Del. Laws, c. 160, § 1; 66 Del. Laws, c. 167, § 2; 70 Del. Laws, c. 186, § 1.)

§ 4196. Bicycling on right side of roadway; exceptions.

(a) Upon all roadways of sufficient width a bicycle operator shall travel in the right half of the roadway except as follows:

(1) When overtaking and passing another bicycle or vehicle proceeding in the same direction;

(2) When preparing for a left turn at an intersection or into a private road or driveway;

(3) When approaching an intersection where right turns are permitted and there is a dedicated right-turn lane, in which case a person may operate a bicycle in this dedicated lane, even if the bicycle operator does not intend to turn right;

(4) When reasonably necessary to avoid conditions including, but not limited to fixed or moving objects, parked or moving vehicles, bicycles, pedestrians, animals or surface hazards;

(5) When a paved roadway shoulder exists, in which case a person may operate a bicycle in the roadway shoulder with due regard for any traffic control devices intended to regulate or guide traffic or pedestrians;

(6) When a part of a roadway has been set aside for the exclusive use of bicycles including contra-flow bicycle lanes, left-handed cycle tracks or bicycle lanes on 1-way streets and 2-way cycle tracks or bicycle lanes, in which case a person may operate a bicycle in the designated bicycle lane or cycle track; or

(7) When operating a bicycle upon a 1-way highway with 2 or more marked traffic lanes and a posted speed limit of less than 30 miles per hour, in which case a person may operate a bicycle as near the left-hand edge of such roadway as judged safe by the bicycle operator.

(b) Upon all roadways any bicycle proceeding at less than the normal speed of vehicle traffic at the time and place and under the conditions then existing shall be operated in the right-hand travel lane. If the right-hand travel lane is wide enough for a bicycle and a vehicle to travel safely side-by-side within the lane, a bicycle operator shall operate far enough to the right as judged safe by the operator to facilitate the movement of such overtaking vehicles unless the bicycle operator determines that other conditions make it unsafe to do so.

(c) Persons operating bicycles upon a roadway shall not travel more than 2 abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

(1) Operating bicycles side-by-side does not constitute an impediment to normal traffic at times of no conflicting traffic, if motor vehicle traffic can overtake in the adjacent lane, or if the lane is too narrow for a bicycle and a vehicle to travel safely side-by-side within the lane.

(2) On a laned roadway, persons operating bicycles side-by-side shall do so within a single lane.

(d) [Repealed.]

(21 Del. C. 1953, § 4194; 54 Del. Laws, c. 160, § 1; 66 Del. Laws, c. 167, § 2; 78 Del. Laws, c. 206, §§ 1, 2; 81 Del. Laws, c. 196, § 1.)

§ 4196A. Bicycle approaching or entering intersection.

(a) A bicycle operator approaching a stop sign at an intersection with a roadway having 3 or more lanes for moving traffic shall come to a complete stop before entering the intersection.

(b) A bicycle operator approaching a stop sign at an intersection where a vehicle is stopped in the roadway at the same stop sign shall come to a complete stop before entering the intersection.

(c) A bicycle operator approaching a stop sign at an intersection with a roadway having 2 or fewer lanes for moving traffic shall reduce speed and, if required for safety, stop before entering the intersection. After slowing to a reasonable speed or stopping, the person shall

yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the person is moving across or within the intersection, except that a person, after slowing to a reasonable speed and yielding the right-of-way if required, may cautiously make a turn or proceed through the intersection without stopping.

(d) A bicycle operator approaching an intersection shall always yield the right-of-way to any vehicle which has already entered the intersection.

(e) When a bicycle and a vehicle enter an intersection from different roadways at approximately the same time, the operator of the vehicle or bicycle on the left shall yield the right-of-way to the vehicle or bicycle on the right.

(81 Del. Laws, c. 196, § 1; 83 Del. Laws, c. 206, § 1.)

§ 4197. Carrying articles.

No person operating a bicycle shall carry any package, bundle or article which prevents the use of both hands in the control and operation of the bicycle. A person operating a bicycle shall keep at least 1 hand on the handlebars at all times.

(21 Del. C. 1953, § 4195; 54 Del. Laws, c. 54, § 1; 66 Del. Laws, c. 167, § 2.)

§ 4198. Left turns.

(a) A person operating a bicycle intending to turn left shall follow a course described in § 4152 of this title or in subsection (b) of this section.

(b) A person operating a bicycle intending to turn left shall:

(1) Enter the intersection as close as practical to the right edge of the roadway; and

(2) Proceed across the intersecting roadway; and

(3) If possible, exit the travel lane and stop or, if not possible to exit the travel lane, stop as much as practical out of the way of traffic; and

(4) Yielding to any traffic proceeding in either direction along the roadway the bicyclist has been using and complying with any official traffic-control device or police officer regulating traffic on the roadway on which the bicyclist intends to proceed, proceed in the new direction.

(c) Notwithstanding subsections (a) and (b) of this section, the Department or local authorities in their respective jurisdictions may cause official traffic-control devices to be placed and thereby require and direct that a specific course be traveled by turning bicycles, and when such devices are so placed, no person shall turn a bicycle other than as directed and required by such devices.

(66 Del. Laws, c. 167, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 196, § 1.)

§ 4198A. Turn and stop signals.

(a) A person operating a bicycle shall give hand and arm signals as follows:

(1) *Left turn.* — Left hand and arm extended horizontally and to the left side of the bicycle.

(2) *Right turn.* — Right hand and arm extended horizontally and to the right side of the bicycle or the left hand and arm extended upward.

(3) *Stop or decrease speed.* — Left hand and arm extended downward from the left side of the bicycle.

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last 100 feet traveled by the bicycle before turning, and shall be given while the bicycle is stopped waiting to turn. A signal by hand and arm need not be given continuously if the hand is needed in the control or operation of the bicycle.

(66 Del. Laws, c. 167, § 2; 70 Del. Laws, c. 384, § 2.)

§ 4198B. Bicycles on sidewalks and crosswalks.

(a) A person propelling a bicycle upon and along a sidewalk, or across a roadway upon and along a crosswalk, shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing such pedestrian.

(b) A person shall not ride a bicycle upon and along a sidewalk, or across a roadway upon and along a crosswalk, where such use of bicycles is prohibited by official traffic-control devices.

(c) A person propelling a vehicle by human power upon and along a sidewalk, or pushing a bicycle across a roadway upon and along a crosswalk, shall have all the rights and duties applicable to a pedestrian under the same circumstances.

(66 Del. Laws, c. 167, § 2.)

§ 4198C. Bicycle parking.

(a) A person may park a bicycle on a sidewalk unless prohibited or restricted by an official traffic-control device.

(b) A bicycle parked on a sidewalk shall not impede the normal and reasonable movement of pedestrian or other traffic.

(c) A bicycle may be parked on the roadway at any angle to the curb or edge of the roadway at any location where parking is allowed.

(d) A bicycle may be parked on the roadway abreast of another bicycle or bicycles near the side of the roadway at any location where parking is allowed.

(e) A person shall not park a bicycle on a roadway in such a manner as to obstruct the movement of a legally parked motor vehicle.

(f) In all other respects, bicycles parked anywhere on a highway shall conform with the provisions of this title.

(66 Del. Laws, c. 167, § 2.)

§ 4198D. Bicycle racing.

(a) Bicycle racing on the highways is prohibited by § 4172 of this title except as authorized in this section.

(b) Bicycle racing on a highway shall not be unlawful when a racing event has been approved by the Department or local authorities in their respective jurisdictions. Approval of bicycle highway racing events shall be granted only under conditions which assure reasonable safety for all race participants, spectators and other highway users, and which prevent unreasonable interference with traffic flow which would seriously inconvenience other highway users.

(c) By agreement with the approving authority, participants in an approved bicycle highway racing event may be exempted from compliance with any traffic laws otherwise applicable thereto, provided that traffic control is adequate to assure the safety of all highway users.

(66 Del. Laws, c. 167, § 2.)

§ 4198E. Inspecting bicycles.

A uniformed police officer may at any time, upon reasonable cause to believe that a bicycle is unsafe or not equipped as required by law, or that its equipment is not in proper adjustment or repair, require the person riding the bicycle to stop and submit the bicycle to an inspection and such test with reference thereto as may be appropriate.

(66 Del. Laws, c. 167, § 2.)

§ 4198F. Lamps and other equipment on bicycles.

(a) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least 500 feet to the front.

(b) Every bicycle shall be equipped with a red reflector of a type approved by the Department which shall be visible for 600 feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle.

(c) Every bicycle when in use at nighttime shall be equipped with reflective material of sufficient size and reflectivity to be visible from both sides for 600 feet when directly in front of lawful lower beams of head lamps on a motor vehicle or, in lieu of such reflective material, with a lighted lamp visible from both sides from a distance of at least 500 feet.

(d) A bicycle or its rider may be equipped with lights or reflectors in addition to those required by subsections (a)-(c) of this section.

(e) Every bicycle shall be equipped with a brake or brakes which will enable its driver to stop the bicycle within 25 feet from a speed of 10 miles per hour on dry, level, clean pavement.

(21 Del. C. 1953, § 4196; 54 Del. Laws, c. 160, § 1; 66 Del. Laws, c. 167, § 2.)

§ 4198G. Bicycle identifying number.

A person engaged in the business of selling bicycles at retail shall not sell any bicycle unless the bicycle has an identifying number permanently stamped or cast on its frame.

(66 Del. Laws, c. 167, § 2.)

§ 4198H. Use of earplugs and headsets restricted.

(a) A person shall not drive a bicycle with earplugs in both ears or while wearing a headset covering both ears.

(b) A prosthetic device which aids the hard-of-hearing is not an earplug or a headset under this section.

(66 Del. Laws, c. 167, § 2.)

§ 4198I. Human-powered vehicles defined.

“Human-powered vehicles” shall mean that certain class of vehicles which are exclusively human-powered by means of foot pedals and which the driver normally rides astride. Adult cycles are included but all children’s cycles are excluded as are all toys and all vehicles of whatever nature that require the driver to place a foot or other object on the ground to cause motion.

(66 Del. Laws, c. 167, § 2.)

§ 4198J. Bicycling on highways under influence of drugs or alcohol.

(a) No person shall ride a bicycle on a highway of this State while under the influence of intoxicating liquor and/or narcotic drugs to a degree which renders such person a hazard.

(b) Whoever is convicted of a violation of subsection (a) of this section shall, for the first offense be fined not less than $150 nor more than $1,150 and for subsequent offenses, be fined not less than $400 nor more than $1,500 or be imprisoned not less than 10 days nor more than 30 days, or both. A subsequent offense must have been committed within 2 years of the prior offense.

(c) No violation of this section shall be entered on a driver's motor vehicle record.

(70 Del. Laws, c. 265, § 3; 74 Del. Laws, c. 282, § 2.)

§ 4198K. Helmet requirements.

(a) A person under 18 years of age shall not operate or ride as a passenger upon any bicycle unless that person is wearing an approved, properly fitted and fastened bicycle helmet. This requirement shall apply to a person who rides upon a bicycle while in a restraining seat which is attached to the bicycle or in a trailer towed by the bicycle. For purposes of this section, an "approved helmet" means a bicycle helmet which conforms to the following standards:

(1) A bicycle helmet that was manufactured prior to March 11, 1999, shall meet or exceed the minimum bicycle helmet safety standards set by the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), or the Snell Memorial Foundation;

(2) A bicycle helmet that was manufactured on or after March 11, 1999, shall meet or exceed the minimum bicycle helmet safety standards set by the Consumer Products Safety Commission.

(b) Any parent or guardian who fails to cause the parent's or guardian's child to wear a bicycle helmet, as provided herein, shall be fined for the first offense $25, and for each subsequent offense, $50.

(c) The Court may dismiss all charges pursuant to this section upon presentation of evidence that a violator hereof has purchased or obtained a bicycle helmet which meets or exceeds the standards set forth herein subsequent to the violation.

(d) The requirements of this section shall apply at all times while a bicycle is being operated on any property open to the public or used by the public for pedestrian and vehicular purposes.

(e) Failure to wear a bicycle helmet as herein described shall not be considered evidence of either comparative or contributory negligence in any civil suit arising out of any accident in which a person under 18 years of age is injured, nor shall failure to wear a bicycle helmet be admissible as evidence in the trial of any civil action.

(f) It is an affirmative defense to a violation of the helmet requirements of this section that the violator is a member of a recognized church or religious denomination and whose religious convictions, in accordance with the tenets and practices of the violator's church or religious denomination, are against the wearing of a helmet.

(70 Del. Laws, c. 38, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 282, § 2; 76 Del. Laws, c. 289, §§ 1-5.)

§ 4198L. Exemption for bicycle-mounted police officers.

Bicycle-mounted police officers, while responding to an emergency or during the pursuit of an actual or suspected violator of the law, are exempt from the obligations under this subchapter.

(70 Del. Laws, c. 384, § 3; 74 Del. Laws, c. 282, § 2.)

§ 4198M. Mopeds and tripeds.

(a) Mopeds and tripeds shall not be operated upon interstate and limited access highways, even to cross such highways, nor shall they be operated on the right-of-way of an operating railroad, except to cross such railroad, nor shall they be operated on any path set aside for the exclusive use of bicycles unless the helper motor has been turned off.

(b) No person shall drive a moped or triped without having been licensed as an operator of a motor vehicle under this title. The licensee shall have such license in the licensee's immediate possession at all times when operating a moped or triped. The licensee does not need a motorcycle endorsement to operate a moped or triped.

(c) Regulations applicable to bicycles shall apply whenever a moped or triped is operated upon any public road or upon any path set aside for the exclusive use of bicycles.

(d) Mopeds or tripeds shall be registered under regulations which shall be adopted by the Division of Motor Vehicles. The registration and reregistration fee for mopeds or tripeds shall be $5.00 for a 3-year registration period. Upon registration of a moped or triped, the Division of Motor Vehicles shall issue a decal or a distinctive number plate to be affixed to the moped or triped as indication of registration.

(e) Title and vehicle document fees must be paid. Liens can be recorded.

(f) A moped license plate will be issued and has to be displayed on the rear of the moped so it is clearly visible. All moped registrations will expire on December 31. A registration card will be issued in the same manner as other vehicles.

(g) *Safety inspections.* — Mopeds shall be exempt from Delaware's safety inspection. Division of Motor Vehicles personnel will verify the vehicle identification number on those vehicles titled in another jurisdiction which are being titled in Delaware for the first time. A fee of $15 shall be charged for Division of Motor Vehicles technicians to perform an offsite vehicle identification number verification.

(h) No motor vehicle insurance is required for the operation of a moped or triped.

(i) A person under 18 years of age shall not operate or ride as a passenger upon a moped or triped unless that person is wearing a properly fitted and fastened helmet which meets or exceeds the standards set forth in § 4198K of this title.

(j) If the moped or triped owner is not a Delaware resident, Delaware will honor the laws of the owner's home state regarding the registration of such vehicle. However, the operator of a moped or triped must hold a valid driver license from the operator's state of residence.

(70 Del. Laws, c. 208, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 282, § 2; 79 Del. Laws, c. 397, § 3; 81 Del. Laws, c. 173, § 1; 84 Del. Laws, c. 42, § 1.)

§ 4198N. Operation of motorized skateboards and scooters.

(a) *Upon public highways, streets, sidewalks or rights-of-way; penalties for violation.* — Motorized skateboards or scooters shall not be operated upon a public highway or street or sidewalk or right-of-way thereof located within this State except under the following conditions:

(1) A motorized skateboard or scooter may be pushed across or along such public way provided such motorized skateboard or scooter is in neutral or that the power train is otherwise disengaged, and further provided that such use shall be in conformance with this chapter.

(2) A motorized skateboard or scooter may be operated on a street or highway located within this State for a special event of limited duration, conducted according to a prearranged schedule only under permit from the governmental unit having jurisdiction.

(3) A low-speed motorized scooter. This section does not apply to any low-speed motorized scooter.

(4) A person who violates this subsection shall be subject to the following penalties:

a. For the first offense, a fine of not less than $25 nor more than $115.

b. For a second or subsequent offense, committed within 24 months after commission of the first offense, the operator shall be fined not less than $57.50 nor more than $230 and the motorized skateboard or scooter may be ordered to be forfeited by the court.

(b) *Upon other property; penalty for violation.* — A person shall not operate a motorized skateboard or scooter upon any property in either public or private ownership without the express permission of the person in control of the property or knowingly in violation of any restrictions imposed on such use by the person in control of the property. A person who violates this subsection shall be subject to the following penalties:

(1) For the first offense, a fine of not less than $25 nor more than $115.

(2) For a second or subsequent offense, committed within 24 months after commission of the first offense, the operator shall be fined not less than $57.50 nor more than $230 and the motorized skateboard or scooter may be ordered to be forfeited by the court.

(3) In addition, restitution shall be made for value of any damage to real or personal property that results from a violation of this subsection.

(c) *Careless operation or excessive rate of speed.* — A person shall not operate a motorized skateboard or scooter in a careless or imprudent manner or at a rate of speed greater than is reasonable and prudent under the conditions or without having regard to actual and potential hazards then existing. In every event, speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance.

(d) *While under the influence or with a prohibited alcohol content.* — A person shall not operate a motorized skateboard or scooter while under the influence of alcohol, any drug, or with a prohibited alcohol content as defined in § 4177 of this title.

(1) When such operation is upon private property with the express permission of the person in control of the property or such operation is not upon public property, a public highway or street or sidewalk or right-of-way thereof, the penalty provisions of this section shall apply.

(2) The provisions of this subsection, subsections (j) or (*l*) of this section or any other statute to the contrary notwithstanding, all provisions of § 4177 of this title and provisions of this Code related thereto shall be applicable to the operation of a motorized skateboard or scooter while under the influence of alcohol, any drug, or with a prohibited alcohol content as defined in § 4177 of this title when such operation is upon private property without the express permission of the person in control of the property or such operation is upon public property, a public highway or street or sidewalk or right-of-way thereof located within this State.

(e) *In a manner causing damage or disturbance.* — (1) A person shall not operate a motorized skateboard or scooter in a manner to cause damage to property of another person or in a manner to endanger, disturb or annoy another person. Disturbance or annoyance of other persons shall be presumed if the operator has received either verbally or in written form notice of such annoyance or disturbance from the complaining party. However, nothing in this subsection shall be construed as prohibiting the operation of motorized skateboards or scooters at a track or park designed for the lawful operation of said devices.

(2) The operator of the motorized skateboard or scooter shall be held liable for any damage to property of another person. However, if the operator is a minor, the parents or legal guardian of the operator shall be held personally liable for any and all damage and/or injuries, including civil or criminal liability, caused by the minor in the operation of the motorized skateboard or scooter.

(3) The owner of such private property may recover from the person responsible nominal damages of not less than the amount of damage or injury.

(f) *Unlawful for operators of motorized skateboard or scooters to disobey command to stop.* — It shall be unlawful for any operator of a motorized skateboard or scooter to wilfully disobey a signal to bring such motorized skateboard or scooter to a stop when such

signal is given by hand, voice, emergency lights, siren or other visual or audible signal by a uniformed law-enforcement, police, peace or environmental protection officer acting in the lawful performance of duty.

(g) *By minors, incompetent persons or persons under mental or physical disabilities.* — (1) A person less than 12 years of age may operate a motorized skateboard or scooter only if:

a. The person is under the direct supervision of a person who is at least 18 years of age; or

b. The person is on land owned by or under the control of the person's parent or legal guardian.

(2) Persons 12 years of age and older may operate a motorized skateboard or scooter without adult supervision provided such use is in compliance with all other provisions of this chapter.

(3) A parent or legal guardian shall not permit a child under the age of 12 to operate a motorized skateboard or scooter except under the direct supervision of an adult.

(4) The owner of a motorized skateboard or scooter shall not permit:

a. The device to be operated by a person under the age of 12 except under direct adult supervision.

b. The device to be operated by a person who is incompetent to operate such vehicle because of mental or physical disability or because of being under the influence of alcohol, any drug, or with a prohibited alcohol content as defined in § 4177 of this title.

(h) *Helmet requirements.* — (1) A person under 18 years of age shall not operate or ride as a passenger upon any motorized skateboard or scooter unless that person is wearing a properly fitted and fastened bicycle helmet which meets or exceeds the standards set forth in § 4198K of this title.

(2) Any parent or legal guardian who fails to cause that parent or legal guardian's child to wear a helmet, as provided in this subsection, shall be fined for the first offense $25, and for each subsequent offense, $50.

(3) The court may dismiss all charges pursuant to this subsection upon presentation of evidence that a violator hereof has purchased or obtained a helmet that meets or exceeds the standards set forth in this subsection subsequent to the violation.

(4) The requirements of this subsection shall apply at all times while a motorized skateboard or scooter is being operated on any property open to the public or used by the public for pedestrian and vehicular purposes.

(5) Failure to wear a helmet as herein described shall not be considered evidence of either comparative or contributory negligence in any civil suit arising out of any accident in which a person under 18 years of age is injured, nor shall failure to wear a helmet be admissible as evidence in the trial of any civil action.

(i) Any person or business selling a new, unused motorized scooter, as defined in § 101(42) of this title, must obtain a signed, witnessed statement from the purchaser stating that the purchaser is aware that motorized scooters cannot be operated on Delaware public highways or sidewalks, as set forth in this section. The seller must retain the document for a period of not less than 3 years from the date of sale.

(j) *Enforcement of section.* — Any law-enforcement, peace, police or environmental protection officer, acting in the lawful performance of duty, shall be empowered to enforce this section. Whenever any motorized skateboard or scooter is used in violation of this section, it may forthwith be seized and taken into custody by the peace officer or officers having knowledge of the facts of such use. Any costs associated with any such seizure shall be paid by the operator or owner of such motorized skateboard or scooter unless the operator or owner is found not guilty of the offense charged.

(k) *Penalties when not otherwise specified in this section.* — Any person convicted of violation of any provision of this section shall be fined not less than $25 nor more than $300. The penalties set forth in this subsection shall apply unless a specific penalty for an offense specified in a provision of this section is otherwise provided in this section.

(*l*) *Jurisdiction.* — The Courts of the Justices of the Peace shall have original jurisdiction over violations of this section except that the Family Court shall have jurisdiction over violations of this section when such violation is committed by any person under the age of 18 years of age.

(m) *Conflicts with other statutes.* — Should any provision of this section conflict with other statutes, the provisions or requirements of this section shall apply. The provisions of this subsection or any other provision of this section notwithstanding, nothing in this subsection or any other provision of this section shall be deemed to preclude prosecution under any other provision of this Code.

(n) *Rules and regulations.* — The Secretary of Safety and Homeland Security and/or the Secretary of Transportation may adopt and enforce such rules and regulations concerning motorized skateboards or scooters and designate such agencies as may be necessary to carry out this section, provided such rules and regulations are not contrary to this section.

(o) Notwithstanding the provisions of this section, any municipality with a population in excess of 50,000 may implement ordinances, regulating the use of motorized skateboard or scooters, inconsistent with or in addition to the provisions of this section.

(74 Del. Laws, c. 282, § 3; 76 Del. Laws, c. 289, §§ 6, 7; 80 Del. Laws, c. 136, § 1; 80 Del. Laws, c. 168, § 1; 82 Del. Laws, c. 93, § 1; 83 Del. Laws, c. 505, § 1; 84 Del. Laws, c. 332, § 1; 85 Del. Laws, c. 40, § 1; 85 Del. Laws, c. 161, §§ 1, 2.)

§ 4198O. Operation of electric personal assistive mobility devices (EPAMD).

(a) Nothing in this title shall be construed to limit the operation of an EPAMD on sidewalks and bike ways of the State except the following:

(1) A person operating an EPAMD shall not exceed a speed of 8 miles per hour on sidewalks and shall yield the right-of-way to pedestrians and human-powered devices at all times. An operator must also give an audible signal before overtaking and passing any pedestrian.

(2) An EPAMD may be operated on a public highway only:

a. While making a direct crossing of a highway in a marked or unmarked crosswalk;

b. Where no sidewalk is available; or

c. When so directed by a traffic control device or by a peace officer.

(3) Any person operating an EPAMD upon a highway shall ride as close as practicable to the right-hand edge of the highway;

(4) An EPAMD may not be operated at any time on a highway with a speed limit of more than 30 miles per hour except to make a direct crossing of the highway in a marked crosswalk;

(5) A person under 16 years of age shall not operate or ride upon an EPAMD unless that person is wearing a properly fitted and fastened bicycle helmet which meets or exceeds the standards set forth in § 4198K of this title;

(6) Any person operating an EPAMD shall obey all traffic control devices and shall exercise due care in the operation of the EPAMD; and

(7) No person shall ride an EPAMD on a highway of this State while under the influence of intoxicating liquor and/or narcotic drugs to a degree which renders such person a hazard.

(b) An EPAMD shall not require a license plate or be registered by the Division of Motor Vehicles.

(c) An EPAMD shall be equipped with front, rear and side reflectors, a system that when employed will enable the operator to bring the device to a controlled stop, and if the EPAMD is operated between $^1/_2$ hour after sunset and $^1/_2$ hour before sunrise, a lamp emitting a white light which, while the EPAMD is in motion, sufficiently illuminates the area in front of the operator; provided that these provisions shall be satisfied if the operator of the EPAMD wears a headlight and reflectors on the operator's person.

(d) No proof of financial responsibility is required for the operation of an EPAMD.

(e) (1) Any person convicted of a violation of paragraphs (a)(1)-(a)(6) or subsection (c) of this section shall receive a warning for the first offense, be fined $10 for the second or subsequent offense, and shall have the EPAMD impounded for up to 30 days for the third or subsequent offense.

(2) Any person convicted of a violation of paragraph (a)(7) of this section shall for the first offense be fined not less than $150 nor more than $1,150 and for subsequent offenses be fined not less than $400 nor more than $1,500 or be imprisoned not less than 10 days nor more than 30 days, or both.

(73 Del. Laws, c. 346, § 7; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 282, § 3.)

§ 4198P. Operation of electric bicycles.

(a) Except as specifically provided in this section, an electric bicycle or an operator of an electric bicycle shall be afforded all the rights and privileges, and be subject to all the duties, of a bicycle or the operator of a bicycle.

(b) An electric bicycle or a person operating an electric bicycle is not subject to the provisions of this Code relating to financial responsibility or insurance, driver's licenses, registration, certificates of title, off-highway vehicles, and license plates.

(c) On and after January 1, 2023, manufacturers and distributors of electric bicycles shall apply a label that is permanently affixed, in a prominent location, to each electric bicycle. The label shall contain the classification number, top assisted speed, and motor wattage of the electric bicycle, and shall be printed in Arial font in at least 9-point type.

(d) No person may tamper with or modify an electric bicycle to change the motor-powered speed capability or engagement of an electric bicycle, unless the label indicating the classification required in subsection (c) of this section is replaced after modification.

(e) An electric bicycle shall comply with the equipment and manufacturing requirements for bicycles adopted by the United States Consumer Product Safety Commission (16 C.F.R. Part 1512).

(f) An electric bicycle shall operate in a manner so that the electric motor is disengaged or ceases to function when the rider stops pedaling or when the brakes are applied.

(g) An electric bicycle may be ridden anywhere bicycles are allowed, including streets, highways, roadways, shoulders, bicycle lanes, bikeways (including bikeways established pursuant to Chapter 10 of Title 17) and bicycle or multi-use paths except for all the following:

(1) A local authority or state agency which has jurisdiction over a bicycle or multi-use path may prohibit the operation of a bicycle if the authority finds, after notice and a public hearing, that the restriction is necessary for safety reasons or compliance with other laws or legal obligations.

(2) A local authority or state agency which has jurisdiction over a trail that is specifically designated as nonmotorized and that has a natural surface tread that is made by clearing and grading the native soil with no added surfacing materials may prohibit the operation of an electric bicycle on that trail.

(3) Sidewalks, including those permitted to be used by bicycles, while using the electric motor.

(h) No person under the age of 16 may operate a class 3 electric bicycle. A person under the age of 16 may ride as a passenger on a class 3 electric bicycle that is designed to accommodate passengers.

(i) All operators and passengers of class 3 electric bicycles must wear an approved, properly fitted and fastened bicycle helmet. For the purposes of this subsection, "approved helmet" has the meaning provided in § 4198K(a) of this title. The requirement to wear a helmet is subject to the provisions of § 4198K(b)-(f) of this title.

(j) All class 3 electric bicycles must be equipped with a speedometer that displays the speed the bicycle is traveling in miles per hour.

(83 Del. Laws, c. 505, § 2.)

§ 4198Q. Operation of low-speed motorized scooters.

(a) Except as specifically provided in this section, a low-speed motorized scooter or an operator of a low-speed motorized scooter is afforded all the rights and privileges, and is subject to all the duties, of a bicycle or the operator of a bicycle.

(b) A low-speed motorized scooter or a person operating a low-speed motorized scooter is not subject to the provisions of this Code relating to financial responsibility or insurance, driver's licenses, registration, certificates of title, off-highway vehicles, and license plates.

(c) On and after January 1, 2026, manufacturers and distributors of low-speed motorized scooters must apply a label that is permanently affixed, in a prominent location, to each low-speed motorized scooter. The label must contain the classification number, top assisted speed, and motor power of the low-speed motorized scooter, and must be printed in Arial font in at least 9-point type.

(d) No person may tamper with or modify a low-speed motorized scooter to change the motor-powered speed capability or engagement of a low-speed motorized scooter, unless the label indicating the classification required in subsection (c) of this section is replaced after modification.

(e) A low-speed motorized scooter must comply with the equipment and manufacturing requirements for electrically operated toys or other electrically operated articles adopted by the United States Consumer Product Safety Commission (16 C.F.R. Part 1505).

(f) A low-speed motorized scooter may be ridden anywhere bicycles are allowed, including streets, highways, roadways, shoulders, bicycle lanes, bikeways (including bikeways established pursuant to Chapter 10 of Title 17) and bicycle or multi-use paths except for all the following:

(1) A local authority or state agency that has jurisdiction over a bicycle or multi-use path may prohibit the operation of a low-speed motorized scooter if the local authority or state agency finds, after notice and a public hearing, that the restriction is necessary for safety reasons or compliance with other laws or legal obligations.

(2) A local authority or state agency that has jurisdiction over a trail that is specifically designated as nonmotorized and that has a natural surface tread that is made by clearing and grading the native soil with no added surfacing materials may prohibit the operation of a low-speed motorized scooter on that trail.

(3) Sidewalks, including those permitted to be used by bicycles.

(g) All operators and passengers of a low-speed motorized scooter under the age of 18 years old must wear an approved, properly fitted, and fastened bicycle helmet. For the purposes of this subsection, "approved helmet" has the meaning provided in § 4198K(a) of this title. The requirement to wear a helmet is subject to the provisions of § 4198K(b)-(f) of this title.

(h) No low-speed motorized scooters may be operated as part of a rental service.

(i) A person must be at least 14 years old to operate a low-speed motorized scooter.

(85 Del. Laws, c. 161, § 3.)

Subchapter XIII

Safety Zones; Passengers in Vehicles

§ 4199. Driving through safety zone prohibited.

No vehicle shall at any time be driven through or within a safety zone.

(21 Del. C. 1953, § 4197; 54 Del. Laws, c. 160, § 1.)

§ 4199A. Riding without owner's consent; protrusion beyond limits of vehicle.

No person shall ride upon any vehicle without the consent of the driver and when any person is riding on any vehicle with the driver's consent, no part of the person's body must protrude beyond the limits of the vehicle.

(21 Del. C. 1953, § 4198; 54 Del. Laws, c. 160, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4199B. Riding in house trailers.

It shall be unlawful to ride in a house trailer being towed by another vehicle.

(21 Del. C. 1953, § 4199; 54 Del. Laws, c. 160, § 1.)

§ 4199C. Child restraint in motor vehicles [Transferred].

Transferred to § 4803 of this title.

Part III
Operation and Equipment
Chapter 42
Reports of Accidents; Penalties; Interpretation of Laws

§ 4201. Duty of driver involved in collisions resulting in property damage or injury.

(a) The driver of any vehicle involved in a collision resulting in apparent damage to property shall immediately stop such vehicle at the scene of the collision. Said stop should be made as close to the scene of the collision as possible without obstructing traffic more than necessary. The driver shall immediately undertake reasonable efforts to ascertain whether any person involved in the collision was injured or killed. If such collision resulted in injury or death, the driver shall comply with § 4203 of this title. If, after reasonably ascertaining that there are no injuries or deaths, and if the damaged vehicle is obstructing traffic, the driver of the vehicle must make every reasonable effort to move the vehicle or have it moved so as not to obstruct the regular flow of traffic more than necessary. If the damage resulting from such collision is to the property of the driver only, with no damage to the person, property of another, or the environment, the driver need not stay at the scene of the collision but shall immediately make a report of the damage resulting as required by § 4203 of this title.

(b) The driver shall give the driver's name, address and the registration number of a vehicle and exhibit a driver's license or other documentation of driving privileges to the owner of the property or the driver or occupants of any vehicle with which the driver's vehicle collides.

(c) Whoever violates subsection (a) of this section shall be fined no less than $230 nor more than $1,150 or imprisoned not less than 60 days nor more than 6 months.

(d) The Secretary shall revoke the driver's license and/or driving privilege of every person convicted under this section. Such revocation shall be for a period of 6 months.

(21 Del. C. 1953, § 4201; 54 Del. Laws, c. 160, § 1; 65 Del. Laws, c. 77, § 6; 66 Del. Laws, c. 238, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 247, §§ 2, 3; 76 Del. Laws, c. 401, §§ 1-4.)

§ 4202. Duty of driver involved in collision resulting in injury or death to any person; penalty.

(a) The driver of any vehicle involved in an collision resulting in injury or death to any person shall immediately stop such vehicle at the scene of such collision. Said stop should be made as close to the scene of the collision as possible without obstructing traffic more than necessary. The driver shall give the driver's name, address and the registration number of the driver's vehicle and exhibit a driver's license or other documentation of driving privileges to the person struck or the driver or occupants of any vehicle collided with and shall render to any person injured in such collision reasonable assistance, including the carrying of such person to a hospital or physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person, or by contacting appropriate law-enforcement or emergency personnel and awaiting their arrival.

(b) Whoever violates subsection (a) of this section when that person has been involved in a collision resulting in injury to any person shall be guilty of an unclassified misdemeanor, be fined not less than $1,000 nor more than $3,000 or imprisoned not less than 1 year nor more than 2 years.

(c) Whoever violates subsection (a) of this section when that person has been involved in a collision resulting in death to any person shall be guilty of a class E felony. The provisions of § 4206(a) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the sentence for such offense shall include a period of incarceration of not less than 1 year and the first 6 months of any sentence imposed shall not be suspended.

(d) The Secretary shall revoke the driver's license and/or driver's privilege of every person convicted under this section. Such revocation shall be for a period of 1 year if the person is convicted and sentenced pursuant to subsection (b) of this section. Such revocation shall be for a period of 2 years if the person is convicted and sentenced pursuant to subsection (c) of this section.

(e) Except as provided in § 927 of Title 10, notwithstanding any other law, rule or regulation to the contrary, the Court of Common Pleas shall have original jurisdiction to hear, try and finally determine any misdemeanor violation of this section, and any other violation of any offense set forth in this title which was allegedly committed during the same incident. The jurisdiction of the justices of the peace over such matters is hereby terminated.

(21 Del. C. 1953, § 4202; 54 Del. Laws, c. 160, § 1; 57 Del. Laws, c. 670, § 14A; 65 Del. Laws, c. 77, § 7; 68 Del. Laws, c. 9, § 39; 69 Del. Laws, c. 93, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 247, § 4; 73 Del. Laws, c. 163, §§ 1-3; 76 Del. Laws, c. 401, §§ 5-9.)

§ 4203. Duty to report collisions; evidence.

(a) After complying with the requirements of §§ 4201 and 4202 of this title, the driver of any vehicle involved in the following described vehicular collisions shall immediately report such collision to the police agency which has primary jurisdictional responsibility for the location in which the collision occurred:

(1) When the collision results in injury or death to any person;

(2) When the collision occurs on a public highway and results in property damage to an apparent extent of $2,000 or more; or

(3) When it appears that any collision involving a driver whose physical ability is impaired as a result of the use of alcohol or drugs or any combination thereof.

(b) When a collision is not required to be reported under subsection (a) of this section, the driver may report such collision to the appropriate police agency as described in subsection (a) of this section, after complying with § 4201(b) of this title.

(c) Police agencies may investigate any collision which occurs within that agency's jurisdiction.

(d) Police agencies shall investigate and complete the State of Delaware Uniform Traffic Collision Report supplied by the Delaware Department of Safety and Homeland Security on all reported collisions involving an impaired driver, apparent property damage to the extent of $2,000 or more or personal injury or death to a person, when such collisions occur within that agency's jurisdiction.

(e) The Department of Safety and Homeland Security may require drivers involved in collisions, or police departments, to file supplemental reports of collisions upon forms furnished by it whenever the original report is insufficient in the opinion of the Department of Safety and Homeland Security. Such reports shall be without prejudice, shall be for the information of the Department of Safety and Homeland Security and shall not be open to public inspection. The fact that such reports have been so made shall be admissible in evidence solely to prove a compliance with this section but no report or any part thereof or statement contained therein shall be admissible in evidence for any other purpose in any trial, civil or criminal, arising out of such collisions.

(f) [Repealed.]

(21 Del. C. 1953, § 4203; 54 Del. Laws, c. 160, § 1; 57 Del. Laws, c. 426; 57 Del. Laws, c. 670, § 14B; 59 Del. Laws, c. 391, § 2; 66 Del. Laws, c. 238, § 2; 70 Del. Laws, c. 258, §§ 1-3; 74 Del. Laws, c. 110, § 138; 76 Del. Laws, c. 401, §§ 10, 11; 83 Del. Laws, c. 220, § 1.)

§ 4204. Report of damaged vehicles; cars involved in fatal collisions.

(a) The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in a serious collision or struck by any bullet shall report to the nearest police station or sheriff's office within 24 hours after such motor vehicle is received, giving the engine number, registration number and the name and address of the owner of such vehicle.

(b) Cars involved in collisions resulting in death to human beings shall not be moved from the place of the collision until arrival of police, except if needed to convey an injured person to a hospital or doctor.

(21 Del. C. 1953, § 4204; 54 Del. Laws, c. 160, § 1; 76 Del. Laws, c. 401, §§ 12, 13.)

§ 4205. Penalties.

(a) Whoever violates this chapter or Chapter 41 of this title shall for the first offense be fined not less than $25 nor more than $75. For each subsequent like offense, the person shall be fined not less than $57.50 nor more than $95. All second offenses, before being punishable as such, shall have been committed within 24 months after the commission of the first offense unless otherwise specifically provided.

(b) Subsection (a) of this section shall not apply to violations for which penalties are prescribed elsewhere in this chapter or Chapter 41 of this title.

(21 Del. C. 1953, § 4211; 54 Del. Laws, c. 160, § 1; 65 Del. Laws, c. 503, § 21; 68 Del. Laws, c. 9, § 40; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 106, § 29; 74 Del. Laws, c. 345, § 9; 78 Del. Laws, c. 208, §§ 11-13; 81 Del. Laws, c. 247, § 2.)

§ 4205A. Classification of offenders sentenced to imprisonment under this title.

(a) For offenses under this title, except those which involve injury or death caused to another person by the person's driving or operation of the vehicle or which involve a driving under the influence-related conviction or offense as defined in § 4177B(e)(1)a.-d. of this title, the terms of imprisonment defined in this title may be served at Supervision Accountability Level IV as defined in § 4204(c)(4) of Title 11.

(b) For offenses under this title which involve injury caused to another person by the person's driving or operation of the vehicle or a driving under the influence-related conviction or offense as defined in § 4177B(e)(1)a.-d. of this title, any term of imprisonment defined in this title shall be served at Supervision Accountability Level V as defined in § 4204(c)(5) of Title 11 or at Supervision Accountability Level IV as defined in § 4204(c)(4) of Title 11 provided that such Level IV placement must be served in a Department of Correction facility which requires full-time residence at the facility and that the person may not be outside the confines of that facility without armed supervision.

(c) For offenses under this title which involve death caused to another person by the person's driving or operation of the vehicle any term of imprisonment defined in this title shall be served at Supervision Accountability Level V as defined in § 4204(c)(5) of Title 11.

(d) A sentencing judge shall not designate under which provision of this section an offender sentenced to imprisonment for a violation of a provision of this title is to be classified to serve the offender's imprisonment. Classification pursuant to the provisions of this section of an offender sentenced to imprisonment for violation of a provision of this title shall be done at the discretion of the Department of Correction in accordance with Chapter 65 of Title 11.

(74 Del. Laws, c. 345, § 9; 70 Del. Laws, c. 186, § 1.)

§ 4206. Removal of vehicles from collision scene prohibited.

No person shall remove from the scene of a collision resulting in apparent property damage any vehicle without the consent of the owner of any property which has been damaged in such collision unless a police officer is present at the scene of such collision and authorizes the removal.

For the purposes of this section, the term “person” shall not include the owner of the vehicle, the operator of the vehicle at the time of the collision or a passenger in such vehicle at the time of the collision.

(62 Del. Laws, c. 136, § 2; 76 Del. Laws, c. 401, §§ 14, 15.)

§ 4207. Uniformity of interpretation.

Chapters 41 and 42 of this title shall be so interpreted and construed as to effectuate the general purpose of those chapters to make uniform among the states the law relating to motor vehicles.

(21 Del. C. 1953, § 4220; 54 Del. Laws, c. 160, § 1; 62 Del. Laws, c. 136, § 1.)

Part III
Operation and Equipment
Chapter 43
Equipment and Construction of Vehicles
Subchapter I
Equipment Requirements

§ 4301. Hard rubber tires.

Every solid rubber tire on a vehicle moved on any highway shall have rubber at least 1 inch thick above the edge of the flange of the entire periphery on its entire traction surface.

(36 Del. Laws, c. 10, § 121; Code 1935, § 5659; 21 Del. C. 1953, § 4301.)

§ 4302. Projections from periphery of tires; exceptions.

(a) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat or spike or any other protuberances of any material other than rubber which projects beyond the tread of the traction surface of the tire, except as otherwise provided in this section. Farm machinery with tires having protuberances which will not injure the highway may be used, and tire chains of reasonable proportions may be used upon any vehicle when required for safety because of snow, ice or other conditions tending to cause a vehicle to slide or skid.

(b) The use of studded tires on all motor vehicles using the highways of this State is permitted from October 15 to April 15.

(36 Del. Laws, c. 10, § 121; Code 1935, § 5659; 21 Del. C. 1953, § 4302; 58 Del. Laws, c. 128.)

§ 4303. Brakes — General requirements.

(a) Every motor vehicle when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle and any trailer or semitrailer attached thereto including 2 separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least 2 wheels and shall be so constructed that no part which is liable to failure shall be common to the 2. A motorcycle need be equipped with only 1 brake. All brakes shall be maintained in good working order and shall conform to regulations, not inconsistent with this subchapter, to be promulgated by the Secretary. All brakes shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

(b) All braking distances specified in this subchapter shall apply to all vehicles mentioned herein, whether such vehicles are loaded or are not loaded to the maximum capacity permitted under Chapter 45 of this title.

(c) Except as provided in this subsection, no motor vehicle, when operated upon a highway in this State, shall utilize or employ any brake or braking system that is attached to, or an integral part of, the vehicle's internal combustion engine or exhaust systems. Nothing in this section shall be interpreted as prohibiting the equipping of any motor vehicle with a braking system that is attached to, or an integral part of, the vehicle's engine or exhaust systems. Nothing in this section shall be interpreted as prohibiting the use of a braking system that is attached to, or an integral part of, the vehicle's engine or exhaust system in an emergency situation or an emergency vehicle including police, fire, ambulance, emergency medical service vehicles or other emergency vehicles.

(36 Del. Laws, c. 10, § 123; 40 Del. Laws, c. 38, § 8; Code 1935, § 5661; 21 Del. C. 1953, § 4303; 57 Del. Laws, c. 670, § 15A; 76 Del. Laws, c. 368, § 1.)

§ 4304. Brakes — Performance requirements.

(a) The service brakes upon any motor vehicle or combination of vehicles shall be adequate to stop such vehicle when traveling 20 miles per hour within a distance of 30 feet when upon dry asphalt or concrete pavement surface free from loose material where the grade does not exceed 1 percent.

(b) Under the road conditions mentioned in subsection (a) of this section, the hand brake shall be adequate to stop the vehicle within a distance of 55 feet and the hand brake shall be adequate to hold such vehicle stationary on any grade upon which operated.

(c) Under the road conditions mentioned in subsection (a) of this section, the service brakes upon a motor vehicle equipped with 2-wheel brakes only shall be adequate to stop the vehicle within a distance of 40 feet and the hand brake adequate to stop the vehicle within a distance of 55 feet.

(36 Del. Laws, c. 10, § 123; 40 Del. Laws, c. 38, § 8; Code 1935, § 5661; 21 Del. C. 1953, § 4304.)

§ 4305. Brakes — Trailers and semitrailers.

No trailer or semitrailer with a gross weight of load and vehicle in excess of 4,000 pounds shall be operated on the highways of this State at a speed in excess of 10 miles per hour unless equipped with suitable brakes controlled by the operator of the towing vehicle.

(36 Del. Laws, c. 10, § 123; Code 1935, § 5661; 21 Del. C. 1953, § 4305.)

§ 4306. Horns and other sound devices; unlawful use.

(a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order capable of emitting sound audible under normal conditions from a distance of not less than 200 feet.

(b) Except as otherwise provided, no vehicle shall be equipped with and no person shall use upon a vehicle any siren, exhaust, compression or spark plug whistle. The driver of a vehicle shall, when reasonably necessary to insure safe operation, give audible warning with the horn but shall not otherwise use the horn for any other purpose. No driver of any vehicle shall use a horn:

(1) To make unreasonably loud or harsh sound;

(2) When stationary; or

(3) When passing an animal-drawn vehicle or bicycle under normal conditions where no imminent danger of a collision exists.

(c) No person operating or occupying a motor vehicle on any street, highway, alley, or parking lot shall operate or permit the operation of any music amplification system, including, but not limited to, any radio, tape player, compact disc player, or any other electrical device used for the amplification of music in or on the motor vehicle so that the sound is plainly audible at a distance of 50 or more feet from the vehicle. For the purpose of this subsection, "plainly audible" means any sound which clearly can be heard by unaided hearing faculties, however, words or phrases need not be discernible and bass reverberation alone shall be sufficient to so constitute.

(d) Subsection (c) of this section shall not apply to those in a parade which has been issued a permit nor to commercially licensed vendors in the legitimate operation of their businesses.

(e) Subsection (c) of this section shall not apply to any municipality of this State with a population in excess of 50,000 which has an ordinance addressing noise violations of that type. In the event that any such municipality repeals its ordinance without substituting requirements at least as restrictive as those found in subsection (c) of this section, then the provisions of subsection (c) of this section shall take effect within that municipality.

(36 Del. Laws, c. 10, § 124; Code 1935, § 5662; 21 Del. C. 1953, § 4306; 74 Del. Laws, c. 399, § 1; 81 Del. Laws, c. 196, § 2.)

§ 4307. Warning devices for emergency vehicles.

(a) Every police, fire department and fire patrol vehicle and every ambulance used for emergency calls, except as provided in subsection (b) of this section, shall be equipped with a bell, siren or exhaust whistle.

(b) A vehicle used by a fire chief, deputy fire chief, assistant fire chief, or fire police officer of a duly organized fire department, which is not owned by or the property of the fire department, shall not be equipped with such warning devices.

(36 Del. Laws, c. 10, § 124; Code 1935, § 5662; 21 Del. C. 1953, § 4307; 57 Del. Laws, c. 670, § 15A; 61 Del. Laws, c. 461, § 2; 62 Del. Laws, c. 165, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 6, § 2.)

§ 4308. Rearview mirror.

All motor vehicles and motorcycles shall be equipped with a mirror so placed that the driver thereof may readily ascertain the presence of any vehicle traveling in the same direction and overtaking the driver's vehicle.

(36 Del. Laws, c. 10, § 125; Code 1935, § 5663; 21 Del. C. 1953, § 4308; 70 Del. Laws, c. 186, § 1.)

§ 4309. Obstructions to view on windshield or windows.

(a) No person shall drive any vehicle upon a highway with any sign, poster or other nontransparent material upon the front windshield, side wings or side or rear window of such motor vehicle, other than a certificate or other paper required to be so displayed by law.

(b) No person shall drive upon a highway a vehicle with a removable windshield placard issued pursuant to § 2135 of this title or pursuant to a similar statute of any other state or country hanging from or attached to the vehicle's front windshield rearview mirror. A person may be found guilty of violating this subsection whether or not the placard is valid.

(36 Del. Laws, c. 10, § 126; Code 1935, § 5664; 21 Del. C. 1953, § 4309; 73 Del. Laws, c. 397, § 4.)

§ 4310. Windshield wiper.

Every windshield on a motor vehicle shall be equipped with a device for cleaning rain, snow or other moisture from the windshield. The device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(36 Del. Laws, c. 10, § 126; Code 1935, § 5664; 21 Del. C. 1953, § 4310.)

§ 4311. Mufflers; cutout prohibited.

(a) No person shall drive a motor vehicle, including a motorcycle, on a highway, including residential streets, unless such motor vehicle or motorcycle is equipped with a muffler in good working order and in accordance with manufacturer's specifications and in constant operation to prevent excessive or unusual noise.

(b) No person shall use a "muffler cutout" on any motor vehicle upon a highway.

(c) It shall be unlawful to sell or offer for sale any muffler without interior baffle plates or other effective muffling devices or to sell or offer for sale any "gutted muffler," "muffler cutout" or "straight exhaust."

(d) The provisions of this section shall only apply if there is not a violation of § 4311A of this title.

(36 Del. Laws, c. 10, § 127; 37 Del. Laws, c. 10, § 34; Code 1935, § 5665; 21 Del. C. 1953, § 4311; 59 Del. Laws, c. 371, § 1; 61 Del. Laws, c. 478, § 1; 75 Del. Laws, c. 164, § 3.)

§ 4311A. Muffler requirements for commercial vehicles equipped with engine compression brake devices.

(a) No person shall drive a commercial vehicle equipped with an engine compression brake device on a highway, including residential streets, unless such commercial vehicle is also equipped with a muffler in good working order and in accordance with manufacturer's specifications and in constant operation to prevent excessive noise.

(b) For the purposes of this section, "engine compression brake device" shall mean any device that uses the engine and transmission to impede the forward motion of the motor vehicle by compression of the engine.

(75 Del. Laws, c. 164, § 1.)

§ 4312. Safety glass — Equipment; definition.

(a) No person shall operate, on any public highway or street in this State, any motor vehicle which is registered in the State and which has been manufactured or assembled on or after July 1, 1937, unless such motor vehicle and/or any trailer drawn thereby is equipped with safety glass, wherever glass is used in partitions, doors, windows or windshields.

(b) The term "safety glass" as used in this subchapter means glass so treated or combined with other materials as to reduce, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from external sources or by glass when the glass is cracked or broken.

(40 Del. Laws, c. 35, §§ 1, 2; Code 1935, §§ 5714, 5715; 41 Del. Laws, c. 234, § 1; 21 Del. C. 1953, § 4312.)

§ 4313. Safety glass — Federal safety standards applicable to windshield, front side windows and side wings; window tinting.

(a) No person shall operate any motor vehicle on any public highway, road or street with the front windshield, the side windows to the immediate right and left of the driver and/or side wings forward of and to the left and right of the driver that do not meet the requirements of Federal Motor Vehicle Safety Standard 205 in effect at the time of its manufacture.

(b) Nothing in this section shall prohibit the use of any products or materials along the top edge of the windshield so long as such products or materials are transparent and do not encroach upon the AS-1 portion of the windshield as provided by FMVSS 205 and [former] FMVSS 128.

(c) No person shall operate any motor vehicle on any public highway, road or street which does not conspicuously display a certificate by the manufacturer of any "after manufacture" window tinting material which may have been installed that such window tinting material meets the requirements of FMVSS 205 in effect at the time of the vehicle's manufacture. It shall be a valid defense to any charge under this subsection if the person so charged produces in court a validated mandatory inspection notice showing that the Division of Motor Vehicles has examined the motor vehicle since the date of offense and certifies compliance with FMVSS 205.

(d) No person shall be convicted under this section if that person possesses a statement signed by a licensed practitioner of medicine and surgery or osteopathic medicine or optometry verifying that tinted windows are medically necessary for the owner or usual operator of said vehicle.

(e) This section shall not apply to anodized glass which is correctly installed in the windshield and windows of an antique motor vehicle or street rod, as such are defined in §§ 2196 and 2197 of this title or of a motor vehicle validly insured under an antique, classic or street rod designated motor vehicle insurance policy that covers the motor vehicle, pursuant to § 2118 of this title.

(f) This section shall not apply to any police K-9 unit vehicles, or any surveillance vehicles operated by a "police officer," as defined under § 8401 of Title 11. This exception shall not apply to marked vehicles, except for police K-9 unit vehicles, or those unmarked vehicles used primarily for regular duty patrols.

(40 Del. Laws, c. 35, § 4; Code 1935, § 5717; 46 Del. Laws, c. 63; 21 Del. C. 1953, § 4313; 57 Del. Laws, c. 670, § 15B; 64 Del. Laws, c. 33, § 1; 67 Del. Laws, c. 227, § 1; 68 Del. Laws, c. 210, § 1; 70 Del. Laws, c. 357, § 1; 71 Del. Laws, c. 396, § 1; 74 Del. Laws, c. 393, § 1; 79 Del. Laws, c. 230, § 1; 83 Del. Laws, c. 83, § 2.)

§ 4313A. Commercial window tinting.

(a) No person who installs window tinting material in motor vehicles as part of a commercial activity shall do so in violation of the requirements of § 4313 of this title.

(b) Whoever violates subsection (a) of this section shall be fined not less than $100 nor more than $500. If any fee was charged for such installation, the violator shall pay restitution to the owner of the vehicle in the amount of the fee charged for installing the illegal window tinting.

(74 Del. Laws, c. 39, § 1.)

§ 4314. Lights and reflectors; change of original design or performance of vehicle.

A person may not use on any motor vehicle or trailer any light, lamp or reflector that tends to change the original design or performance of the motor vehicle or trailer, unless the light, lamp or reflector is of a type that has been approved by the Department and is mounted,

adjusted and aimed in accordance with regulations adopted by the Secretary. Such regulations shall not violate the Federal Motor Vehicle Safety Standards.

(66 Del. Laws, c. 109, § 1.)

§ 4315. Penalties for §§ 4301-4316.

(a) Whoever violates §§ 4301-4305 of this title shall for the first offense be fined not less than $25 nor more than $115. For each subsequent like offense, the person shall be fined not less than $57.50 nor more than $230, or imprisoned not less than 10 nor more than 30 days, or both.

(b) Whoever violates §§ 4306-4311 of this title, except for § 4306(c) of this title, shall for the first offense be fined not less than $10 nor more than $28.75. For each subsequent like offense, the person shall be fined not less than $28.75 nor more than $100. Whoever violates § 4306(c) of this title shall be subject to a fine of at least $50 and not to exceed $250. For each subsequent offense such person shall be subject to a fine of at least $125 and not to exceed $500.

(c) Whoever violates § 4311A of this title shall be fined $500.

(d) Whoever being the operator, owner or custodian of any motor vehicle which is operated in violation of §§ 4312-4316 of this title shall be fined not less than $28.75 nor more than $100.

(e) In case of any violation of §§ 4301-4316 of this title by any common carrier or person operating under a permit or certificate issued by any public authority, in addition to the penalties prescribed in this section, such permit or certificate shall be revoked or, in the discretion of the issuing authority suspended until such sections are satisfactorily complied with.

(f) A violation of § 4303(c) of this title shall also constitute a moving violation which shall be part of the person's driving record.

(g) In cases where no collision has occurred, violation of § 4306, § 4308, or § 4313 of this title may be dismissed before trial if the defendant establishes that repairs have been made so that the vehicle is in compliance.

(36 Del. Laws, c. 10, §§ 141, 142; 37 Del. Laws, c. 10, § 34; 38 Del. Laws, c. 30; 40 Del. Laws, c. 35, § 6; 40 Del. Laws, c. 37, § 1; Code 1935, §§ 5679, 5680, 5719; 45 Del. Laws, c. 292, § 2; 46 Del. Laws, c. 61; 21 Del. C. 1953, § 4315; 65 Del. Laws, c. 503, § 22; 68 Del. Laws, c. 9, §§ 41-43; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 399, §§ 2, 3; 75 Del. Laws, c. 164, § 2; 80 Del. Laws, c. 277, § 1; 83 Del. Laws, c. 204, § 1.)

§ 4316. Directional signal lights.

All new vehicles licensed in this State must be equipped with directional signal lights.

(21 Del. C. 1953, § 4316; 49 Del. Laws, c. 96, § 1.)

§ 4317. Protectors or flaps behind rear wheels of vehicles.

(a) No person shall operate, cause or permit to be operated any bus or commercial motor vehicle having a gross weight of 8,000 pounds or more, including semitrailers and trailers, upon the highways of this State unless it is equipped with suitable metal protectors or substantial flexible flaps behind the rearmost wheels of the vehicle or combination to prevent the projection of rocks, dirt, water or other substances to the rear and to minimize side spray.

(b) The flap, shield or other device shall extend down from the vehicle's body to not more than 8 inches above the road surface, but not more than 15 inches when the vehicle is in an unloaded condition. The protector or flap shall extend laterally at least the width of the tire being protected.

(c) If any bus or commercial motor vehicle, including semitrailers and trailers, is so designed or constructed that the objectives in subsection (a) of this section are accomplished by reason of fender or body construction or other means of enclosure, either permanent or temporary, then the requirements of this section have been satisfied.

(d) This section shall not apply to any farm tractor or to uncoupled truck tractors or other vehicles where the construction is such that complete freedom around the wheel area is necessary to secure the designed use of the vehicle.

(e) The Director of the Division of Motor Vehicles shall set and adopt such regulations as are necessary to implement this section.

(f) Whoever violates this section shall for the first offense be fined not less than $10 nor more than $28.75. For each subsequent like offense, the person shall be fined not less than $28.75 nor more than $100.

(21 Del. C. 1953, § 4359; 57 Del. Laws, c. 684; 58 Del. Laws, c. 410; 65 Del. Laws, c. 503, § 23; 68 Del. Laws, c. 9, § 44; 70 Del. Laws, c. 186, § 1.)

§ 4318. Bumper, frame rail, and body heights.

(a) No passenger vehicle or station wagon that is required to be registered under Chapter 21 of this title shall be registered or operated upon any highway of the State if the bumper height of such vehicle exceeds 22 inches from the ground to the bottom of the bumper, or if the vehicle frame rail is higher than the attached bumper, or if the maximum distance between the vehicle body and vehicle frame rail exceeds 3 inches.

(b) Vehicles not included in subsection (a) of this section that are required to be registered under Chapter 21 of this title shall not be registered or operated upon any highway of the State if the bumper height of such vehicle exceeds 30 inches from the ground to the

bottom of the bumper, or if the vehicle frame rail is higher than the attached bumper, or if the maximum distance between the vehicle body and vehicle frame rail exceeds 3 inches.

(c) The following vehicles are exempt from this section: antique motor vehicles registered under § 2196 of this title; authorized emergency vehicles; motor vehicles with a gross vehicle weight rating of 10,000 pounds or greater; and vehicles registered with farm truck plates (FT tags), as defined in § 2113(1) of this title.

(d) Any person found guilty of operating a motor vehicle in violation of this section shall, for the first offense, be fined not less than $50 nor more than $115 For each subsequent like offense within one year, such person shall be fined not less than $100 nor more than $230. Measurements made with an over-the-counter measuring device shall be prima facie evidence of a violation.

(62 Del. Laws, c. 147, § 1; 68 Del. Laws, c. 9, § 45; 70 Del. Laws, c. 85, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4319. Mandatory reverse warning — Commercial vehicle.

(a) Except as to farm vehicles, all commercial vehicles registered in the State with a gross weight rating of 26,001 pounds or more shall be equipped with:

(1) An audible reverse warning signal, so as to adequately place an individual within 50 feet of such vehicle on notice that such commercial vehicle intends to and/or is in the process of moving backwards in a reverse gear;

(2) A backup camera visible in the cab of the vehicle; or

(3) An audible warning device that will alert the driver when the vehicle is approaching an object.

(b) This section shall only apply to commercial vehicles that are titled on or after January 1, 2014.

(c) Whomever violates this section shall be subject to a civil penalty of $75. For each subsequent offense within 2 years of a prior offense, the person shall be subject to a civil penalty of $175.

(79 Del. Laws, c. 179, § 1.)

Subchapter II

Lights

§ 4331. When lighted lamps are required.

(a) Every vehicle upon a highway within this State at any time from sunset to sunrise, or during fog, smoke, rain or when windshield wipers are in use because of weather conditions or at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 1,000 feet ahead shall display lighted lamps and illuminating devices, exclusive of parking lamps, as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles.

(b) The portion of subsection (a) of this section criminalizing the failure to display lighted lamps and illuminating devices when windshield wipers are in use because of weather conditions shall constitute a secondary offense in that no person shall be stopped by a police officer for that failure alone.

(36 Del. Laws, c. 10, §§ 128, 130; Code 1935, §§ 5666, 5668; 21 Del. C. 1953, § 4331; 50 Del. Laws, c. 292, § 1; 59 Del. Laws, c. 504, § 1; 69 Del. Laws, c. 417, §§ 1-3.)

§ 4332. Visibility distance and mounted height of lamps.

(a) Whenever requirement is hereinafter declared as to distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in § 4331 of this title in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

(b) Whenever requirement is hereinafter declared as to the mounted height of lamps or devices it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.

(36 Del. Laws, c. 10, §§ 128, 130; Code 1935, §§ 5666, 5668; 21 Del. C. 1953, § 4332; 50 Del. Laws, c. 292, § 1.)

§ 4333. Head lamps on motor vehicles.

(a) Every motor vehicle, trailer, semitrailer and pole motor-driven cycle shall be equipped with at least 2 head lamps with at least 1 on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in this chapter.

(b) Every motorcycle and every motor-driven cycle shall be equipped with at least 1 and not more than 2 head lamps which shall comply with the requirements and limitations of this chapter.

(c) Every head lamp upon every motor vehicle, including every motorcycle and motor-driven cycle, shall be located at a height measured from the center of the head lamp of not more than 54 inches nor less than 24 inches, to be measured as set forth in § 4332(b) of this title.

(36 Del. Laws, c. 10, §§ 128, 130; Code 1935, §§ 5666, 5668; 21 Del. C. 1953, § 4333; 50 Del. Laws, c. 292, § 1; 51 Del. Laws, c. 235.)

§ 4334. Tail lamps.

(a) Every motor vehicle, trailer, semitrailer and pole trailer and any other vehicle which is being drawn at the end of a train of vehicles shall be equipped with at least 1 tail lamp, mounted on the rear, which, when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of 500 feet to the rear, provided, that, in the case of a train of vehicles only the tail lamp on the rearmost vehicle need actually be seen from the distance specified. Provided, however, that every such above mentioned vehicle, other than a truck tractor, registered in this State and manufactured or assembled after July 1, 1956, shall be equipped with at least 2 tail lamps mounted on the rear, which, when lighted as herein required, shall comply with this section.

(b) Every tail lamp upon every vehicle shall be located at a height of not more than 72 inches nor less than 20 inches.

(c) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any tail lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

(36 Del. Laws, c. 10, § 128; Code 1935, § 5666; 21 Del. C. 1953, § 4334; 50 Del. Laws, c. 292, § 1.)

§ 4335. New vehicles to be equipped with reflectors.

(a) Every new motor vehicle hereafter sold and operated upon a highway, other than a truck tractor, shall carry on the rear, either as a part of the tail lamps or separately, 2 red reflectors, except that every motorcycle and every motor-driven cycle shall carry at least 1 reflector meeting the requirements of this section, and except that vehicles of the type mentioned in § 4338 of this title shall be equipped with reflectors as required in those sections applicable thereto.

(b) Every such reflector shall be mounted on the vehicle at a height not less than 20 inches nor more than 60 inches measured as set forth in § 4332(b) of this title, and shall be of such size and characteristics and so mounted as to be visible at night from all distances within 350 feet to 100 feet from such vehicle when directly in front of lawful upper beams of head lamps, except that visibility from a greater distance is hereinafter required of reflectors on certain types of vehicles.

(21 Del. C. 1953, § 4335; 50 Del. Laws, c. 292, § 1.)

§ 4336. Stop lamps and turn signals required on new motor vehicles.

It shall be unlawful for any person to sell any new motor vehicle, including any motorcycle or motor-driven cycle, in this State, or for any person to drive such vehicle on the highways, unless equipped with at least 1 stop lamp meeting the requirements of § 4347 of this title.

(21 Del. C. 1953, § 4336; 50 Del. Laws, c. 292, § 1.)

§ 4337. Application of succeeding sections.

Those sections of this chapter which follow immediately, including §§ 4338-4342 of this title, relating to clearance and marker lamps, reflectors and stoplights, shall apply as stated in said sections to vehicles of the type therein enumerated, namely passenger buses, trucks, truck tractors and certain trailers, semitrailers and pole trailers, respectively, when operated upon any highway, and such vehicles shall be equipped as required and all lamp equipment required shall be lighted at times mentioned in § 4331 of this title, except that clearance and side marker lamps need not be lighted on any said vehicle when operated within any municipality where there is sufficient light to render clearly discernible persons and vehicles on the highway at a distance of 500 feet.

(21 Del. C. 1953, § 4337; 50 Del. Laws, c. 292, § 1.)

§ 4338. Additional equipment required on certain vehicles.

In addition to other equipment required in this chapter, the following vehicles shall be equipped as herein stated under the conditions stated in § 4337 of this title:

(1) On every bus or truck, whatever its size, there shall be the following:

On the rear, 2 reflectors, 1 at each side, and 1 stoplight;

(2) On every bus or truck 80 inches or more in overall width, in addition to the requirements in paragraph (1) of this section:

On the front, 2 clearance lamps, 1 at each side; on the rear, 2 clearance lamps, 1 at each side; on the side, 2 side marker lamps, 1 at or near the front and 1 at or near the rear; on each side, 2 reflectors, 1 at or near the front and 1 at or near the rear;

(3) On every truck tractor:

On the front, 2 clearance lamps, 1 at each side; on the rear, 1 stoplight;

(4) On every trailer or semitrailer having a gross weight in excess of 3,000 pounds:

On the front, 2 clearance lamps, 1 at each side; on each side, 2 side marker lamps, 1 at or near the front and 1 at or near the rear; on each side, 2 reflectors, 1 at or near the front and 1 at or near the rear; on the rear, 2 clearance lamps, 1 at each side; also 2 reflectors, 1 at each side and 1 stoplight;

(5) On every pole trailer in excess of 3,000 pounds gross weight:

On each side, 1 side marker lamp and 1 clearance lamp which may be in combination to show to the front, side and rear; on the rear of the pole trailer or load, 2 reflectors, 1 at each side;

(6) On every trailer, semitrailer or pole trailer weighing 3,000 pounds gross or less:

On the rear, 2 reflectors, 1 on each side. If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stoplight on the towing vehicle, then such vehicle shall also be equipped with 1 stoplight.

(21 Del. C. 1953, § 4338; 49 Del. Laws, c. 220, § 25; 50 Del. Laws, c. 292, § 1.)

§ 4339. Color of clearance lamps, side marker lamps, backup lamps and reflectors.

(a) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display and reflect an amber color.

(b) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display and reflect a red color.

(c) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stoplight or other signal device, which may be red, amber or yellow, and except that the light illuminating the license plate shall be white and the light emitted by a backup lamp shall be white or amber.

(21 Del. C. 1953, § 4339; 50 Del. Laws, c. 292, § 1; 77 Del. Laws, c. 263, §§ 1, 2.)

§ 4340. Mounting of reflectors, clearance lamps and side marker lamps.

(a) Reflectors, when required by § 4338 of this title, shall be mounted at a height not less than 24 inches and not higher than 60 inches above the ground on which the vehicle stands, except that if the highest part of the permanent structure of the vehicle is less than 24 inches, the reflector at such point shall be mounted as high as that part of the permanent structure will permit.

The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.

Any required red reflector on the rear of a vehicle may be incorporated with the tail lamp, but such reflector shall meet all the other reflector requirements of this chapter.

(b) Clearance lamps shall be mounted on the permanent structure of the vehicle in such a manner as to indicate its extreme width and as near the top thereof as practicable. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as required herein with reference to both.

(21 Del. C. 1953, § 4340; 50 Del. Laws, c. 292, § 1.)

§ 4341. Visibility of reflectors, clearance lamps and marker lamps.

(a) Every reflector upon any vehicle referred to in § 4338 of this title shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within 600 feet to 100 feet from the vehicle when directly in front of lawful upper beams of head lamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides, and those mounted on the rear shall reflect a red color to the rear.

(b) Front and rear clearance lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of 500 feet from the front and rear, respectively, of the vehicle.

(c) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the time lights are required at a distance of 500 feet from the side of the vehicle on which mounted.

(21 Del. C. 1953, § 4341; 50 Del. Laws, c. 292, § 1.)

§ 4342. Obstructed lights not required.

Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp (except tail lamps) need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps, nor that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

(21 Del. C. 1953, § 4342; 50 Del. Laws, c. 292, § 1.)

§ 4343. Lamp or flag on projecting load.

(a) Whenever the load upon any vehicle extends to the rear 4 feet or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the time specified in § 4331 of this title, a red light or lantern plainly visible from a distance of at least 500 feet to the sides and rear. The red light or lantern required under this section shall be, in addition to the red rear light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than 12 inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

(b) This section does not apply to:

(1) Any vehicle carrying wooden prefabricated roof trusses in an inverted position, if the trusses do not extend more than 10 feet beyond the rear of the bed or body of the vehicle;

(2) A combination of vehicles carrying an indivisible load if the load is not over 70 feet long, and the load is being transported during daylight hours; or

(3) Any vehicle or combination of vehicles carrying:

a. Piling, poles or mill logs;

b. Nursery stock; or

c. Crew or racing shells.

(c) Subject to the maximum length limits of this section, the load on any vehicle operated alone or the load on the front vehicle of a combination of vehicles:

(1) Except as provided in paragraph (c)(2) of this section, may not extend more than 3 feet beyond the foremost part of the vehicle; and

(2) May extend more than 3 feet beyond the foremost part of a vehicle equipped with front-end loading attachments and containers used in collecting garbage, rubbish, refuse or recyclable materials when the vehicle is actively engaged in collecting garbage, rubbish, refuse or recyclable materials.

(21 Del. C. 1953, § 4343; 50 Del. Laws, c. 292, § 1; 71 Del. Laws, c. 249, §§ 1, 2.)

§ 4344. Lamps on parked vehicles.

(a) Every vehicle, except motorcycles, shall be equipped with at least 1 lamp which, when lighted, shall display a white or amber light visible from a distance of 500 feet to the front of the vehicle, and a red light visible from a distance of 500 feet to the rear of the vehicle. The lamp shall be situated so that 1 such lamp, or combination of lamps meeting the requirements of this section, is installed as near as practicable to the side of the vehicle which is closest to passing traffic.

(b) Whenever a vehicle (whether attended or unattended) is parked or stopped upon a street or highway, at a time when there is insufficient light to reveal any person or object within a distance of 500 feet upon the highway, such vehicle shall be equipped with and shall display lamps meeting the requirements of subsection (a) of this section, but it shall not be necessary to display the lamps upon a vehicle which is lawfully parked upon a portion of a roadway which is ordinarily or customarily used for parking vehicles.

(c) Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

(36 Del. Laws, c. 10, §§ 134, 141; 37 Del. Laws, c. 10, § 34; Code 1935, §§ 5672, 5679; 45 Del. Laws, c. 292, § 2; 21 Del. C. 1953, § 4344; 50 Del. Laws, c. 292, § 1; 60 Del. Laws, c. 384, § 1.)

§ 4345. Lamps on other vehicles and equipment.

Every vehicle, including animal-drawn vehicles and vehicles referred to in § 4355(c) of this title, not specifically required by this subchapter to be equipped with lamps or other lighting devices, shall at all times specified in § 4331 of this title be equipped with at least 1 lamp displaying a white light visible from a distance of not less than 500 feet to the front of said vehicle and shall also be equipped with 2 lamps displaying red light visible from a distance of not less than 500 feet to the rear of said vehicle, or as an alternative, 1 lamp displaying a red light visible from a distance of not less than 500 feet to the rear and 2 red reflectors visible for distances of 100 to 600 feet to the rear when illuminated by the upper beams of head lamps.

(21 Del. C. 1953, § 4345; 50 Del. Laws, c. 292, § 1.)

§ 4346. Spot lamps and auxiliary lamps.

(a) *Spot lamps.* — Any motor vehicle may be equipped with not to exceed 2 spot lamps, and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than 100 feet ahead of the vehicle.

(b) *Fog lamps.* — Any motor vehicle may be equipped with not to exceed 2 fog lamps mounted on the front at a height not less than 12 inches nor more than 30 inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high intensity portion of the light to the left of the center of the vehicle shall at a distance of 25 feet ahead project higher than a level of 4 inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the above requirements may be used with lower head lamp beams as specified in § 4349 of this title.

(c) *Auxiliary passing lamp.* — Any motor vehicle may be equipped with not to exceed 1 auxiliary passing lamp mounted on the front at a height not less than 24 inches nor more than 42 inches above the level surface upon which the vehicle stands. Section 4349 of this title shall apply to any combination of head lamps and auxiliary passing lamps.

(d) *Auxiliary driving lamp.* — Any motor vehicle may be equipped with not to exceed 1 auxiliary driving lamp mounted on the front at a height not less than 16 inches nor more than 42 inches above the level surface upon which the vehicle stands. Section 4349 of this title shall apply to any combination of head lamps and auxiliary driving lamps.

(21 Del. C. 1953, § 4346; 50 Del. Laws, c. 292, § 1.)

§ 4346A. LED ground effect lighting equipment on motorcycles.

(a) For the purposes of this section, "LED ground effect lighting equipment" means light emitting diode (LED) technology that is attached to the underbody of a motorcycle for the purpose of illuminating:

(1) The body of the motorcycle; or

(2) The ground below the motorcycle.

(b) A person may operate a motorcycle equipped with LED ground effect lighting that emits a nonflashing amber or white light.

(81 Del. Laws, c. 5, § 1.)

§ 4347. Signal lamps and signal devices.

(a) Any motor vehicle may be equipped and when required under this chapter shall be equipped with a stop lamp or lamps on the rear of the vehicle which shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than 100 feet to the rear in normal sunlight, and which shall be actuated upon application of the service (foot) brake and be incorporated with 1 or more other rear lamps.

(b) Any motor vehicle may be equipped and when required under this chapter shall be equipped with lamps or mechanical signal devices showing to the front and rear for the purpose of indicating an intention to turn either to the right or left. When lamps are used for such purpose, the lamps showing to the front shall be located on the same level and as widely spaced laterally as practicable and when in use shall display a white or amber light, or any shade of color between white and amber, visible from a distance of not less than 100 feet to the front in normal sunlight, and the lamps showing to the rear shall be located at the same level and as widely spaced laterally as practicable and when in use shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than 100 feet to the rear in normal sunlight. When actuated such lamps shall indicate the intended direction of turning by flashing the lights showing to the front and rear on the side toward which the turn is made. Where mechanical signal devices are used for such purpose, said devices shall be self-illuminated when in use at the times mentioned in § 4331 of this title.

(c) No stop lamp or signal lamp or device shall project a glaring light.

(21 Del. C. 1953, § 4347; 50 Del. Laws, c. 292, § 1.)

§ 4348. Additional lighting equipment [Effective until June 30, 2030].

(a) Any motor vehicle may be equipped with not more than 2 side cowl or fender lamps which shall emit an amber or white light without glare.

(b) Any motor vehicle may be equipped with not more than 1 running board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(c) Any motor vehicle may be equipped with not more than 2 backup lamps either separately or in combination with other lamps, but any such backup lamp shall not be lighted when the motor vehicle is in forward motion.

(d) (1) Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing and when so equipped may display such warning in addition to any other warning signals required by this subchapter.

(2) a. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber.

b. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red.

c. These warning lights shall be visible from a distance of not less than 500 feet under normal atmospheric conditions at night.

(3) a. Flashing headlights may be installed upon any motor vehicle being used by a fire chief, assistant fire chief, fire engineer, fire police officer, police officer, a firefighter who is a member of any regularly established fire company or by an ambulance attendant who is a member of any regularly established ambulance service. Flashing lights shall only be installed if duly authorized by the fire chief or ambulance captain of the respective fire or ambulance company. The lights shall be used only in response to duty as a first responder. Only those firefighters or ambulance attendants of regularly established fire companies duly designated as first responders by their respective fire chief, or those ambulance attendants of other regularly established ambulance services duly designated as first responders by their respective ambulance captain, shall be authorized to use such flashing lights, notwithstanding § 4353(c) of this title. Nothing in this section shall be interpreted to grant emergency vehicle status to firefighters or ambulance attendants making use of such signals in their personal vehicles pursuant to § 4106 of this title. Flashing lights as used in this subsection shall mean a sudden and transient outburst of bright light either operated or activated by 4-way flashers and/or by a high and low beam headlight switch on the vehicle.

b. Modulating headlights may be installed on motorcycles for the purpose of warning other vehicles of their presence requiring the exercise of unusual care in approaching, overtaking, or passing, notwithstanding § 4353(c) of this title. Such modulating headlights must conform to the motorcycle headlamp modulation system requirements of 49 C.F.R. § 571.108 S10.17.5. Nothing in this section shall be interpreted to grant emergency status to motorcycle operators making use of such modulating headlights.

(21 Del. C. 1953, § 4348; 50 Del. Laws, c. 292, § 1; 70 Del. Laws, c. 414, § 1; 77 Del. Laws, c. 6, §§ 4, 6; 83 Del. Laws, c. 371, § 1.)

§ 4348. Additional lighting equipment [Effective June 30, 2030].

(a) Any motor vehicle may be equipped with not more than 2 side cowl or fender lamps which shall emit an amber or white light without glare.

(b) Any motor vehicle may be equipped with not more than 1 running board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(c) Any motor vehicle may be equipped with not more than 2 backup lamps either separately or in combination with other lamps, but any such backup lamp shall not be lighted when the motor vehicle is in forward motion.

(d) (1) Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing and when so equipped may display such warning in addition to any other warning signals required by this subchapter.

(2) a. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber.

b. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red.

c. These warning lights shall be visible from a distance of not less than 500 feet under normal atmospheric conditions at night.

(3) a. Flashing headlights may be installed upon any motor vehicle being used by a fire chief, assistant fire chief, fire engineer, fire police officer, police officer, a firefighter who is a member of any regularly established fire company or by an ambulance attendant who is a member of any regularly established ambulance service. Flashing lights shall only be installed if duly authorized by the fire chief or ambulance captain of the respective fire or ambulance company. The lights shall be used only in response to duty as a first responder. Only those firefighters or ambulance attendants of regularly established fire companies duly designated as first responders by their respective fire chief, or those ambulance attendants of other regularly established ambulance services duly designated as first responders by their respective ambulance captain, shall be authorized to use such flashing lights, notwithstanding § 4353(c) of this title. Nothing in this section shall be interpreted to grant emergency vehicle status to firefighters or ambulance attendants making use of such signals in their personal vehicles pursuant to § 4106 of this title. Flashing lights as used in this subsection shall mean a sudden and transient outburst of bright light either operated or activated by 4-way flashers and/or by a high and low beam headlight switch on the vehicle.

b. [Repealed.]

(21 Del. C. 1953, § 4348; 50 Del. Laws, c. 292, § 1; 70 Del. Laws, c. 414, § 1; 77 Del. Laws, c. 6, §§ 4, 6; 83 Del. Laws, c. 371, § 1; 83 Del. Laws, c. 371, § 2; 84 Del. Laws, c. 504, § 1.)

§ 4349. Multiple beam road lighting equipment.

Except as hereinafter provided, the head lamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles other than motorcycles or motor-driven cycles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

(1) There shall be an uppermost distribution of light or composite beam so aimed and of such intensity as to reveal persons and vehicles at a distance of at least 350 feet ahead for all conditions of loading;

(2) There shall be a lowermost distribution of light or composite beam so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead; and on a straight level road under any condition of loading none of the high intensity portion of the beam shall be directed to strike the eyes of an approaching driver;

(3) Every new motor vehicle, other than a motorcycle or motor-driven cycle, registered in this State after January 1, 1956, which has multiple beam road lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use and shall not otherwise be lighted. The indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

(21 Del. C. 1953, § 4349; 50 Del. Laws, c. 292, § 1.)

§ 4350. Use of multiple beam road lighting equipment.

Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in § 4331 of this title, the driver shall use a distribution of light or composite beam directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(1) Whenever a driver of a vehicle approaches an oncoming vehicle within 500 feet, such driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light or composite beam specified in § 4349(2) of this title shall be deemed to avoid glare at all times, regardless of road contour and loading;

(2) Whenever the driver of a vehicle follows another vehicle within 200 feet to the rear, except when engaged in the act of overtaking and passing, such driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in § 4349(1) of this title.

(21 Del. C. 1953, § 4350; 50 Del. Laws, c. 292, § 1.)

§ 4351. Lighting equipment on motor-driven cycles.

The head lamp or head lamps upon every motor-driven cycle may be of the single beam type but in either event shall comply with the requirements and limitations as follows:

(1) Every such head lamp or head lamps on a motor-driven cycle shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than 100 feet when the motor-driven cycle is operated at any speed less than 25 miles per hour, and at a distance

of not less than 200 feet when the motor-driven cycle is operated at a speed of 25 or more miles per hour, and at a distance of not less than 300 feet when the motor-driven cycle is operated at a speed of 35 or more miles per hour;

(2) In the event the motor-driven cycle is equipped with a multiple beam head lamp or head lamps the upper beam shall meet the minimum requirements set forth above and shall not exceed the limitations set forth in § 4349(1) of this title, and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in § 4349 of this title;

(3) In the event the motor-driven cycle is equipped with a single beam lamp or lamps, such lamps shall be so aimed that when the vehicle is loaded none of the high intensity portion of light, at a distance of 25 feet ahead, shall project higher than the level of the center of the lamp from which it comes.

(21 Del. C. 1953, § 4351; 50 Del. Laws, c. 292, § 1.)

§ 4352. Number of driving lamps required or permitted.

(a) At all times specified in § 4331 of this title, at least 2 lighted lamps shall be displayed, 1 on each side at the front of every motor vehicle other than a motorcycle or motor-driven cycle, except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

(b) Whenever a motor vehicle equipped with head lamps as required in this subchapter is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of intensity greater than 300 candlepower, not more than a total of 4 of any such lamps on the front of a vehicle shall be lighted at any 1 time when upon a highway.

(21 Del. C. 1953, § 4352; 50 Del. Laws, c. 292, § 1.)

§ 4353. Special restrictions on lamps.

(a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps, flashing turn signals, emergency vehicle warning lamps and school bus warning lamps, which projects a beam of light of an intensity greater than 300 candlepower, shall be so directed that no part of the high intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than 75 feet from the vehicle.

(b) No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying a red light visible from directly in front of the center thereof. This section shall not apply to any vehicle upon which a red light visible from the front is expressly authorized or required by this subchapter.

(c) Flashing lights are prohibited except on an authorized emergency vehicle, school bus, snow removal equipment, vehicles authorized by the Secretary of Safety and Homeland Security if determined to be in the interest of public safety, or on any vehicle as a means of indicating a right or left turn or the presence of a vehicular hazard requiring unusual care in approaching, overtaking or passing, or when included in a motorcycle, moped, or motorized scooter brake light system in which the brake lamp pulses rapidly for no more than 5 seconds when the brake is applied, and then converts to a continuous light as a normal brake lamp until the time that the brake is released.

(21 Del. C. 1953, § 4353; 50 Del. Laws, c. 292, § 1; 65 Del. Laws, c. 468, § 1; 75 Del. Laws, c. 89, § 281(b); 80 Del. Laws, c. 255, § 1.)

§ 4354. Standards for lights on snow removal equipment.

(a) The Department of Safety and Homeland Security shall adopt standards and specifications applicable to head lamps, clearance lamps, identification and other lamps on snow removal equipment when operated on the highways of this State in lieu of the lamps otherwise required on motor vehicles by this subchapter. Such standards and specifications may permit the use of flashing lights for purposes of identification on snow removal equipment when in service upon the highways. The standards and specifications for lamps referred to in this section shall correlate with and, so far as possible, conform with those approved by the American Association of State Highway Officials.

(b) It shall be unlawful to operate any snow removal equipment on any highway unless the lamps thereon comply with and are lighted when and as required by the standards and specifications adopted as provided in this section.

(21 Del. C. 1953, § 4354; 50 Del. Laws, c. 292, § 1; 57 Del. Laws, c. 670, § 15C; 74 Del. Laws, c. 110, § 138.)

§ 4355. Scope and effect of regulations.

(a) It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this subchapter, or which is equipped in any manner in violation of this subchapter or for any person to do any act forbidden or fail to perform any act required under this subchapter.

(b) Nothing contained in this subchapter shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with this subchapter.

(c) This subchapter, with respect to equipment on vehicles, shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

(21 Del. C. 1953, § 4355; 50 Del. Laws, c. 292, § 1.)

§ 4356. Use of flashing lights.

(a) Any motor vehicle used by a fire chief, deputy fire chief, assistant fire chief, chief engineer, fire police officer and Chief EMS officer may have placed upon such motor vehicle flashing blue and white lights. Such flashing blue and white lights shall be used by the fire chief, deputy fire chief, assistant fire chief, chief engineer, fire police officer and Chief EMS officer of any regularly established fire company or ambulance company only in the performance of their duties. The white lights permitted under this subsection shall be embedded in, or otherwise associated with the activation or operation of, the headlamps and/or the flashing turn signal lights of the vehicle.

(b) A police vehicle, a volunteer fire company-owned vehicle or a City of Wilmington bureau of fire-owned vehicle may have placed upon such vehicle flashing blue and red lights or flashing blue, red and/or white lights.

(21 Del. C. 1953, § 4357; 53 Del. Laws, c. 13; 61 Del. Laws, c. 155, § 1; 62 Del. Laws, c. 165, § 2; 68 Del. Laws, c. 37, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 20, §§ 1, 2; 77 Del. Laws, c. 6, § 3.)

§ 4356A. Use of revolving or flashing green light.

(a) A motor vehicle may be equipped with a green revolving or flashing light if the motor vehicle meets any of the following requirements:

(1) Is used by a fire department or police department.

(2) Is designated or authorized as an emergency vehicle by the Secretary of the Department of Safety and Homeland Security and used by a federal, state, county, or municipal agency or public service corporation.

(3) Is snow removal equipment that is owned and operated by the State or a municipality.

(b) A motor vehicle authorized under subsection (a) of this section to be equipped with a green revolving or flashing light may only use the light as follows:

(1) When the motor vehicle is in service at an accident, fire, or disaster scene to signify a command post to which fire or police officials may report for instructions or orders.

(2) If the motor vehicle is a hazardous material response vehicle traveling to an accident, fire, or disaster scene at the request of a fire department or police department.

(3) If the motor vehicle is snow removal equipment that is owned and operated by the State or a municipality and is in use during cold weather operations.

(63 Del. Laws, c. 365, § 1; 75 Del. Laws, c. 89, § 281(c); 84 Del. Laws, c. 75, § 1; 84 Del. Laws, c. 450, § 1; 85 Del. Laws, c. 68, § 36.)

§ 4357. Carrying of flares in certain vehicles; use upon becoming disabled.

(a) No person shall operate any vehicle having a width in any part in excess of 80 inches or a gross weight of vehicle and load of 8,000 pounds or more upon the highways of this State outside of a business or residential district during the period when lighted lamps must be displayed on vehicles, unless there shall be carried in such vehicle at least 3 flares, or 3 red electric lanterns or 3 portable red emergency reflectors capable of being distinguished at a distance of not less than 600 feet under normal atmospheric conditions at night.

(b) Whenever any vehicle described in subsection (a) of this section or its lighting equipment is disabled during the period when lighted lamps must be displayed and such vehicle cannot immediately be removed from the main traveled portion of a highway outside of a business or residential district, the driver or other person in charge of such vehicle shall cause flares, lanterns or reflectors to be lighted and placed upon the highway, 1 at a distance of approximately 100 feet in advance of such vehicle, 1 at a distance of approximately 100 feet to the rear of the vehicle and the third upon the roadway alongside of the vehicle. If the vehicle is transporting flammables, 3 red reflectors shall be so placed so as to afford a warning of the presence of the vehicle on the highway in lieu of such other signals and no open burning flare shall be placed adjacent to any such vehicle.

(21 Del. C. 1953, § 4358; 57 Del. Laws, c. 545, § 2.)

§ 4358. Penalties.

Whoever violates this subchapter shall for the first offense be fined not less than $10 nor more than $28.75. For each subsequent like offense, the person shall be fined not less than $28.75 nor more than $100. A violation of § 4333, § 4334, § 4336, § 4337, or § 4351 of this title may be dismissed before trial if the defendant establishes that repairs have been made so that the vehicle is in compliance.

(21 Del. C. 1953, § 4356; 50 Del. Laws, c. 292, § 1; 65 Del. Laws, c. 503, § 24; 68 Del. Laws, c. 9, § 46; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 204, § 2.)

Subchapter III

School Buses

§ 4361. Skid chains and snow tires; penalty.

When the highways are covered with snow or ice, the operator of any school bus shall not transport school children upon any of the highways of this State unless all rear wheels are equipped with tires having treads designed for use in snow, which tires must be in such

condition as to serve the purpose for which they are designed. Any person violating this section shall be fined not less than $10 nor more than $100, or imprisoned not more than 10 days or both.

(43 Del. Laws, c. 192, §§ 1, 2; 21 Del. C. 1953, § 4363; 49 Del. Laws, c. 240; 77 Del. Laws, c. 312, § 6.)

§§ 4362-4365. Markings; color and size; flashing lamps; stop signal device [Repealed].

Repealed by 77 Del. Laws, c. 312, § 7, effective June 28, 2010.

§ 4366. Communication devices.

Every school bus being used for the transportation of children shall be equipped with a radio or telephonic communication device that will allow the driver of the bus to call for or receive calls for assistance in the event of an emergency. All costs associated with the purchase of communication devices and if applicable, the associated line charges, will be the responsibility of the State. All costs for use of communication devices for non-911 communications shall be the responsibility of the school district. Notwithstanding the above, any school district shall be free to absorb any such costs to its own account.

(70 Del. Laws, c. 508, § 1; 74 Del. Laws, c. 274, § 1.)

§ 4367. Air conditioning.

(a) School buses used to transport special education students that have a medical need for air conditioning (specified by a physician), and that go to a special education school may be air conditioned.

(b) Internal ceiling-mounted air conditioning units mounted above the seats within the head protection zone or at the rear of the bus shall be padded with materials meeting FMVSS 302 and FMVSS 222 requirements.

(71 Del. Laws, c. 354, § 377.)

Subchapter IV

Special Provisions

§ 4371. Construction of vehicles to prevent escape of contents; penalty.

(a) No vehicle shall be driven or moved on any highway unless it is so constructed or loaded as to prevent its contents from dropping, sifting, leaking or otherwise escaping therefrom.

(b) Whoever violates subsection (a) of this section shall for the first offense be fined not less than $10 nor more than $28.75. For each subsequent like offense, the person shall be fined not less than $28.75 nor more than $100.

(36 Del. Laws, c. 10, §§ 127, 141; 37 Del. Laws, c. 10, § 34; Code 1935, §§ 5665, 5679; 21 Del. C. 1953, § 4371; 65 Del. Laws, c. 503, § 25; 68 Del. Laws, c. 9, § 47; 70 Del. Laws, c. 186, § 1.)

§ 4372. Transportation of meat scrap, bones; penalty.

Whoever transports upon a public highway any meat scrap, waste, bones or waste animal matter, except inside a vehicle having a closed body, the doors of which are kept securely fastened while the vehicle is moving on the highway, shall be fined not more than $115, or imprisoned not more than 30 days or both.

(48 Del. Laws, c. 120, §§ 1, 2; 21 Del. C. 1953, § 4372; 68 Del. Laws, c. 9, § 48.)

§ 4373. Unlawful display of club insignia; penalty.

(a) No person who is not a member of the Delaware Automobile Association shall exhibit or display within this State any membership card, sign, token or other insignia of the Association, with intent to make it appear that the person is a member of the Delaware Automobile Association or entitled to any of the benefits or advantages resulting from membership therein.

(b) Whoever violates any provision of this section shall be fined not more than $57.50.

(Code 1915, § 3486A; 31 Del. Laws, c. 55; Code 1935, § 3962; 21 Del. C. 1953, § 4374; 68 Del. Laws, c. 9, § 49; 70 Del. Laws, c. 186, § 1.)

§ 4374. Equipment required on motor vehicles transporting railroad employees; penalty.

(a) Every motor vehicle provided by a railroad company and used to transport employees shall be equipped with adequate seating facilities, heating facilities and facilities for communication between occupants of the front seat of the vehicle and the occupants in the rear compartment of the vehicle. This requirement shall not apply to motor vehicles used to transport employees distances of less than 5 miles from their regular assembly point nor in cases of extreme emergency.

(b) If any dispute arises as to the adequacy of the facilities provided for in this section, it shall be submitted to and decided by the Director of the Division of Motor Vehicles.

(c) The Department may rescind, cancel or suspend the registration of any motor vehicle described in subsection (a) of this section and may rescind, cancel, suspend or take possession of the current registration plates of any such motor vehicle which is determined by the Department to be not equipped as required by this section.

(60 Del. Laws, c. 653, § 1.)

Subchapter V

Brake Fluids [Repealed].

§§ 4381-4387. Definitions; Prohibition; Misbranding; Adulteration; Standards and specifications; Enforcement; Penalties [Repealed].

Repealed by 72 Del. Laws, c. 84, § 1, eff. June 25, 1999.

Part III
Operation and Equipment
Chapter 44
Abandoned Vehicles

§ 4401. Purpose; abandoned vehicles on private property or public highways; definition.

(a) The purpose of this chapter is to eliminate abandoned vehicles which tend to impede traffic in the streets or interfere with the enjoyment of, and reduce the value of, private property, to invite plundering, to create fire hazards and other safety and health hazards to children as well as to adults, to interfere with the comfort and well-being of the public and to create, extend and aggravate urban blight.

(b) Any vehicle that is either: (1) inoperable, dismantled, wrecked, or which displays expired registration plates which are at least 30 days expired, or which displays no registration plates, or from which major components have been removed, is in such a state of disrepair as to be incapable of being operated in the manner for which it is designed and is situated on private property appearing to have been abandoned; or (2) which is inoperable, dismantled, wrecked, or which displays expired registration plates which are at least 30 days expired, or which displays no registration plates, or from which the major components have been removed and which shall have been placed upon any State or public highway or property or the property or roads of any political subdivision or the State or public highways within a municipality or upon any express highway in the State for a period in excess of 12 hours without being removed, shall be considered to be abandoned for the purpose of this chapter, except:

(1) That vehicles and equipment used or to be used in the construction, operation or maintenance of public utility facilities and which are left in a manner which does not interfere with the normal movement of traffic shall not be considered abandoned vehicles for the purposes of this chapter;

(2) Those vehicles whose owners have properly parked and locked them and have notified the State Police, county police or municipal police, as the case may be, as designated in § 4402 of this title, that the owner desires to leave the vehicle so parked and secured for a period not to exceed 30 days, except that if during such period the vehicle is no longer secured, or, in the opinion of the State Police, county police or municipal police, has become a danger to the public, then the vehicle shall be subject to the provisions of this chapter.

(c) As used in this chapter, the term “express highway” or “state highway” or “public highway” shall include any portion of the highway located within the right-of-way lines or, in the case of limited access highway, the denial of access lines, including shoulders and median strip.

(21 Del. C. 1953, § 4401; 55 Del. Laws, c. 173; 57 Del. Laws, c. 204; 57 Del. Laws, c. 713, § 1; 65 Del. Laws, c. 46, § 1; 74 Del. Laws, c. 60, §§ 1-3.)

§ 4402. Enforcement; removal of abandoned vehicles; transfer thereof.

(a) This chapter shall be enforced with respect to state or public highways or property within a municipality which maintains a police force by that police force. In all other instances, the State Police or the Department of Safety and Homeland Security (hereinafter “Department”) shall enforce this chapter, except that, in New Castle County, the New Castle County Police shall have concurrent authority to enforce this chapter. County code enforcement constables in each county and municipal police shall have concurrent authority to enforce subsections (d) and (e) of this section. The Department of Transportation shall have a limited role in causing vehicles to be removed from state or public highways, as stated herein.

(b) Upon the discovery of a vehicle on any state or public highway or property or the property or roads of any political subdivision or state or public highways within a municipality or upon any express highway in the State concerning which vehicle there are reasonable grounds to believe to be an abandoned vehicle, the State Police, county police or municipal police, as the case may be, shall post a notice at some conspicuous place on the vehicle, which shall direct that such vehicle be removed by a stated time and date (such time and date to be not less than 12 hours following the posting of such notice). If the vehicle is not removed within the time period designated by such notice, the abandoned vehicle shall be removed to a storage area designated by the Department or the State Police or its successor.

(c) In the event that a vehicle is abandoned on private property without the consent of the owner or occupant thereof, at the complaint of the property owner or occupant, such vehicle may be caused to be removed by the State Police, county police or municipal police, as the case may be, in the manner provided in this chapter, except that the posting required in subsection (b) of this section may be omitted. Any towing company or vendor requested to remove an abandoned vehicle under these circumstances shall be provided by the involved police agency the best available information regarding ownership of the vehicle and last known address of the owner.

(d) If an abandoned vehicle is on private property with the consent of the owner or occupant thereof, or if an abandoned vehicle is owned by the owner or occupant of the private property where the vehicle is located, representatives of the Department, State Police, a county code enforcement constable, or a municipal police officer may enter upon the property where such vehicle is located to ascertain its ownership. The Department, county, or municipality shall notify the owner of the abandoned vehicle by certified mail sent to the owner’s last known address to remove such vehicle within 7 days from the date of the mailing. If the vehicle is not removed within 7 days or if the owner cannot be located for the purpose of sending the written notice, then representatives of the Department, State Police, county code enforcement, or municipal police may enter upon the property where the vehicle is located and conspicuously affix thereto a sticker or tag

showing the time and date of its affixing, advising the owner that if the vehicle is not removed within 24 hours from the time of the affixing of the sticker, the vehicle shall be removed to a storage area designated by the Department, State Police, a county code enforcement agency, or a municipal police department. This subsection does not apply to automobile graveyards as defined in § 1202(b)(2) of Title 17 nor to any vehicle on private property which is not visible from the street or road and is not otherwise a nuisance or a health or fire hazard.

(e) The notice required by subsections (b) and (d) of this section shall state that, if such vehicle is not so removed, it will be removed and stored at a storage area designated by the Department or the State Police at the owner's expense, and thereafter will be subject to disposal in accordance with law. Such notice shall also set forth verbatim § 4414 of this title. If the vehicle shall not have been removed by the time and date specified in the notice, the police officer or agents or employees of the Department or State Police shall take such vehicle into custody and shall cause it to be removed and stored for safekeeping in the storage area designated by the Department or the State Police. The officer shall promptly notify the Secretary of Safety and Homeland Security, upon a form to be supplied by the Secretary for that purpose, of the action which has been taken with respect to such vehicle.

(f) This chapter shall not apply to any removal of a vehicle unless the removal is directed by the appropriate police authority or the Department or State Police or its successor.

(g) Any person who possesses or on whose property any abandoned vehicle or motor vehicle is found or who owns a vehicle or motor vehicle for which the certificate of title is lost or destroyed and such vehicle or motor vehicle is more than 8 years old and has no engine or is otherwise totally inoperable, may transfer the vehicle or motor vehicle to a licensed automotive recycler without the certificate of title on forms furnished by the Department. In such cases, the licensed automotive recycler may take the vehicle or motor vehicle in that person's possession and shall immediately obtain from the Division of Motor Vehicles the name and address of the last known owner of the vehicle or motor vehicle or secured party. The licensed automotive recycler shall give at least 10 days' notice to the owner or secured party by certified mail, return receipt requested. If the vehicle is not reclaimed within the 10-day period specified in the notice, the licensed automotive recycler assumes unencumbered title to the vehicle.

If the name and address of the owner or secured party cannot be obtained from the records of the Division of Motor Vehicles or by exercising reasonable diligence, the licensed automotive recycler assumes unencumbered title after the vehicle or motor vehicle has been in the recycler's possession for 30 days.

Notice of assumption of ownership shall be made to the Division of Motor Vehicles on forms devised by the Division.

(h) In the event that a vehicle is abandoned or parked within a private right-of-way, alleyway or easement in such a manner as to impede the flow of traffic, at the complaint of any property owner or occupant or other person with a right-of-passage across the private right-of-way, alleyway or easement, such vehicle may be caused to be removed by the State Police, county police or municipal police, as the case may be, in the manner provided in this chapter, except that the posting required in subsection (b) of this section may be omitted and that the provisions of this chapter shall be applied to said parked vehicle as if it were an abandoned vehicle.

(21 Del. C. 1953, § 4402; 55 Del. Laws, c. 173; 56 Del. Laws, c. 153; 57 Del. Laws, c. 670, § 16A; 57 Del. Laws, c. 713, §§ 2-5; 58 Del. Laws, c. 119, §§ 1-4; 63 Del. Laws, c. 265, § 1; 63 Del. Laws, c. 421, § 1; 65 Del. Laws, c. 318, § 5; 66 Del. Laws, c. 236, §§ 1-3; 67 Del. Laws, c. 249, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 60, §§ 4, 5; 74 Del. Laws, c. 110, §§ 91, 92; 75 Del. Laws, c. 333, § 1; 78 Del. Laws, c. 124, § 1; 84 Del. Laws, c. 497, § 1; 85 Del. Laws, c. 68, § 37.)

§ 4403. Notice of removal.

The police or the Department of Safety and Homeland Security causing the removal of an abandoned vehicle shall immediately ascertain the identity of any person or persons holding a lien against said vehicle. Within 5 days of the removal of the vehicle, the State Police, other police agencies, New Castle County Code Enforcement Constables or the Department shall cause a written notice to be mailed to the registered owner of the vehicle removed and lien holders stating:

(1) That the vehicle has been removed pursuant to law;

(2) The place to which it has been removed; and

(3) That the vehicle may be sold to satisfy the costs of removal and storage of the vehicle as provided in § 4404 of this title unless those costs have been paid in full on or before 30 days from the date of the removal of the vehicle.

If the address of the owner of the vehicle cannot be ascertained by the exercise of reasonable diligence, then the notice provided by this section shall not be required to be given.

(21 Del. C. 1953, § 4403; 55 Del. Laws, c. 173; 58 Del. Laws, c. 119, § 5; 66 Del. Laws, c. 236, § 4; 74 Del. Laws, c. 110, § 93; 75 Del. Laws, c. 333, § 2.)

§ 4404. Sale of abandoned vehicles; disposition of proceeds.

The Department of Safety and Homeland Security shall have a possessory lien against said abandoned vehicles and shall have a right to sell said abandoned vehicles after complying with the notice and sale provisions outlined in Chapter 39 of Title 25, with the exception that the proceeds of the sale shall be applied first to the costs of the sale, then to the costs of removing, towing, preserving and storing and then to the payment of any liens to which said motor vehicle, trailer or part thereof may be subject in order of their priority, then to the State Treasurer who shall create a special fund thereof and who shall pay to the owner the moneys held if a claim is made within 1 year of the removal or deposit the moneys in the General Fund if no claim is made within 1 year of removal. Any possessory lien created under this section shall not extend to any personal property that is not attached to or considered necessary for the proper operation of

any motor vehicle, and such property shall be returned to the owner of the motor vehicle if the owner of the motor vehicle claims the items prior to the sale of such motor vehicle.

(21 Del. C. 1953, § 4404; 55 Del. Laws, c. 173; 57 Del. Laws, c. 670, § 16B; 57 Del. Laws, c. 713, § 6; 61 Del. Laws, c. 367, § 2; 74 Del. Laws, c. 110, § 94; 83 Del. Laws, c. 125, § 1.)

§ 4405. Sale as barring claims or interests.

Upon the sale of a vehicle pursuant to this chapter, all claims or interest therein shall be forever barred.

(21 Del. C. 1953, § 4405; 55 Del. Laws, c. 173.)

§ 4406. Issuance of certificate of title.

The Secretary of Transportation shall issue a certificate of title to the purchaser of a vehicle sold pursuant to this chapter.

(21 Del. C. 1953, § 4406; 55 Del. Laws, c. 173; 57 Del. Laws, c. 670, § 16B; 74 Del. Laws, c. 110, § 95.)

§ 4407. Secretary of Public Safety; rules and regulations.

The Secretary of Public Safety may make and promulgate rules and regulations to implement this chapter.

(21 Del. C. 1953, § 4407; 55 Del. Laws, c. 173; 57 Del. Laws, c. 670, § 16A.)

§ 4408. Immunity of police officers, Department of Safety and Homeland Security employees and garage persons towing or storing vehicles.

No law-enforcement officer or agent or employee of the Department of Safety and Homeland Security, Department of Transportation, State Police or other legally authorized police agency or New Castle County Code Enforcement Constable acting under this chapter and no one who tows or stores a vehicle as a result of being directed to do so shall be liable to criminal prosecution arising from such action or be liable to any person for the injury, loss or destruction of any real or personal property which occurs in the course of the removal or storage of any vehicle taken into custody under this chapter.

(21 Del. C. 1953, § 4408; 55 Del. Laws, c. 173; 58 Del. Laws, c. 119, § 6; 66 Del. Laws, c. 236, § 5; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 96; 75 Del. Laws, c. 333, § 3.)

§ 4409. Rights and authority granted to be in addition to other rights and authority.

The rights and authority conferred by this chapter shall be in addition to, and not in lieu of, any other rights or authority possessed by any public officer or property owner with respect to abandoned vehicles.

(21 Del. C. 1953, § 4409; 55 Del. Laws, c. 173.)

§ 4410. Wreckers; removal; licenses; records; contract.

(a) A wrecker, licensed by the Department of Safety and Homeland Security (hereinafter "Department") or its successor upon the procurement from the Department of the license with the appropriate decal affixed thereto, shall be the responsible party for implementing the removal provisions of this chapter. The owner of the wrecker shall be responsible for removing only those vehicles as are specifically designated by complete description and serial number. The owner shall keep adequate records and furnish the Department with a monthly report.

(b) The Department of Safety and Homeland Security and wrecker owner shall enter into a contract providing for the removal of vehicles, but the Department of Safety and Homeland Security shall make the determination of the number of cars to be removed by the wrecker within an 8-hour work day with no removal permitted on Sunday.

(21 Del. C. 1953, § 4410; 57 Del. Laws, c. 713, § 8; 66 Del. Laws, c. 236, § 6; 74 Del. Laws, c. 110, §§ 97, 98.)

§ 4411. Storage area for abandoned vehicles.

The Department of Safety and Homeland Security or State Police shall designate the area or areas in each county which shall be used for the storage of abandoned vehicles.

(21 Del. C. 1953, § 4411; 57 Del. Laws, c. 713, § 9; 58 Del. Laws, c. 119, § 7; 66 Del. Laws, c. 236, § 7; 74 Del. Laws, c. 110, § 99.)

§ 4412. Vehicles left in possession of garage and/or service station; limitations.

Any vehicle left in the possession of a garage or service station which is in operation as a going business shall not be considered for purposes of this chapter an abandoned vehicle, even though the vehicle left in possession of the garage or service station is inoperable or partially or fully dismantled. No garage or service station owner shall maintain more than 5 such vehicles within a 6-month period, unless the owner complies with § 1206 of Title 17, relating to screening of junkyards.

(21 Del. C. 1953, § 4412; 57 Del. Laws, c. 713, § 10; 70 Del. Laws, c. 186, § 1.)

§ 4413. Antique cars or parts thereof; exception.

Anyone maintaining an inventory of antique cars or parts thereof shall not be subject to this chapter, provided the antique cars or parts thereof are housed in a building consisting of 4 sides and a roof and are not visible from the highway or road from any location.

(21 Del. C. 1953, § 4413; 57 Del. Laws, c. 713, § 11.)

§ 4414. Penalty; prima facie evidence of wilful abandonment; jurisdiction.

(a) Any person who wilfully abandons a vehicle within the right-of-way of any highway of this State or upon the property of another without consent, and any person who, being the owner of an abandoned vehicle, wilfully fails to remove it pursuant to a directive given under § 4402(b) of this title shall be fined not less than $28.75 nor more than $115.

(b) For the purposes of this section, the fact that a person voluntarily left a vehicle and did not return to remove it within 7 consecutive days shall be prima facie evidence of the wilful abandonment of such vehicle.

(c) Justices of the peace shall have jurisdiction for purposes of this section.

(21 Del. C. 1953, § 4414; 55 Del. Laws, c. 173; 57 Del. Laws, c. 713, § 7; 58 Del. Laws, c. 119, § 8; 66 Del. Laws, c. 14, § 3; 68 Del. Laws, c. 9, § 51; 70 Del. Laws, c. 186, § 1.)

§ 4415. Disposal of vehicles 8 years of age or older by wrecker owners.

(a) This section applies to motor vehicles whose model year age is 8 years of age or older on the date of towing.

(b) Any wrecker owner is vested with a lien as defined in § 3901 of Title 25 upon taking possession of any motor vehicle described in subsection (a) of this section.

(c) The wrecker owner in possession of a motor vehicle and requesting a Delaware certificate of title shall contact the Delaware Division of Motor Vehicles to determine the owner(s) of any vehicle with undetermined ownership within 5 calendar days of towing the vehicle.

(d) The owner and all secured parties shall be notified by the wrecker owner within 10 days of the wrecker owner's receipt of information from the Division of Motor Vehicles. This notification must be by registered mail or certified mail.

(e) The owner and all secured parties shall either satisfy the lien or respond to the notification within 5 calendar days from receipt of said notification. This response shall include either a signed release of interest in the vehicle pursuant to § 3904 of Title 25 or a signed letter contesting the disposal.

(1) If the owner and/or any secured party contests the lien or the disposal, the person may contest the lien or the disposal to the closest Justice of the Peace Court to the address of the wrecker owner.

(2) If the owner and/or secured party does not reply within 5 days from the receipt of said notification, the wrecker owner may proceed to sell according to § 3903 of Title 25.

(f) The wrecker owner shall have the vehicle inspected by the Delaware State Police Auto Theft Unit between the date the vehicle is towed and the thirtieth day following that date.

(g) If the unit is released by the registered owner and all secured parties, the wrecker owner may proceed to transfer the vehicle without having to comply with Chapter 39 of Title 25. This transfer shall be made to a salvage yard without a certificate of title, but shall be made on forms furnished by the Department of Safety and Homeland Security.

(h) If the model year of the unit cannot be determined, then it will not be subject to this section.

(i) If the name and address of the owner or secured party is not recorded with the Division of Motor Vehicles, the wrecker owner assumes unencumbered title after the vehicle has been in the wrecker owner's possession for 30 days. Any transfer shall be made to a salvage yard without a certificate of title but shall be made on forms furnished by the Department of Safety and Homeland Security.

(j) Any wrecker owner may transfer a vehicle described in subsection (a) of this section directly to a licensed automotive recycler when said vehicle has been in the wrecker owner's possession for 30 days, without owner notification, only after the vehicle has been inspected by the State Police Auto Theft Unit and upon receipt of a Certificate Of Authority To Dispose Of A Towed Vehicle Form issued by the Department. A wrecker owner shall be issued a Certificate Of Authority To Dispose Of A Towed Vehicle Form when the wrecker owner submits to the Department the approved application form:

(1) Along with the State Police Vehicle Inspection Report and a copy of the corresponding Police Tow Form; or

(2) When the vehicle has been towed from private property, along with other documentary evidence of the right to the possession, containing description of vehicle, date towed, location towed from and person authorizing the towing.

(k) Any wrecker owner who violates this section shall, for the first offense, be fined not less than $25 nor more than $50 for each vehicle violation. For each subsequent life offense within 1 year the wrecker owner shall be fined not less than $50 nor more than $100 for each vehicle violation.

(*l*) The last known registered owner of an abandoned vehicle is considered to be the prima facie owner of the vehicle at the time it was abandoned and to be the person who abandoned it.

(65 Del. Laws, c. 363, § 1; 66 Del. Laws, c. 14, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 138.)

§ 4416. Vehicles left or abandoned on public highways.

Any other provision of this chapter notwithstanding, in the event a motor vehicle is left unattended within the right-of-way of a "public highway" or state highway, or any state-maintained street, road or bridge and is determined to be a safety hazard within the discretion of the Department of Safety and Homeland Security, the Department of Transportation, the State Police or any authorized police agency, said vehicle shall be towed to a storage area designated by the Department of Safety and Homeland Security and the provisions of this chapter shall apply.

(66 Del. Laws, c. 236, § 8; 74 Del. Laws, c. 110, § 100.)

Part III
Operation and Equipment
Chapter 45
Size and Weight of Vehicles and Loads

§ 4501. Size and weight of vehicles generally.

(a) No person shall drive or move, or, being the owner, cause or knowingly permit to be driven or moved on any highway, any vehicle or combination of vehicles:

(1) Having a size or weight exceeding the limitations stated in this chapter; or

(2) Having a gross weight exceeding that for which it is lawfully registered; or

(3) In violation of any provision of this title; or

(4) Having a gross weight exceeding that for which it could have been registered in this State if it is registered for a greater weight in another state, unless a reciprocity agreement between the 2 states is in effect; or

(5) In violation of the rules or regulations of the Secretary of Safety and Homeland Security adopted pursuant to this title or this chapter; or

(6) Special mobile equipment.

(b) For purposes of this chapter, any combination of trucks, truck trailers, trailers and semitrailers, not specifically authorized herein, shall be unlawful. The following are authorized:

(1) A truck and trailer.

(2) A truck tractor, semitrailer.

(3) A truck tractor, semitrailer, trailer.

(4) A vehicle string utilizing saddlemount and/or fullmount.

(5) A tow truck and a disabled vehicle or combination of vehicles.

(c) Except as otherwise provided herein, this chapter applies to every vehicle operated upon any road, street or highway within this State. The maximum size and weight of vehicles specified herein by type of highway shall be lawful throughout this State and local authorities may not alter such limitations, except as expressly provided in this chapter.

(d) Any gross weight measurements made to determine compliance with this chapter shall be taken so as to include both the vehicle and load. Any vehicle having a gross weight in excess of that allowable under this chapter or in excess of that for which it is currently registered shall be considered as an “overweight vehicle.”

(e) Any linear measurements taken to determine compliance with this chapter shall be taken so as to include the vehicle and any load thereon including any projections of any type, character or nature whatsoever, such as, but not limited to, bumpers, steps, mirrors and hose connections specifically excluding the tongue of a trailer.

(f) Except as otherwise provided in this chapter, it shall be unlawful to operate any vehicle at a gross weight which exceeds the weight for which it is registered and provided further that:

(1) Except as otherwise provided in paragraph (f)(1)a. or (f)(1)b. of this section, the total gross weight, including load, of a combination of a truck tractor and semitrailer having a total of 5 or more axles may not exceed 80,000 pounds.

a. For a live-haul poultry truck traveling less than 150 miles from the farm to the plant, the total gross weight, including load, of a combination of a truck tractor and semitrailer having a total of 5 or more axles may not exceed 90,000 pounds or combined manufacturer’s gross combined weight rating (GCWR), whichever is less. However, such a live-haul poultry truck may exceed the established weight limit by no more than 3% to account for variations in bird weight due to bird size, moisture retention caused by precipitation, or other unanticipated conditions. For the established weight limit and associated 3% variance to apply to a live-haul poultry truck, the following conditions must exist:

1. The live-haul poultry truck must be subject to the Motor Carrier Safety Assistance Program (MCSAP) inspection.

2. The live-haul poultry truck must adhere to all bridge weight limits.

3. The live-haul poultry truck must not use the interstate highway system.

4. The axles on a live-haul poultry truck must be a minimum of 96 inches apart no later than May 8, 2015.

b. For a truck hauling farm produce grown in this State and traveling from the farm on which the farm produce is grown to a location at which the farm produce is to be processed or stored, or from a location at which the farm produce is processed or stored to an export facility within this State, the total gross weight, including load, of a combination of a truck tractor and semitrailer having a total of 5 or more axles may not exceed 90,000 pounds or combined manufacturer’s gross combined weight rating (GCWR), whichever is less.

1. For purposes of this paragraph (f)(1)b., “farm produce” means fruits, vegetables, or commodity grains.

2. This paragraph (f)(1)b. applies to a truck hauling farm produce if all of the following conditions are met:

A. The truck hauling farm produce is subject to the Motor Carrier Safety Assistance Program (MCSAP) inspection.

B. The truck hauling farm produce adheres to all bridge weight limits.

C. The axles on a truck hauling farm produce are a minimum of 96 inches apart.

D. The truck hauling farm produce does not use the interstate highway system.

(2) The gross weight of a vehicle equipped with 2 or more axles without power brakes on each rear hub shall not exceed 22,000 pounds and it shall be unlawful to operate such vehicle in excess of 20 miles per hour.

(3) The gross weight of a trailer equipped with metal tires shall not exceed 6,000 pounds.

(4) Any vehicle, otherwise required to be registered pursuant to this title which is not registered and which requires a registration fee that is calculated upon gross weight, shall be assigned a weight allowance equal to the highest legal weight for which that vehicle could be registered for the purpose of enforcement of the weight section of this title.

(g) Except as otherwise provided in this chapter, it shall be unlawful to operate any vehicle in this State in violation of length, height or size restrictions provided in this title and provided further that:

(1) No passenger vehicle shall carry any load extending beyond the line of the fenders on the left side of such vehicle nor extending more than 6 inches beyond the line of the fender on the right side thereof.

(2) The load upon any vehicle operated alone or the load upon the front vehicle of a combination of vehicles shall not extend more than 3 feet beyond the foremost part of the vehicle; and the load upon any vehicle operated alone or the load upon the rear vehicle of a combination of vehicles shall not extend more than 6 feet beyond the rear of the bed or body of such vehicle. Pilings and/or poles or mill logs, or nursery stock, or rowing shells, or steel beams, pipes, angles, channels and other length or steel, or other metal, or other articles impossible of dismemberment shall not extend more than 10 feet beyond the rear of the bed or body of such vehicle.

(3) A number of motor vehicles may be transported in combination, utilizing saddlemount and/or fullmount mechanisms and utilizing the motive power of 1 of the vehicles in combination, provided such combination of vehicles shall not exceed a length of 65 feet, and provided further that the equipment used in such combinations shall comply with the safety regulations of the United States Department of Transportation.

(4) Except as otherwise indicated herein, the limitations as to length of load stated in this chapter shall not apply to a vehicle or combination of vehicles transporting boats, commonly known as crew or rowing shells for use in interscholastic or intercollegiate rowing contests, provided that such boats shall not exceed 70 feet in length.

(5) Neither the State, any agency or subdivision thereof, nor any person, firm or corporation shall be required to raise, alter, construct or reconstruct any underpass, wire, pole, trestle or other structure to permit passage of any vehicle having a height, including any load thereon, in excess of 12 feet 6 inches. The liability for damage to any person, vehicle, structure or other property caused by any vehicle having a height, including any load thereon, in excess of 12 feet 6 inches shall be borne by the owner and/or the operator of the vehicle.

(h) The provisions of § 4502 of this title do not apply to the following vehicles; provided, however, that the liability for damages caused by any vehicle operated under this provision shall be borne by the owner of said vehicle:

(1) Fire apparatus owned or used by an organized fire company.

(2) Farm equipment being temporarily operated, moved, or transported on a highway, which shall include farm tractors and other implements of husbandry being temporarily moved or transported by a manufacturer, dealer, business, or commercial transport company.

(3) A vehicle being towed with 1 set of axles free of the roadway surface.

(i) Any vehicle or combination of vehicles, otherwise not in compliance with this chapter, but permitted to be operated within this State by virtue of a special use permit pursuant to this chapter, shall be permitted to travel on such highways as shall be designated within the contents of said permit.

(j) In accordance with the provisions of § 4503 of this title, a commercial motor vehicle is granted reasonable access between:

(1) Interstate roadways, federal-aid primary system highways, US numbered routes; and

(2) Terminals, facilities for food, fuel, repairs, and rest, and points of loading and unloading for household goods carriers, motor carriers of passengers, and any tow-away trailer transporter combination.

(36 Del. Laws, c. 10, §§ 114, 117; 37 Del. Laws, c. 10, §§ 29-31; 40 Del. Laws, c. 38, § 11; Code 1935, §§ 5652, 5655; 46 Del. Laws, c. 86, § 2; 47 Del. Laws, c. 114; 21 Del. C. 1953, §§ 4501, 4503; 50 Del. Laws, c. 633, § 1; 52 Del. Laws, c. 40; 53 Del. Laws, c. 395, §§ 1, 2; 56 Del. Laws, c. 18, §§ 1, 2; 57 Del. Laws, c. 670, § 24A; 58 Del. Laws, c. 384, §§ 1, 6; 60 Del. Laws, c. 54, §§ 1, 2; 60 Del. Laws, c. 264, § 1; 60 Del. Laws, c. 409, §§ 2-5; 62 Del. Laws, c. 5, §§ 1-4; 64 Del. Laws, c. 207, § 5; 64 Del. Laws, c. 259, § 3; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 259, § 6; 74 Del. Laws, c. 110, § 101; 79 Del. Laws, c. 220, § 1; 81 Del. Laws, c. 223; 82 Del. Laws, c. 93, § 2; 84 Del. Laws, c. 416, § 1.)

§ 4502. Size and weight of vehicles except on interstate highways, federal-aid primary system highways and United States numbered routes.

(a) Except as provided in § 4503 of this title, this section sets forth the size and weight restrictions applicable to all roads, streets and highways within this State.

(b) (1) No vehicles, including any load thereon, shall exceed a total outside width of 8 feet 6 inches.

(2) No vehicles, including any load thereon, shall exceed a height of 13 feet 6 inches.

(3) No single motor vehicle, including any load thereon, shall exceed 40 feet in length, and no combination of vehicles, including the load thereon, shall exceed 60 feet in length, except as otherwise provided in this section.

a. A truck and semitrailer combination engaged in the transportation of motor vehicles shall not exceed a length of 65 feet exclusive of the overhang of the transported vehicles.

b. Buses shall not exceed 45 feet in length.

c. Piling and pole trailers and vehicles or combinations or vehicles engaged in the transportation of steel beams, pipes, angles channels and other lengths of steel, or other metals, or other articles impossible of dismemberment shall not exceed 70 feet.

(4) Notwithstanding paragraph (b)(1) or (3) of this section:

a. No recreational vehicle, including any load or truck camper thereon or any camping trailer, recreational trailer or park trailer attached thereto, shall exceed a total outside width of 102 inches, exclusive of any safety equipment, which shall not extend beyond the federal motor vehicle safety standards for such equipment, or appurtenances such as awnings and lights which are integral to the construction of the vehicle, installed by the vehicle's manufacturer or dealer, and do not extend more than 6 inches wider on each side of the vehicle; provided however, that such vehicles permissibly exceeding the 102-inch width limit with its attached equipment or appurtenances shall only be operated:

1. On roadways having travel lanes at least 11 feet in width, unless prohibited by the Department of Transportation or by a municipality based on safety reasons and marked with signs prohibiting such vehicles; or

2. On any roadway of the State when such a vehicle is being operated between a roadway permitted under paragraph (b)(4)a.1. of this section and:

A. The location where the recreational vehicle, recreational trailer, park trailer, camping trailer or truck camper is garaged; or

B. The destination of the recreational vehicle, recreational trailer, park trailer, camping trailer or truck camper; or

C. A facility for food, fuel, repair, services or rest.

b. No single recreational vehicle, including any load or truck camper thereon, shall exceed 45 feet in length; and

c. No combination of a recreational vehicle with any vehicle, including the load thereon, nor any combination of any motor vehicle with any camping trailer, recreational trailer or park trailer attached thereto, shall exceed 65 feet in length.

(c) (1) A vehicle equipped with 2 axles, having each of the 2 axles equipped with 2 hubs, with a power brake on each hub, may not exceed a total gross weight of 40,000 pounds or manufacturer's gross vehicle weight rating, whichever is less.

(2) A vehicle equipped with 3 axles, having each of the 3 axles equipped with 2 hubs, with a power brake on each hub, shall not exceed a total gross weight of 65,000 lbs. or the manufacturer's gross vehicle weight rating, whichever is less; notwithstanding the above, and as limited in § 2105 of this title, it shall be lawful to operate such a vehicle to and from any construction site located in this State when the total gross weight does not exceed 70,000 lbs.; and it shall also be lawful to operate such a vehicle containing agricultural products when the gross weight, including vehicle and load, does not exceed 70,000 lbs.; provided that vehicles utilizing the above exception shall pay a fee of $100 per vehicle at the time of registration for this extra weight capacity.

(3) A vehicle equipped with 4 axles, having each of the rear axles equipped with 2 hubs, with a power brake on each rear hub, shall not exceed a total gross weight of 73,280 pounds or manufacturer's gross vehicle weight rating whichever is less.

(4) The total gross weight of a combination tractor and semitrailer having a total of 3 axles shall not exceed 60,000 lbs. or combined manufacturer's gross vehicle weight rating whichever is less.

(5) The total gross weight of a combination tractor and semitrailer having a total of 4 axles shall not exceed 70,000 lbs. or combined manufacturer's gross vehicle weight rating whichever is less.

(6) Except as otherwise provided in paragraphs (c)(6)a. or (c)(6)b. of this section, the total gross weight of a combination tractor and semitrailer having a total of 5 or more axles may not exceed 80,000 lbs. or combined manufacturer's gross vehicle weight rating, whichever is less.

a. For a live-haul poultry truck traveling less than 150 miles from the farm to the plant, the total gross weight, including load, of a combination of a truck tractor and semitrailer having a total of 5 or more axles may not exceed 90,000 pounds or combined manufacturer's gross combined weight rating (GCWR), whichever is less. However, such a live-haul poultry truck may exceed the established weight limit by no more than 3% to account for variations in bird weight due to bird size, moisture retention caused by precipitation, or other unanticipated conditions. For the established weight limit and associated 3% variance to apply to a live-haul poultry truck, the following conditions must exist:

1. The live-haul poultry truck must be subject to the Motor Carrier Safety Assistance Program (MCSAP) inspection.

2. The live-haul poultry truck must adhere to all bridge weight limits.

3. The live-haul poultry truck must not use the interstate highway system.

4. The axles on a live-haul poultry truck must be a minimum of 96 inches apart no later than May 8, 2015.

b. For a truck hauling farm produce grown in this State and traveling from the farm on which the farm produce is grown to a location at which the farm produce is to be processed or stored, or from a location at which the farm produce is processed or stored to an export facility within this State, the total gross weight, including load, of a combination of a truck tractor and semitrailer having a total of 5 or more axles may not exceed 90,000 pounds or combined manufacturer's gross combined weight rating (GCWR), whichever is less.

1. For purposes of this paragraph (c)(6)b., "farm produce" means fruits, vegetables, or commodity grains.
2. This paragraph (c)(6)b. applies to a truck hauling farm produce if all of the following conditions are met:
   A. The truck hauling farm produce is subject to the Motor Carrier Safety Assistance Program (MCSAP) inspection.
   B. The truck hauling farm produce adheres to all bridge weight limits.
   C. The axles on a truck hauling farm produce must be a minimum of 96 inches apart.
   D. The truck hauling farm produce does not use the interstate highway system.

(7) Except as otherwise provided herein, for single unit vehicles, no axle load shall exceed 22,400 pounds. With respect to any single unit vehicle, the maximum gross weight between any 3 consecutive axles that actually bear weight upon the pavement, and which have wheels spaced between 144 inches and not less than 60 inches apart when measured horizontally between their center lines, shall not exceed 60,000 lbs. With respect to any single unit vehicle, the maximum gross weight between any 2 consecutive axles that actually bear weight upon the pavement, and which have wheels spaced between 96 inches and not less than 40 inches apart when measured horizontally between their center lines, shall not exceed 40,000 pounds. With respect to any single unit vehicle, the maximum combined gross weight between any 2 consecutive axles that actually bear weight upon the pavement, and are less than 40 inches apart when measured horizontally between the center lines, shall not exceed 20,000 pounds. Where the distance between consecutive axle centers exceeds 96 inches, the weight for each such axle shall not exceed 22,400 pounds.

(8) Except as otherwise provided herein, for combination unit vehicles, no axle load shall exceed 22,400 pounds. With respect to any combination unit vehicle, the maximum gross weight between any 2 consecutive axles that actually bear weight upon the pavement and which have wheels spaced between 96 inches and not less than 40 inches apart, measured horizontally between their center lines, shall not exceed 36,000 pounds. Where the distance between consecutive axle centers exceeds 96 inches, the weight for each such axle shall not exceed 22,400 pounds. With respect to any combination vehicle, the maximum combined gross weight between any 2 consecutive axles that actually bear weight upon the pavement, and are less than 40 inches apart when measured horizontally between the center lines, shall not exceed 20,000 pounds.

(9) *Farm operations.* — Notwithstanding the other provisions of this section, the following applies to vehicles registered as (i) farm trucks or (ii) registered commercial motor vehicles that are controlled or operated by a farmer and while used in the operation of a farm. For these vehicles, no single axle load shall exceed 22,400 pounds, and with respect to any vehicle equipped with coupled axles spaced less than 48 inches apart measured horizontally between their center lines, the combined weight on the coupled axles shall not exceed 20,000 pounds and, with respect to a vehicle equipped with coupled axles spaced 48 inches or more apart measured horizontally between their center lines, the combined weight on the coupled axle shall not exceed 40,000 pounds. Furthermore, any farm loaded truck or farm vehicle carrying harvested products or livestock may exceed the weight limits established under this subsection by no more than 3 percent.

(10) Whenever the total gross weight permitted in any provisions of this section exceeds the total gross weight permitted as calculated pursuant to paragraph (c)(7) of this section, paragraph (c)(7) of this section shall be void.

(d) The Secretary of the Delaware Department of Transportation may, on the basis of engineering and/or traffic investigations, determine that any road, street, or highway under the jurisdiction of the Department of Transportation is not of sufficient width to accommodate vehicles otherwise permitted by this section and may thereafter prohibit vehicles of an otherwise permissible width from operation on such road, street or highway.

(64 Del. Laws, c. 207, § 5; 69 Del. Laws, c. 73, § 2; 70 Del. Laws, c. 169, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 259, § 3; 74 Del. Laws, c. 133, § 1; 76 Del. Laws, c. 305, § 1; 77 Del. Laws, c. 67, § 1; 77 Del. Laws, c. 244, § 3; 77 Del. Laws, c. 316, §§ 2, 3; 79 Del. Laws, c. 220, § 2; 81 Del. Laws, c. 79, § 36; 82 Del. Laws, c. 93, § 3; 84 Del. Laws, c. 416, § 2.)

§ 4503. Size and weight of vehicles on interstate highways; size of vehicles on federal-aid primary system highways and United States numbered routes.

(a) No person shall drive or move or, being the owner, cause or knowingly permit to be driven or moved on any interstate highway, federal-aid primary system highway, or United States numbered route, unless otherwise posted, any vehicle or combination of vehicles having a size or weight in excess of that permitted by this section. Provided, however, that such weight limitations and restrictions listed in this section apply only to the interstate highway; weight limitations and restrictions for federal-aid primary system highways and United States numbered routes shall be as listed in § 4502 of this title.

(b) (1) No vehicle, including any load thereon, shall exceed a height of 13 feet, 6 inches.

(2) The maximum length of a semitrailer, including any load thereon, exclusive of truck tractor size shall be 53 feet.

(3) The maximum length of a trailer or semitrailer in a truck tractor-semitrailer-trailer combination, including any load thereon, exclusive of tractor size shall be 29 feet.

(4) Buses shall not exceed 45 feet in length.

(5) Single vehicles including the load thereon shall not exceed 40 feet in length.

(6) No vehicle including any load thereon shall exceed a total outside width of 102 inches, exclusive of safety equipment, which shall not extend more than 3 inches wider on each side of the vehicle, or as shall be authorized by the Delaware Secretary of Public Safety.

(7) Notwithstanding paragraph (b)(5) or (6) of this section:

a. No recreational vehicle, including any load or truck camper thereon or any camping trailer, recreational trailer or park trailer attached thereto, shall exceed a total outside width of 102 inches, exclusive of any safety equipment, which shall not extend beyond the federal motor vehicle safety standards for such equipment, or appurtenances such as awnings and lights which are integral to the construction of the vehicle, installed by the vehicle's manufacturer or dealer, and do not extend more than 6 inches wider on each side of the vehicle;

b. No single recreational vehicle, including any load or truck camper thereon, shall exceed 45 feet in length; and

c. No combination of a recreational vehicle with any vehicle, including the load thereon, nor any combination of any motor vehicle with any camping trailer, recreational trailer or park trailer attached thereto, shall exceed 65 feet in length.

(c) (1) Each weight stated in this section shall apply only to interstate highways and is a total gross weight which includes the weight of the vehicle, including load thereon and any enforcement tolerance applicable thereto.

(2) It shall be unlawful for the gross weight on any 1 axle to exceed 20,000 pounds.

(3) It shall be unlawful for the gross weight on any tandem or coupled axles to exceed 34,000 pounds.

(4) It shall be unlawful for the maximum gross weight for any vehicle to exceed the sum of the allowed axle weight for the number of axles actually bearing their full share of the weight upon the pavement or the smallest weight as calculated hereunder:

a. The gross weight of any vehicle or combination of vehicles shall not exceed the weights stated hereunder:

2 axles — 40,000 lbs.

3 axles — 54,000 lbs.

4 axles — 74,000 lbs.

5 axles — 80,000 lbs.

b. The maximum gross weight of any vehicle or combination of vehicles on a group of 2 or more consecutive axles shall not exceed the weight as calculated by this formula:

$W = 500 (LN / N - 1 + 12 N + 36)$

For purposes of this subsection, W equals overall gross weight on any group of 2 or more consecutive axles to the nearest 500 pounds, L equals the distance in feet between the extreme of any group of 2 or more consecutive axles, and N equals the number of axles in the group under consideration except that 2 consecutive sets of tandem axles may carry a gross load of 34,000 pounds each, whenever the overall distance between the first and last axle of the consecutive sets is 36 feet or more.

(d) The Delaware Secretary of Transportation may, on the basis of engineering and traffic investigations, determine that certain interstate highways, federal-aid primary system highways, and United States numbered routes cannot accommodate vehicles, otherwise permitted under this section, and may thereafter prohibit operation of such vehicles on the interstate highways, federal-aid primary system highways, and United States numbered routes so designated.

(e) The provisions of this section do not apply to the following vehicles when such vehicles are being operated on interstate highways and United States numbered routes; provided, however, that the liability for damages caused by any vehicle operated under this provision shall be borne by the owner of said vehicle:

(1) Fire apparatus owned or used by an organized fire company.

(2) Farm equipment being temporarily operated, moved or transported on a highway. This provision only applies to farmers engaged in their agricultural related practices.

(f) Any vehicle subject to this subpart that utilizes an auxiliary power or idle reduction technology unit in order to promote reduction of fuel use and emissions because of engine idling, may be allowed up to an additional 400 lbs. total in gross, axle, tandem, or bridge formula weight limits.

(1) To be eligible for this exception, the operator of the vehicle must be able to prove:

a. By written certification, the weight of the APU; and

b. By demonstration or certification, that the idle reduction technology is fully functional.

(2) Certification of the weight of the APU must be available to law-enforcement officers if the vehicle is found in violation of applicable weight laws. The additional weight allowed cannot exceed 400 lbs. or the weight certified, whichever is less.

(g) The State hereby adopts federal commercial vehicle size limit exemptions for vehicles operating on interstate highways, federal-aid primary system highways, and United States numbered routes within the State as directed in 49 U.S.C. § 31111 and 49 U.S.C. § 31113 as amended.

(h) The State hereby adopts federal interstate weight limit exemptions for vehicles operating on interstate highways within the State as directed in 23 U.S.C. § 127 as amended.

(64 Del. Laws, c. 207, § 5; 67 Del. Laws, c. 345, §§ 1, 2; 68 Del. Laws, c. 281, § 1; 69 Del. Laws, c. 73, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 259, §§ 1, 2; 74 Del. Laws, c. 133, § 2; 77 Del. Laws, c. 124, § 1; 82 Del. Laws, c. 93, § 4.)

§ 4504. Regulations; fees; permits for excessive size and weights.

(a) The Secretary of Transportation may adopt such regulations, issue permits and may impose such fees as the Secretary may deem reasonable to implement the requirements of this chapter. The fee for permits issued pursuant to paragraph (c)(1) of this section for vehicles operating on any interstate highway within this State shall be $1.00 per single trip permit.

(b) (1) The Secretary of Transportation is hereby authorized to adopt rules and regulations, to establish and set fees and to adopt procedures for the issuance of permits for the movement of vehicles and/or loads of a size and weight exceeding the maximum specified in this chapter.

(2) Local authorities may adopt regulations under which permits may be granted for the movement of vehicles and/or loads of a size and weight exceeding the maximum specified in this chapter over any highway for which the local authority has the sole maintenance responsibility.

(3) Every permit granted shall be in writing and shall contain a description of the vehicle and load, a statement of the fee levied and the name of the authorized officer of the granting authority. It may designate the route and certain restrictions, rules, conditions and regulations as deemed necessary.

(4) Permits may be obtained only for vehicles or trailers complying with this title.

(5) A permit obtained pursuant to this section shall relieve no person of the obligation to comply with all laws, rules and regulations otherwise applicable.

(c) (1) Single trip permits shall be issued for single trips from the designated starting point to the designated terminal point. Intermediate stopping points and round trips are not permitted.

(2) Multi-trip permits shall be issued for a period of 1 year or the period from the first day of the month to the first day of the following month. Each permit shall be valid as authorized herein; it shall not be transferable.

a. Utility companies may be issued a permit for piling and pole trailers. Each permit may be valid for up to 4 trailers at the time of issue.

b. Utility companies and governmental agencies may be issued a permit for a manned and/or unmanned aerial type single motor vehicle up to 50 feet long. Each permit shall be valid for an individual vehicle only.

c. Pole and piling haulers may be issued a permit for piling and pole movements. Each permit shall be valid for an individual tractor only.

d. A specific route permit may be issued to owners or renters of double-bottom vehicles weighing not more than 80,000 lbs. with a width of not more than 102 inches. Each permit shall be for a single route between 2 specific points. Such permit shall not be vehicle specific; it is route specific.

e. Permits shall not be issued under paragraph (c)(2)d. of this section for any route which has a posted speed limit over 30 m.p.h. and has travel lanes less than 11 feet wide as measured from face of curb or edge of travelway.

f. Multi-trip permits shall not be issued for any purpose not specifically authorized in paragraph (c)(2)a., b., c. or d. of this section.

g., h. [Deleted.]

(d) Notwithstanding any provision or regulation to the contrary, all operators of self-propelled cranes, as defined in § 101 of this title, shall be allowed to apply for and receive a 1-year blanket permit allowing unlimited moves of said self-propelled crane. These blanket permits can be renewed each year. For purposes of this subsection, a “blanket permit” is an unlimited movement permit for each self-propelled crane owned by an applicant. Said permit shall be issued per the rules and regulations adopted by the Department of Transportation.

(e) (1) Every permit shall be carried in the vehicle to which it refers during the movement it authorizes and it shall be open to inspection by any police officer.

(2) Copies of multi-trip permits issued to utility companies may be carried by their vehicles in lieu of the original.

(3) Copies of multi-trip permits issued for bus operation may be carried in the buses in lieu of the original.

(4) Copies of multi-trip permits issued for the movement of double-bottom vehicles may be carried in the vehicle in lieu of the original or they may be posted at the destination point of the route or they may be retained at the nearest office of the permittee.

(5) [Deleted.]

(f) (1) No person shall fail to provide accurate information concerning the granting of a permit.

(2) No person shall violate any of the terms, conditions, restrictions, rules or regulations published in the policy or stated on the permit. A violation of any of the terms and conditions set forth in such permit shall render the permit null and void.

(3) Any permit obtained on the basis of false or misleading data is null and void. Any fee levied for it shall not be returned or transferred.

(4) Any permit which shall be rendered null and void for whatever reason shall subject the violator to such punishment as shall be permitted by law for persons not having obtained permits in the first instance.

(g) The revenue from the fees imposed pursuant to this section shall be deposited no later than the close of the next business day following such receipt, to the credit of the Transportation Trust Fund, established pursuant to Chapter 14 of Title 2, as amended.

(36 Del. Laws, c. 10, § 119; Code 1935, § 5657; 45 Del. Laws, c. 283, § 3; 47 Del. Laws, c. 57; 21 Del. C. 1953, § 4504; 57 Del. Laws, c. 671, § 10; 59 Del. Laws, c. 101, §§ 1, 2; 60 Del. Laws, c. 503, § 24; 62 Del. Laws, c. 343, § 1; 64 Del. Laws, c. 207, § 5; 64 Del. Laws, c. 338, §§ 1-3; 67 Del. Laws, c. 345, § 3; 69 Del. Laws, c. 291, § 264; 70 Del. Laws, c. 169, §§ 3-6; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 220, §§ 1-3; 75 Del. Laws, c. 118, §§ 1, 2; 82 Del. Laws, c. 28, § 1.)

§ 4505. Traffic control devices.

(a) For purposes of this section:

(1) “Commercial vehicle” means as defined under § 101 of this title and includes a truck.

(2) “Local service” means an origin, destination, or service located directly on a restricted roadway segment or at a location that can only be accessed by a restricted roadway segment.

(3) “Residential service” means an origin, destination, or service located at a building that is used as a residence.

(4) “Service” means a stop at any of the following:

a. A point where freight originates, terminates, or is handled.

b. A facility for food, fuel, repair, or rest.

c. A location where commercial motor carriers maintain an operating facility.

d. A location where labor is performed.

(b) The Secretary of the Department may implement this chapter and §§ 134 and 141 of Title 17 by erecting traffic control devices.

(c) The Secretary of the Department may do all of the following:

(1) Order traffic control devices erected on any highway establishing the maximum permitted weight or height of any vehicle including load that may be driven on the highway.

(2) Order traffic control devices erected on any highway prohibiting the operation of commercial vehicles on the highway, with exceptions for local service or residential service.

(d) (1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department’s website with other similar orders.

(2) An incorporated municipality exercising its authority under § 134(e) of Title 17 shall submit notice of the municipality’s action to the Registrar of Regulations for publication in the Register of Regulations. For a state-maintained highway, the notice must include a certification from the Department that the notice has been approved by the Department. The Secretary shall publish the notice on the Department’s website with orders issued by the Department under paragraph (d)(1) of this section.

(e) It is unlawful for a person to drive or move or, being the owner, cause or knowingly permit to be driven or moved, a vehicle or combination of vehicles in violation of a traffic control device erected under any of the following:

(1) Paragraph (c)(1) of this section.

(2) Paragraph (c)(2) of this section.

(f) (1) For purposes of this subsection:

a. “First offense” means a person has not, before the date of this offense, previously been convicted of violating the traffic control device at the location of the offense.

b. “Subsequent like offense” means a person has, before the date of this offense, been convicted of violating the traffic control device at the location of the offense.

(2) Section 4508 of this title does not apply to a violation of subsection (e) of this section.

(3) A violation of paragraph (e)(1) of this section is punishable as follows:

a. For a first offense, by both of the following:

1. A fine of not less than $250 nor more than $450 or by a term of imprisonment of not more than 30 days or both.

2. A fine for all excess weight up to and including 5,000 pounds in the amount of 2.3 cents per pound and a fine for all excess weight over 5,000 pounds in the amount of 5.75 cents per pound or by a term of imprisonment not to exceed 30 days or both.

b. For a subsequent like offense, by both of the following:

1. A fine of not less than $500 nor more than $650 or by a term of imprisonment of not more than 60 days or both.

2. A fine for all excess weight up to and including 5,000 pounds in the amount of 5.75 cents per pound and a fine for all excess weight over 5,000 pounds in the amount of 11.5 cents per pound or by a term of imprisonment not to exceed 60 days or both.

(4) A violation of paragraph (e)(2) of this section is punishable as follows:

a. For a first offense, by a fine of not less than $250 nor more than $450 or by a term of imprisonment of not more than 30 days or both.

b. For a subsequent like offense, by a fine of not less than $450 nor more than $650 or by a term of imprisonment of not more than 60 days or both.

(5) A subsequent like offense under this subsection constitutes a moving violation.

(36 Del. Laws, c. 10, § 120; Code 1935, § 5658; 46 Del. Laws, c. 124; 21 Del. C. 1953, § 4505; 58 Del. Laws, c. 550; 60 Del. Laws, c. 503, § 24; 60 Del. Laws, c. 700, § 9; 60 Del. Laws, c. 701, § 64; 64 Del. Laws, c. 207, § 5; 83 Del. Laws, c. 68, § 1; 83 Del. Laws, c. 283, § 38.)

§ 4506. Enforcement authority.

(a) (1) Any police officer, having reason to believe that the weight of a vehicle and load is unlawful, or during the course of a routine check of all applicable vehicles, may weigh the vehicle by means of a portable or stationary scale or may require that the vehicle be driven to a designated scale location and be weighed.

(2) The officer may require the operator of a vehicle under paragraph (a)(1) of this section to unload immediately the portion of the load as is necessary to decrease the gross weight of the vehicle to the maximum specified in this chapter or for which the vehicle is registered, whichever is less.

(3) Materials required to be unloaded under paragraph (a)(2) of this section must be unloaded and cared for by the owner or operator of the vehicle at the risk and expense of the owner or operator.

(4) a. Except as provided under paragraph (a)(4)b. of this section, farm vehicles and trucks are exempted from this subsection while engaged in farming operations.

b. Live-haul poultry trucks under §§ 4501(f)(1)a. and 4502(c)(6)a. of this title and trucks hauling farm produce under §§ 4501(f)(1)b. and 4502(c)(6)b. of this title are not exempted from this section.

(b) It shall be unlawful for an owner or operator to fail to remove from the deposit area by a time specified by the officer any such material that has been unloaded. An owner or operator, or both, found to be in violation of this section shall be punished as provided in § 4508 of this title.

(c) It shall be unlawful and punishable pursuant to § 4508 herein for an owner or operator to:

(1) Fail to obey traffic control devices erected to enforce this chapter;

(2) Fail to stop at areas selected for vehicle weighing operations;

(3) Deviate from the route of travel to avoid State Police weighing operations;

(4) Deliberately destroy or damage traffic control devices or weighing equipment erected or established to enforce this chapter.

(d) (1) A summons in appropriate form to be adopted by the Department of Safety and Homeland Security may be attached to an unattended vehicle found to be in violation of § 4508 of this title by any police officer authorized to arrest for violations of this title, in lieu of arrest of the operator of such vehicle.

(2) If the identity of the operator of an unattended vehicle is not otherwise apparent, it shall be prima facie evidence that the person in whose name the vehicle is registered as the owner is responsible for such violation.

(e) Any remedy or penalty imposed pursuant to this section shall not relieve the owner or operator of any requirement or penalty otherwise imposed by operation of law or pursuant to this chapter.

(36 Del. Laws, c. 10, § 118; 37 Del. Laws, c. 10, § 32; Code 1935, § 5656; 21 Del. C. 1953, § 4506; 57 Del. Laws, c. 543; 64 Del. Laws, c. 207, § 5; 66 Del. Laws, c. 266, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 102; 78 Del. Laws, c. 152, § 1; 79 Del. Laws, c. 220, § 3; 84 Del. Laws, c. 416, § 3.)

§ 4507. Weighing equipment and procedures.

(a) The Secretary of Safety and Homeland Security may adopt such regulations and procedures as may be necessary to implement this section and to select such equipment as may be necessary for law-enforcement weighing purposes.

(b) Equipment used for law-enforcement weighing may include, but is not limited to, the following:

(1) “Vehicle scale”;

(2) “Axle load scale”;

(3) “Wheel load weigher”.

(c) The tolerance or permissible error from true value for weighing devices utilized for law-enforcement purposes shall be those which have been adopted by the Division of Standards and Inspection of the State Department of Agriculture.

(d) Vehicle weights may be determined by either of the methods defined as follows:

(1) “Single draft weighting”;

(2) “Multiple draft weighting”.

(21 Del. C. 1953, § 4508; 57 Del. Laws, c. 542; 61 Del. Laws, c. 230, §§ 1, 2; 64 Del. Laws, c. 207, § 5; 74 Del. Laws, c. 110, § 103.)

§ 4508. Penalties.

(a) Any person who violates any requirement of this chapter, relating to size or weight of a vehicle or a combination of vehicles or restrictions regarding parking in residence districts pursuant to § 4512 of this title, shall be punished as follows:

(1) A first offense shall be punishable by a fine of not less than $100 nor more than $500 or by a term of imprisonment of not more than 30 days or both.

(2) A subsequent like offense shall be punishable by a fine of not less than $400 nor more than $2,000 or by a term of imprisonment of not more than 60 days or both.

(b) Any person who violates any requirement of this chapter, specifically relating to weight of a vehicle or a combination of vehicles, such that said vehicle shall be classified as an "overweight vehicle," shall in addition to whatever other penalties may be allowed by law be punished as follows:

(1) A first offense shall be punishable by a fine for all excess weight up to and including 5,000 pounds in the amount of 2.3 cents per pound and a fine for all excess weight over 5,000 pounds in the amount of 5.75 cents per pound or by a term of imprisonment not to exceed 30 days or both.

(2) Each subsequent offense shall be punishable by a fine for all excess weight up to and including 5,000 pounds in the amount of 5.75 cents per pound and a fine for all excess weight over 5,000 pounds in the amount of 11.5 cents per pound or by a term of imprisonment not to exceed 60 days or both.

(c) For purposes of this section a first offense shall be defined as one not previously committed by the person charged within the previous 24 months prior to the date of the offense. A subsequent like offense shall be deemed to have occurred if the person charged has previously been convicted or charged and subsequently convicted of the same offense within the previous 24 months prior to the date of this offense.

(36 Del. Laws, c. 10, § 142; 38 Del. Laws, c. 30; 40 Del. Laws, c. 37, § 1; Code 1935, § 5680; 46 Del. Laws, c. 61; 21 Del. C. 1953, § 4507; 60 Del. Laws, c. 596, § 1; 63 Del. Laws, c. 337, § 2; 64 Del. Laws, c. 207, § 5; 68 Del. Laws, c. 9, §§ 52, 53; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 237, § 2; 83 Del. Laws, c. 430, § 1.)

§ 4509. Jurisdiction.

(a) Justices of the peace shall have original jurisdiction to hear, try and finally determine alleged violations of this chapter. Upon a finding of guilt, such justice of the peace may impose such penalties or combination of penalties as are permitted by this chapter. Upon application of the State or defendant, in accordance with the rules of the applicable court, the matter may be removed to the Court of Common Pleas for determination. All other rules of the courts of Delaware shall apply. The justice of the peace may require any or all defendants to post a bond in an amount sufficient to guarantee payment of all potential fines and costs which may be required to be paid should a judgment of guilt be determined as to each such defendant or which shall be forfeit in the event the defendant fails to appear for a scheduled Court appearance. In the event, a bond shall be posted in an amount sufficient to cover the minimum potential fine and costs which may be imposed, upon the adjudication of guilt.

(1) Any such bond shall be made payable to the court upon demand in the event the defendant fails to appear for a scheduled court appearance or upon default on the judgment against the defendant.

(2) Upon forfeiture of the bond to the court such bond shall be made payable to the State upon expiration of the appropriate appeal period.

(3) Upon adjudication of guilt and payment of such fines and costs as may be imposed by the court or upon a finding of not guilty and expiration of the appropriate appeal period, such bond shall be returned to the defendant(s).

(b) In the event either party applies to have the matter removed to the Court of Common Pleas, as provided herein, any bond imposed pursuant to subsection (a) of this section shall be reissued in the name of the appropriate court. All other provisions of subsection (a) of this section shall apply.

(c) In the event either party appeals, such bond(s) issued pursuant to this section shall remain in full force and effect until such time as the matter has finally been resolved.

(36 Del. Laws, c. 10, § 120; Code 1935, § 5658; 46 Del. Laws, c. 124; 21 Del. C. 1953, § 4505; 58 Del. Laws, c. 550; 60 Del. Laws, c. 503, § 24; 60 Del. Laws, c. 700, § 9; 60 Del. Laws, c. 701, § 64; 64 Del. Laws, c. 207, § 5.)

§ 4510. Conflict with federal requirements.

(a) Any conflict between a provision of this chapter and any federal law or implementing regulation, such provision of this chapter shall be void and of no force and effect and unenforceable. Any such provision of this chapter declared to be inoperable, as provided herein, shall be brought to the attention of the next session of the General Assembly and shall not, in any event, serve to invalidate any other provision of this chapter.

(b) Any other provision of this chapter to the contrary notwithstanding, a vehicle or combination of vehicles having a weight in excess of that permitted by § 4503 of this title lawfully may be operated on any interstate highway or United States numbered route if such vehicle or combination of vehicles has been issued a permit for that purpose pursuant to § 4504 of this title. Regarding such permits issued pursuant to § 4504(c)(1) of this title, the State has determined that vehicles bearing such permits could be lawfully operated within this State on July 1, 1956.

(64 Del. Laws, c. 207, § 5; 67 Del. Laws, c. 345, § 4; 70 Del. Laws, c. 259, § 7.)

§ 4511. Removal of disabled or abandoned trucks and trailers from highways.

A tow truck or wrecker may, without regard to the limitations of the length, weight or width as specified in this chapter, tow disabled or abandoned truck, trucks and trailers, or truck and semitrailers from highways to a point where such disabled or abandoned vehicle can be repaired or stored.

(63 Del. Laws, c. 337, § 1; 64 Del. Laws, c. 207, § 5.)

§ 4512. Oversized motor vehicle and trailer parking.

(a) In any residence district it shall be unlawful to park, store, or permit to be parked or stored on a highway within such residence district any of the following:

(1) Trailer, semi-trailer, or recreational trailer unattached to a motor vehicle.

(2) A motor vehicle the length of which is greater than 276 inches or the width of which is over 96 inches or the height of which is over 120 inches or the gross vehicle weight of which exceeds 10,000 pounds, as such weight has been registered and recorded with the Delaware Division of Motor Vehicles (or as recorded with any other state's Department of Motor Vehicles).

(b) Motor vehicles parked pursuant to the following situations shall be exempt from this section:

(1) Any motor vehicle parked on a highway within a residence district in conjunction with ongoing legal service or work being performed in relation to a residence or business contained therein. Notwithstanding the above, the motor vehicle may remain parked within such residence district only for the time necessary to complete such work or service. This exemption shall only apply if such motor vehicle is parked immediately and entirely adjoining the property of the residence or business, being serviced. Examples of such motor vehicles include, but are not limited to, delivery trucks, limousine services, and moving trucks.

(2) Any motor vehicle used for work being performed or on call in case of emergencies for any of the following:

a. By a "public utility" as defined in § 102 of Title 26 or by others working on its behalf.

b. In connection with a "cable television system" as defined in § 102 of Title 26.

c. By a municipality or municipal electric company or by others working on their behalf.

(c) In any residence district, it shall be unlawful to park, store, or permit to be parked or stored on a highway within such residence district, any motor vehicle with a trailer, semi-trailer, or recreational trailer attached unless it satisfies 1 of the following:

(1) It is parked, stored, or permitted to be parked or stored on the highway immediately and entirely adjacent to the owner's property.

(2) The exemptions otherwise applicable to motor vehicles in subsection (b) of this section apply.

(d) [Repealed.]

(e) The Department of Transportation may place signs prohibiting or restricting the stopping, standing or parking of any trailer, semitrailer, or recreational trailer unattached to a motor vehicle on any highway where, in its opinion, such stopping, standing or parking is dangerous to those using the highways or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic thereon. Such prohibitions or restrictions may be declared to be effective either part or all of the time, and differing limits may be established for different times of the day, for different types of vehicles, for different weather conditions and when other significant factors differ. One sign located at the beginning of the roadway is sufficient to prohibit or restrict stopping, standing, or parking for the length of the roadway. The Department shall provide a list of roadways or sections of roadways for which it has placed signs prohibiting or restricting the stopping, standing, or parking to the Division of Safety and Homeland Security and law-enforcement agencies across the state.

(76 Del. Laws, c. 334, § 1; 78 Del. Laws, c. 237, § 1; 83 Del. Laws, c. 430, § 1.)

§ 4513. Truck monitoring system.

(a) *Definitions. —*

As used in this section:

(1) "County" means the 3 counties of this State: New Castle, Kent, and Sussex.

(2) "County law" means any legislative, administrative, or other law or policy implemented by the governing body of a county.

(3) "Driver" does not include an employee of the owner of a motor vehicle.

(4) "Municipality" includes all cities, towns, and villages created under any general or special law of this State for general governmental purpose and which possesses legislative, administrative, or police powers for the general exercise of municipal functions and carry on the functions through a set of elected and other officials.

(5) "Municipal law" means any legislative, administrative, or other law or policy implemented by a municipality.

(6) "Recorded image" means an image recorded by a truck monitoring system and includes any of the following:

a. A photograph.

b. A microphotograph.

c. A digital image.

d. A video.

e. Any other medium used to store images or sounds to be seen or heard later.

(7) "Road" means an open way for motor vehicles, and includes all of the following:

a. A Delaware byway, express highway, road, highway, or state highway, as those terms are defined under § 101 of this title.

b. A road, street, highway, roadway, or any similar term, as defined under a county or municipal law.

(8) “Truck monitoring system” means a device that is capable of producing a recorded image of a motor vehicle for identification of the vehicle type.

(b) *Purpose. —*

This section establishes the authority for the State or its counties or municipalities to use a truck monitoring system to assist in the enforcement of Chapter 45 and § 4505 of this title. This section does not establish a new violation.

(c) *Applicability. —*

(1) This section does not apply to any of the following:

a. An emergency vehicle.

b. An authorized state vehicle or snow plow.

c. A school bus.

d. A vehicle for which an owner, an employee of an owner, or a driver provides proof of lawful use of a restricted roadway.

e. A recreational vehicle.

(2) An employer, not the employer’s employee, is liable under this section if a violation under this section occurs while an employee is using, for the purposes of employment, a vehicle that the employer owns.

(d) *Initial implementation; responsible authority. —*

A truck monitoring system may be installed or used to record images of a motor vehicle traveling on a road in this State after the requirements of paragraph (d)(1) of this section and, if applicable, paragraph (d)(3) of this section, have been met.

(1) By August 15, 2020, the Department of Transportation shall do both of the following:

a. Identify roads in this State as potential candidates for the placement of truck monitoring systems.

b. Conduct an analysis to determine the appropriateness of each location.

(2) After the requirements of paragraph (d)(1) of this section have been met, the Secretary of the Department of Safety and Homeland Security may approve and install a truck monitoring system. The Secretary of the Department of Safety and Homeland Security may consult with the Department of Transportation for best practices in installing a truck monitoring system.

(3) A county or municipality may install and use a truck monitoring system after all of the following requirements have been met:

a. Paragraph (d)(1) of this section.

b. The county or municipality adopts an ordinance authorizing the use of a truck monitoring system at a location identified as a potential candidate under paragraph (d)(1) of this section.

c. The county or municipality publishes notice of each truck monitoring system location in a newspaper of general circulation in the area in which the truck monitoring system will be installed or used.

d. All signs stating restrictions on the presence of certain motor vehicles during certain times approaching and within the segment of road on which the truck monitoring system is located meet all of the following criteria:

1. Are in accordance with the Delaware Manual on Uniform Traffic Control Devices.

2. Indicate that a truck monitoring system is in use.

(4) The county or municipality that adopts an ordinance to authorize the use of a truck monitoring system is responsible for paying or obtaining funds for payment of the installation, use, maintenance, or other costs associated with the truck monitoring system that the county or municipality authorized. The Community Transportation Fund may be used to pay for a truck monitoring system.

(e) *Vendor selection. —*

The Department of Safety and Homeland Security shall utilize a supporting vendor to provide truck monitoring systems for the State, counties, and municipalities. The system vendor must be selected through an open competitive procurement process which allows for the government and taxpayer to benefit from improved quality at lower pricing. To assure integrity and propriety, a person involved in the administration or enforcement of the truck monitoring system may not own any interest or equity in the vendor used.

(f) *Truck monitoring system requirements and maintenance; daily set-up log. —*

(1) [Repealed.]

(2) A daily log must be maintained for each truck monitoring system. A county or municipality that has adopted an ordinance to install a truck monitoring system shall designate a truck monitoring system technician to fulfill the requirements of paragraph (f)(3)a. of this section for a truck monitoring system.

(3) A truck monitoring system technician shall do all of the following:

a. Fill out and sign a daily set-up log for each truck monitoring system to which the truck monitoring system technician is assigned. The log must do all of the following:

1. Include a statement that the technician successfully performed the manufacturer-specified self-test of the truck monitoring system before producing a recorded image.

2. Be kept on file.

3. Be admitted as evidence in any court proceeding for the violation that the recorded image captured.

b. With the approval of a law-enforcement officer of the applicable jurisdiction, issue a violation notice and send the notice to the registered owner of the motor vehicle.

(g) [Repealed.]

(h) *Civil penalty. —*

Unless a law-enforcement officer issued a citation to the owner or driver of the motor vehicle at the time of the violation, the owner or driver is subject to a civil penalty if a truck monitoring system captures the owner's motor vehicle while violating state, county, or municipal law restricting the presence of certain vehicles at certain times. A civil penalty under this subsection may not exceed any of the following:

(1) For a first violation by the owner, an employee of the owner, or the driver of the motor vehicle, a mailed warning notice instead of a civil penalty. For purposes of this section, "first violation" means the owner, an employee of the owner, or the driver of the motor vehicle has not previously violated a state, county, or municipal law restricting the presence of certain motor vehicles at certain times within 24 months before the date of the violation.

(2) For a second violation by the owner, an employee of the owner, or the driver of the motor vehicle, $250.

(3) For third or subsequent violation by the owner, an employee of the owner, or the driver of the motor vehicle, $500.

(i) *Issuance of citation; contents; duty of recipient. —*

The State, county, or municipality, whichever applies, shall, within 30 days of the violation, mail a notice of violation to the owner of a motor vehicle that was captured on a truck monitoring system while violating a state, county, or municipal law restricting the presence of certain vehicles at certain times. The notice of violation must include all of the following:

(1) The name and address of the registered owner of the motor vehicle.

(2) The registration number of the motor vehicle involved in the violation.

(3) The violation charged.

(4) The location at which the violation occurred.

(5) The date and time of the violation.

(6) A copy of the recorded image of the motor vehicle.

(7) The amount of the civil penalty imposed and the date by which the civil penalty must be paid.

(8) A signed statement by a law-enforcement officer of the applicable jurisdiction that, based on inspection of the recorded image, the motor vehicle was being operated in violation of a state, county, or municipal law restricting the presence of certain vehicles at certain times.

(9) A statement that the recorded image is evidence of the violation.

(10) Information advising the owner of the manner, time, and place by which liability as alleged in the notice may be contested.

(11) Information warning the owner that failure to pay the civil penalty or contest liability in a timely manner is an admission of liability and may result in a judgment being entered against the owner or the denial of the registration or renewal of any of the owner's motor vehicles.

(12) Notice that the owner's ability to rebut the presumption that the owner or an employee of the owner was the operator of the motor vehicle at the time of the alleged violation and the means for rebutting the presumption.

(j) *Evidence; witnesses. —*

(1) A certificate alleging that a violation of a state, county, or municipal law restricting the presence of a certain motor vehicle during a certain time occurred and that the requirements under subsections (d) and (f) of this section have been met and affirmed by a duly authorized law-enforcement officer based on inspection of a recorded image produced by a truck monitoring system is both of the following:

a. Evidence of the facts contained in the certificate.

b. Admissible in a proceeding alleging a violation under this section without the presence or testimony of the truck monitoring system technician.

(2) A recorded image from a truck monitoring system is evidence of a violation only if the image shows all of the following:

a. The front or side of a motor vehicle.

b. At least 2 time-stamped recorded images of the motor vehicle that include the same stationary object near the motor vehicle.

c. On at least 1 recorded image, a clear and legible identification of the entire registration plate number of the motor vehicle.

(3) If an owner or driver who received a notice of violation under this section desires the truck monitoring system technician to be present and testify at trial, the owner or driver shall notify the court and the State, county, or municipality, whichever issued the notice of violation, in writing no later than 20 days before trial.

(4) Adjudication of liability is based on a preponderance of the evidence.

(k) *Defenses. —*

(1) The court may consider in defense of a violation either of the following:

a. Subject to paragraph (k)(2) of this section, that the motor vehicle or the registration plates of the motor vehicle were stolen before the violation occurred and were not under the control or possession of the owner, an employee of the owner, or the driver at the time of the violation.

b. Subject to paragraph (k)(2) of this section, presence on the road was required to complete a local service, including trash removal. It is the driver's or owner's burden to prove that presence on the road was required to complete a local service.

c. Any other issue or evidence that the court deems pertinent.

(2) To demonstrate a defense under paragraph (k)(1) of this section, the owner or driver must submit proof that a police report regarding the stolen motor vehicle or registration plates was filed in a timely manner.

(*l*) *Status of violation. —*

A violation for which a civil penalty is imposed under this section is not a moving violation for the purpose of assessing points under 2 DE Admin. Code § 2208, and may not be any of the following:

(1) Recorded on the driving record of the owner, an employee of the owner, or driver of the motor vehicle.

(2) Treated as a parking violation under state, county, or municipal law.

(3) Considered in the provision of motor vehicle insurance coverage.

(m) *Adoption of procedures for issuance of citations. —*

The Justice of the Peace Court, upon approval by the Chief Justice, may develop court rules, administrative directives, or other forms of policies for handling violations under this section.

(n) *Administration and processing of citations. —*

(1) The county or municipality that installed the truck monitoring system, or a contractor designated by the county or municipality, shall administer and process civil citations issued under this section in coordination with the court.

(2) If a contractor operates a truck monitoring system on behalf of a county or municipality, the contractor's fee may not be contingent on the number of citations issued or paid.

(82 Del. Laws, c. 203, § 1; 83 Del. Laws, c. 155, § 1.)

Part III
Operation and Equipment

Chapter 46
Advertisement and Sale of Master Keys

§ 4601. Introduction, sale, distribution or advertisement for sale to public of motor vehicle master keys; penalties.

(a) Whoever knowingly introduces, manufactures for introduction or transports or distributes in this State any motor vehicle master key shall be fined not more than $2,000, or imprisoned not more than 5 years or both.

(b) Whoever knowingly disseminates or knowingly causes to be disseminated any advertisement or sale to the public of this State motor vehicle master keys shall be fined not more than $2,000, or imprisoned not more than 5 years or both.

(c) As used in this section, “master key” means any key adapted to fit the ignition switch of 2 or more motor vehicles, the ignition switches of which are designed to operate by different keys.

(21 Del. C. 1953, § 4601; 57 Del. Laws, c. 48.)

§ 4602. Exemptions.

Section 4601 of this title shall not apply to:

(1) The introduction, manufacture for introduction, transportation, distribution, sale or possession in this State of motor vehicle master keys for use in the ordinary course of business by any bona fide locksmith, vehicle manufacturer, lock manufacturer, common carrier, contract carrier, new or used car dealer, rental car agency, automobile club or association or any department, agency or instrumentality of:

a. This State;

b. The United States; or

c. Any political subdivisions of any such entity;

(2) The shipment, transportation or delivery for shipment in this State of motor vehicle master keys in the ordinary course of business of any common carrier or contract carrier.

(21 Del. C. 1953, § 4602; 57 Del. Laws, c. 48.)

§ 4603. Reporting of keys; penalties.

Any person, corporation, agency, association, club, department or carrier possessing any master key pursuant to this chapter shall, before May 30, 1969, and every 6 months thereafter, submit to the Secretary of Public Safety of this State a list describing all master keys which it possesses. Any person, corporation, agency, association, club, department or carrier which submits a list pursuant to this section which list does not contain any master key which was described in any previous list to the Secretary of Public Safety shall, in writing, notify the Secretary of Public Safety of the reason for omission. Whoever knowingly fails to comply with this section shall be fined not more than $2,300, or imprisoned not more than 5 years or both.

(21 Del. C. 1953, § 4603; 57 Del. Laws, c. 48; 57 Del. Laws, c. 670, § 29; 68 Del. Laws, c. 9, § 54.)

§ 4604. Possession of motor vehicle master keys, manipulative keys, key-cutting devices, lock picks or lock picking devices and hot wires; penalty; class E felony.

(a) No person shall have in possession any motor vehicle master key, manipulative key or device, key-cutting device, lock pick or lock picking device or hot wire, designed to open or capable of opening the door or trunk of any motor vehicle or of starting the engine of a motor vehicle. Any person who violates this subsection shall be guilty of a class E felony as the same is defined in Chapter 42 of Title 11 and shall be sentenced in accordance therewith.

(b) This section shall not apply to any bona fide dealer of new or used motor vehicles, a car rental agent, a locksmith, a public utility subject to the jurisdiction of the Public Service Commission or the agents of such persons while such persons or their agents are acting within the scope of their employment. This section shall not apply to a private investigator who in the usual course of business repossesses vehicles if such investigator is licensed and bonded by the State or the employees of such private investigator while the employee is repossessing vehicles in the usual course of business and is bonded and licensed by the State. This section shall not apply to a state, county or municipal law-enforcement officer who is acting within the scope of official duties. Nor shall this section apply to a bona fide business which has a key-cutting device located and used on the premises for the purpose of making replacement keys.

(59 Del. Laws, c. 559, § 1; 70 Del. Laws, c. 186, § 1.)

Part III
Operation and Equipment
Chapter 47
Motor Carrier Safety—Responsibility

§ 4701. Statement of legislative purpose.

The purpose of this chapter is to reduce truck and bus related accidents on our highways by minimizing the causes related to mechanical failures, driver error and careless safety practices by motor carriers, and to standardize regulations for the transportation industry.

(65 Del. Laws, c. 198, § 1.)

§ 4702. Adoption of federal requirements — In general.

(a) Except as modified by this chapter, the State hereby adopts, as the laws of Delaware governing motor carrier safety, the following parts of the Code of Federal Regulations, as published and as subsequently amended: Title 49, Chapter III, Subchapter B, Part 374, Part 385, Part 386, Part 387, Part 390, Part 391, Part 392, Part 393, Part 395, Part 396 and Part 397, adopted pursuant to the Transportation Article of the United States Code (49 U.S.C. § 101 et seq.).

(b) Notwithstanding the adoption of the laws and regulations as indicated in subsection (a) of this section, no requirements under this chapter shall apply to any single vehicle or a vehicle in combination operated in intrastate commerce with a gross vehicle weight rating or gross vehicle weight of 26,000 pounds or less, except for:

(1) A vehicle being used to transport hazardous materials of a type or quality that requires the vehicle to be marked or placarded in accordance with the Federal Motor Carrier Safety Regulations; or

(2) A vehicle having a seating capacity of 16 or more persons.

(65 Del. Laws, c. 198, § 1; 66 Del. Laws, c. 114, § 11; 74 Del. Laws, c. 217, §§ 16-18; 75 Del. Laws, c. 324, § 1; 82 Del. Laws, c. 93, § 5.)

§ 4703. Adoption of federal requirements — Amendments of 49 C.F.R. Part 390.

Amend § 390.3 of 49 C.F.R. Part 390 by adding “and intrastate” after the word “interstate” and before the word “commerce.”

(65 Del. Laws, c. 198, § 1; 66 Del. Laws, c. 114, § 1; 74 Del. Laws, c. 217, § 19.)

§ 4704. Adoption of federal requirements — Amendments of 49 C.F.R. Part 391.

(a) Section 391.11(b)(1) of 49 C.F.R. Part 391 is stricken in its entirety and in its place is inserted the following:

“(1) Is at least 21 years old if engaged in interstate commerce or at least 18 years or older and has at least 1 year previous experience as an operator of a motor vehicle if engaged in intrastate commerce”.

(b) *Intra-State Only Restricted Commercial Driver License Medical.* — Persons who are not physically qualified to drive a commercial motor vehicle per 49 C.F.R. § 391.41 may apply for an intrastate only restricted commercial driver license waiver provided they are otherwise qualified to drive a motor vehicle, other than a motor vehicle which requires endorsements to transport passengers or hazardous materials, and meet the other provisions of this subsection, Title 21 and the Federal Motor Carrier Regulations.

The applicant must provide evidence and certify to the Secretary of Transportation that they have:

(1) Held a CDL and were employed on a full time basis in the operation of motor vehicles weighing over 26,000 pounds for at least 4 years during the previous 6 years;

(2) Not had a CDL disqualification during the previous 6 years;

(3) Not incurred 4 or more serious traffic violations, railroad-highway grade crossing offenses or out-of-service violations during the previous 6 years.

The Division will establish policy to administer the CDL medical waiver program. The applicant must provide recent physical examinations signed by the driver’s primary physician and, if appropriate, from a medical specialist. The Division may require the applicant to successfully complete a training course and evaluation by a physical rehabilitation center. The Division may refer individual applications to the Medical Advisory Board for their advice concerning the applicant’s ability to safely operate motor vehicles weighing more than 26,000 pounds. The driver may be required to successfully complete the CDL knowledge tests and CDL road skill test prior to issuing an intra-State only restricted CDL license.

A “K” restriction will be added to the CDL driver license once a medical waiver is granted. The CDL medical waiver expires on the CDL expiration date or upon a date determined by the Division, whichever is earlier. Ninety days before the CDL medical waiver expires, the Division will notify the driver by letter using the address of record that the driver must reapply for a CDL medical waiver to continue operating a commercial motor vehicle in this State. However, once an applicant is initially granted a CDL medical waiver, the Division may issue a 90-day temporary CDL medical waiver pending the results of medical or rehabilitation examinations.

(c) State, county and local government employees who hold a commercial driver license and operate commercial motor vehicles as defined by § 2603 of this title as part of their official duties for the State or any political subdivision therein, shall meet the federal physical qualifications and examination requirements found in 49 C.F.R. Part 391, Subpart E unless 1 of the following exceptions apply:

(1) The employee is approved for an intrastate only restricted commercial driver license in accordance with subsection (b) of this section; or

(2) The employee is a school bus driver and has met the annual Department of Education physical examination requirements in accordance with § 2708(a)(2) of this title.

(65 Del. Laws, c. 198, § 1; 66 Del. Laws, c. 114, §§ 2-4; 66 Del. Laws, c. 426, § 1; 74 Del. Laws, c. 110, § 104; 74 Del. Laws, c. 217, § 20; 75 Del. Laws, c. 220, §§ 1, 2; 76 Del. Laws, c. 42, § 1; 78 Del. Laws, c. 87, § 1.)

§ 4705. Adoption of federal requirements — Amendments of 49 C.F.R. Part 392.

(a) Amend § 392.4 of 49 C.F.R. Part 392 by adding a new subparagraph (e) to read as follows:

"(e) Nothing in this section shall preclude prosecution under § 4177 of this title."

(b) Amend § 392.5 of 49 C.F.R. Part 392 by adding a new subparagraph (f) to read as follows:

"(f) Nothing in this section shall preclude prosecution under § 4177 of this title."

(65 Del. Laws, c. 198, § 1; 66 Del. Laws, c. 114, § 5; 74 Del. Laws, c. 217, § 21; 78 Del. Laws, c. 383, § 2.)

§ 4706. Adoption of federal requirements — Amendment of 49 C.F.R. Part 393.

Repealed by 74 Del. Laws, c. 217, § 22, eff. Sept. 30, 2005.

§ 4707. Adoption of federal requirements — Amendment of 49 C.F.R. Part 395.

(a) Amend 49 C.F.R. § 395.3(b) by striking the word "No" as it appears as the first word thereof, and by substituting in lieu thereof the phrase, "Unless an emergency waiver is issued by the Director of the Delaware Emergency Management Agency, to assist with energy supply deliveries such as heating oil and liquefied petroleum gas, no."

(b) Amend 49 C.F.R § 395.1(n) by adding the following new sentences: "Any utility vehicle driver engaging in the provision or restoration of utility services when the loss of such service is unexpected, unplanned or unscheduled shall be exempted from 49 C.F.R. Part 395 in its entirety. The exemption of the regulation provided for in this subsection shall expire if the Secretary of the United States Department of Transportation determines that it is in conflict with the intent of the Federal Motor Carrier Safety Regulations."

(c) Amend 49 C.F.R. § 395.1(n) by adding the following new sentences: "Any utility vehicle driver engaging in the provision or restoration of utility services when the loss of such service is unexpected, unplanned or unscheduled shall be exempted from 49 C.F.R. Part 395 in its entirety. The exemption of the regulation provided for in this subsection shall expire if the Secretary of the United States Department of Transportation determines that it is in conflict with the intent of the Federal Motor Carrier Safety Regulations."

(66 Del. Laws, c. 114, § 10; 73 Del. Laws, c. 14, § 1; 74 Del. Laws, c. 217, § 23; 75 Del. Laws, c. 12, §§ 1, 2.)

§ 4708. Adoption of federal requirements — Amendments of 49 C.F.R. Part 396.

(a) Subsection (a) of 49 C.F.R. § 396.9 is stricken in its entirety and the following is substituted in its place:

"(a) Personnel authorized to perform inspections — Every special agent of the Federal Highway Administration, Secretary of Public Safety, the Secretary of Safety and Homeland Security's deputies, state police, other sworn police officers and size and weight enforcement technicians of the Division of State Police working in conjunction with and in the physical presence of a uniformed police officer, are hereby authorized to enter and perform inspections of any motor vehicle, cargo and driver of any motor carrier for compliance with safety regulations adopted pursuant to this chapter. State police size and weight enforcement technicians shall have the same authority and duties enforcing this chapter as granted in § 710 of this title."

(b) Farm vehicles being operated on an intrastate basis within this State shall be exempt from the recordkeeping requirements as provided in 49 C.F.R. Part 396.

(65 Del. Laws, c. 198, § 1; 66 Del. Laws, c. 114, §§ 6-8; 74 Del. Laws, c. 110, § 105; 74 Del. Laws, c. 217, § 24.)

§ 4709. Fines, penalties, voluntary assessments.

(a) Any person, driver or motor carrier who violates any subpart of this chapter, or fails to do any act required by any subpart in this chapter or does any act forbidden in this chapter or subpart of the Code of Federal Regulations hereby adopted, upon conviction thereof, shall be sentenced to pay a fine for each violation of not less than $28.75 nor more than $115, or imprisonment for not more than 30 days or both. Any such person, driver or motor carrier committing a second or subsequent offense within 2 years upon conviction thereof shall be sentenced to pay a fine of not less than $115 nor more than $575 or imprisonment for not less than 60 days nor more than 1 year, or both.

(b) Section 709 of this title shall be applicable to this chapter.

(65 Del. Laws, c. 198, § 1; 66 Del. Laws, c. 114, § 8; 68 Del. Laws, c. 9, § 55.)

§ 4710. Authority to place vehicle, etc., out of service.

The Secretary of Public Safety, the Secretary of Safety and Homeland Security's deputies, state police and other police officers authorized by law to make arrests for violations of the motor vehicle and traffic laws of the State are hereby authorized to place any vehicle, driver or operator out of service for any violation of this chapter.

(65 Del. Laws, c. 198, § 1; 66 Del. Laws, c. 114, § 8; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 106.)

§ 4711. Jurisdiction.

Justices of the peace shall have original jurisdiction to hear, try and finally determine alleged violations of this chapter.

(65 Del. Laws, c. 198, § 1; 66 Del. Laws, c. 114, § 8.)

§ 4712. Authority to enforce regulations.

(a) The Secretary of Public Safety, the Secretary of Safety and Homeland Security's deputies, state police and other sworn police officers are hereby authorized to make arrests without a warrant for any violation of this chapter committed in their presence.

(b) The Secretary of Public Safety, the Secretary of Safety and Homeland Security's deputies, state police and other sworn police officers authorized by the law to make arrests for violations of this chapter without a warrant are authorized upon reasonable and probable cause to believe, based upon personal investigation of a motor vehicle accident which may include information obtained from eyewitnesses, that a violation has been committed by any person then and there present and to arrest such person without a warrant.

(65 Del. Laws, c. 198, § 1; 66 Del. Laws, c. 114, § 8; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, §§ 107, 108.)

§ 4713. Authority to promulgate rules and regulations.

The Secretary of Public Safety has authority to promulgate rules and regulations to carry out the stated purposes of this chapter.

(65 Del. Laws, c. 198, § 1; 66 Del. Laws, c. 114, § 8.)

§ 4714. Conflicts with other requirements of Delaware Motor Vehicle Code.

(a) Nothing contained in this chapter shall be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by this chapter, provided such equipment and accessories do not decrease the safety of operation of the motor vehicles on which they are used.

(b) Compliance with this chapter does not relieve the obligation to comply with other chapters of Titles 21 and 29; however, if a conflict occurs, the state or federal regulation herein adopted which promotes the greater degree of safety shall control.

(65 Del. Laws, c. 198, § 1; 66 Del. Laws, c. 114, § 8.)

Part III
Operation and Equipment

Chapter 48
Occupant Protection System Safety Act

§ 4801. Short title.

This chapter shall be known and may be cited as the "Occupant Protection System Safety Act."

(68 Del. Laws, c. 34, § 1; 74 Del. Laws, c. 277, § 2.)

§ 4802. Driver requirements; exceptions; sales requirements; working condition of system.

(a) (1) The driver of a motor vehicle operated on a street or highway in this State shall wear a properly adjusted and fastened seat belt which meets the applicable federal motor vehicle safety standards.

(2) The driver of a motor vehicle shall secure or cause to be secured in a properly adjusted and fastened seat belt system, as defined by the applicable federal motor vehicle safety standards, each occupant of the passenger compartment of the motor vehicle who is 16 years of age or older.

(b) The term "motor vehicle," as used in this chapter, is defined in § 101(44) of this title, with the exception of motorcycles.

(c) The provisions of this section shall not apply to:

(1) Any person in a motor vehicle who possesses a written verification from a licensed physician or a licensed physical therapist that such person is unable to wear or use an occupant protection system for physical or medical reasons;

(2) A motor vehicle which is not required to be equipped with an occupant protection system under federal law or has otherwise been exempted from compliance in conformity with federal law; or

(3) A motor vehicle operated by a letter carrier of the United States Postal Service while performing the duties of a letter carrier.

(d) [Deleted.]

(e) No person shall install, distribute, have for sale, offer for sale or sell any occupant protection system, including an air bag, for use in a motor vehicle unless it meets current minimum standards and specifications under federal law.

(f) Every owner of a motor vehicle shall maintain all occupant protection systems, including air bags, and assemblies and mechanisms required by this section in proper working condition and in a manner that will enable occupants to use them.

(g) (1) Failure to comply with this section shall be considered as an aggravating circumstance for sentencing purposes for persons convicted of violations of other provisions of this title.

(2) a. Any person who is found to have violated this section in connection with the prosecution of a violation of any other provision of this title shall in addition to any fine, and at the same time as any fine is assessed to the defendant, be levied for credit to the Victim's Rights Fund an additional penalty assessment of 40% not to exceed $20 of every fine, penalty or forfeiture imposed or collected by the court for the offense under this title. Where there are multiple offenses under this title involved, the penalty assessment pursuant to this section shall be based upon a total fine for all offenses but not to exceed a total additional penalty assessment of $20. When a fine, penalty or forfeiture is suspended in whole or in part the additional penalty assessment shall not be suspended.

b. The assessment imposed herein shall be in addition to the penalty assessment imposed by § 9016(a) of Title 11.

c. Where there is no other violation of this title in addition to a violation of this section, a civil penalty of $25 shall be imposed. The failure to wear a seat belt by more than 1 person in the same vehicle at the same time, as required by this section, shall be treated as a single civil violation. Justice of the Peace Court shall have jurisdiction over actions involving this civil penalty.

(h) No motor vehicle points shall be assessed against any person for failing to comply with subsection (a) of this section and there shall be no entry made on the person's driving record for failing to comply with subsection (a) of this section.

(i) Failure to wear or use an occupant protection system shall not be considered as evidence of either comparative or contributory negligence in any civil suit or insurance claim adjudication arising out of any motor vehicle accident, nor shall failure to wear or use an occupant protection system be admissible as evidence in the trial of any civil action or insurance claim adjudication.

(j) Notwithstanding any law to the contrary, any police officer is authorized to make an administrative stop for purposes of enforcing this section, upon reasonable and articulable suspicion that a violation of this section has occurred.

(68 Del. Laws, c. 34, § 1; 69 Del. Laws, c. 169, § 1; 74 Del. Laws, c. 90, §§ 1-3, 7, 8; 74 Del. Laws, c. 277, §§ 3-7; 80 Del. Laws, c. 136, § 1; 80 Del. Laws, c. 168, § 1; 82 Del. Laws, c. 93, § 1; 83 Del. Laws, c. 505, § 1; 84 Del. Laws, c. 332, § 1; 85 Del. Laws, c. 40, § 1; 85 Del. Laws, c. 161, § 1.)

§ 4803. Child restraint in motor vehicles.

(a) (1) The driver shall be responsible, when transporting a child under the age of 16 in a motor vehicle operated on the roadways, streets, or highways of this State, for providing protection of the child by properly securing the child in all seating positions, according to

manufacturer's instructions, in a child safety seat or booster seat meeting federal motor vehicle safety standards, and that is appropriate for the child's age, weight and height, or a properly secured seatbelt. The duty imposed by this subsection shall not apply to any operator or passenger of a "charter bus," "limousine" or "taxicab" as defined in § 1801 of Title 2.

(2) A child under the age of 2 years and less than 30 pounds shall be properly secured in a rear-facing child restraint equipped with a 5-point harness.

(3) A child under the age of 4 and less than 40 pounds shall be properly secured in a child restraint equipped with a 5-point harness. This restraint shall be either rear-facing or forward facing until they reach the upper height or weight limits of the restraint.

(4) A child shall be properly secured in a belt-positioning booster until they reach the upper height or weight limits of the restraint per the manufacturer's guidelines.

(5) Every child who has reached the upper height and weight limits per the manufacturer's guidelines of a belt-positioning booster seat and has not yet attained the age of 16 shall, in all seating positions, wear a properly-secured seatbelt while in a motor vehicle operated on the roadways, streets, or highways of this State.

(b) (1) No child who is 5#5# or less in height and who is under 12 years of age shall occupy the front passenger seat of any vehicle equipped with a passenger-side airbag that has not been deliberately rendered inoperable in conformity with federal law. This subsection shall not apply to vehicles equipped with a passenger-side airbag specifically designed or modified by the vehicle's manufacturer for use by children and small adults.

(2) It shall not be a violation of this section for a child 5#5# or less in height and under 12 years of age to occupy the front passenger seat of a vehicle equipped with a passenger-side airbag that has not been deliberately rendered inoperable in conformity with federal law if such vehicle does not have a rear passenger seat or if all rear passenger seats are occupied by other children 5#5# or less in height and under 12 years of age. A violation of this subsection shall be considered a secondary offense, and no motor vehicle shall be stopped by a police officer solely for failure to comply with this subsection.

(c) A second or subsequent violation of this section shall be an offense punishable by a fine of $25 for each violation. The failure to provide a child restraint system or seat belt for more than 1 child in the same vehicle at the same time, as required by this section, shall not be treated as a separate offense. Law enforcement should provide a referral to a car seat fitting station sanctioned by the Office of Highway Safety for guidance and education regarding proper use of a child restraint.

(d) A violation of this section shall not be considered as evidence of either comparative or contributory negligence in any civil suit or of criminal negligence or recklessness in any criminal action arising out of any motor vehicle accident in which a child under 16 is injured, nor shall failure to wear a child passenger restraint system or seat belt in violation of this section be admissible as evidence in the trial of any civil action.

(e) Following December 27, 2023, the Department of Safety and Homeland Security shall implement an awareness campaign to educate motorists about the components of the law and to encourage the public to correctly and consistently uses child safety seats, booster seats and seatbelts.

(63 Del. Laws, c. 251, § 1; 66 Del. Laws, c. 409, §§ 1, 2; 68 Del. Laws, c. 9, § 38; 68 Del. Laws, c. 34, § 2; 69 Del. Laws, c. 418, §§ 1-8; 71 Del. Laws, c. 480, § 1; 73 Del. Laws, c. 254, §§ 1-3; 74 Del. Laws, c. 110, § 138; 74 Del. Laws, c. 129, § 1; 74 Del. Laws, c. 277, §§ 8, 9; 74 Del. Laws, c. 316, §§ 1, 2; 76 Del. Laws, c. 60, §§ 1-3; 84 Del. Laws, c. 73, § 1; 84 Del. Laws, c. 514, § 43.)

Part IV
Miscellaneous

Chapter 61
Civil Liability for Driver's Negligence

§ 6101. Negligence of owners and drivers of rented vehicles; insurance of liability.

(a) The owner of a motor vehicle who is engaged in the business of renting motor vehicles without drivers, who rents a vehicle without a driver to another, other than as a part of a bona fide transaction involving the sale of the motor vehicle, and permits the renter to operate the vehicle upon the highways and who does not carry or cause to be carried public liability insurance in an insurance company or companies approved by the Insurance Commissioner of this State insuring the renter against liability arising out of the renter's negligence in the operation of the rented vehicle in limits of not less than the minimum financial responsibility limits required under § 2902 of this title, shall be jointly and severally liable with the renter for any damages caused by the negligence of the renter in operating the vehicle and for any damages caused by the negligence of renting the vehicle from the owner.

(b) Subsection (a) of this section shall not confer any right of action upon any passenger in any rented vehicle specified therein as against the owner, but nothing contained in this section shall prevent the introduction as a defense of comparative or contributory negligence, to the extent to which such defense is allowed in other cases.

(c) The policy of insurance referred to in subsection (a) of this section shall inure to the benefit of any person operating the rented vehicle by or with the permission of the person so renting it in the same manner and under the same conditions and to the same extent as to the renter. The insurance policy or policies above referred to need not cover any liability incurred by the renter of any vehicle to any passenger in such vehicle, provided the owner, upon renting any such vehicle to another without a driver, gives to the renter a written notice of the fact that such policy or policies do not cover the liability which the renter may incur on account of the renter's negligence in the operation of such vehicle to any passenger in such vehicle.

(d) When any suit or action is brought against the owner under this section, the judge or court before whom the case is pending shall cause a preliminary hearing to be had in the absence of the jury for the purpose of determining whether the owner has provided, or caused to be provided, insurance covering the renter in the limits above mentioned. Whenever it appears that the owner has provided or caused to be provided insurance covering the renter in the sums above mentioned, the judge or court shall dismiss, as to the owner, the action brought under this section.

(36 Del. Laws, c. 10, § 21; Code 1935, § 5559; 21 Del. C. 1953, § 6102; 61 Del. Laws, c. 292, § 7; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 447, § 1.)

§ 6102. Notification by owner of intention to rent vehicle.

No owner of any motor vehicle who is engaged in the business of renting motor vehicles without drivers shall rent a motor vehicle without a driver, otherwise than as a part of a bona fide transaction involving the sale of such motor vehicle, unless the owner has previously notified the Department of the intention to so rent such vehicle and has complied with the requirements as to the showing of financial responsibility as provided in § 2105 [repealed] of this title.

(36 Del. Laws, c. 10, § 21; Code 1935, § 5559; 21 Del. C. 1953, § 6103; 70 Del. Laws, c. 186, § 1.)

§ 6103. Records required of owners of rented vehicles; inspection; forms.

(a) Every person engaged in the business of renting motor vehicles without drivers, who rents any such vehicle without a driver, otherwise than as part of a bona fide transaction involving the sale of such motor vehicle, shall maintain a record of the identity of the person to whom the vehicle is rented and the exact time the vehicle is the subject of such rental or in possession of the person.

(b) Whoever, being an owner, fails to make or have in possession or refuses an inspection of the record required in this section, shall be fined in such amount or imprisoned for such term, or both, as the court, in its discretion, may determine.

(c) If the Secretary prescribes a form for the keeping of the record provided for in this section, the owner shall use such form.

(36 Del. Laws, c. 10, § 22; Code 1935, § 5560; 21 Del. C. 1953, § 6104; 57 Del. Laws, c. 670, § 17A; 70 Del. Laws, c. 186, § 1.)

§ 6104. Liability of parent, guardian, or employer for negligence of minor.

(a) (1) Except as otherwise provided under paragraph (a)(2) of this section and § 6106 of this title, any negligence of a minor under age 18 driving a motor vehicle on a highway of this State, who has been licensed under § 2710 of this title, is imputed to a person who signed the license application on behalf of the minor, and that person is jointly and severally liable with the minor for any damages resulting from the minor's negligence.

(2) The following are exempted from liability for negligence of a minor under paragraph (a)(1) of this section:

a. A caregiver of a minor who is in the custody of the Department of Services for Children, Youth and Their Families under Chapter 25 of Title 13. For purposes of this paragraph (a)(2)a., "caregiver" means as defined in § 2502 of Title 13.

b. A case worker of the Division of Family Services, acting in accordance with § 2710 of this title, and on behalf of a child who was in the custody of the Department of Services for Children, Youth and their Families at the time of the signing of the license application.

(b) The liability imposed on the person who signed the application of a minor under the age of 18 under subsection (a) of this section applies to the original license or permit granted to the minor or any renewal of the license without the necessity of the person signing the minor's renewal application, unless the person notifies the Department of Transportation in writing at least 30 days before the date of the renewal of the original license or permit granted to the minor that the person does not consent to the renewal.

(36 Del. Laws, c. 10, § 71; Code 1935, § 5609; 44 Del. Laws, c. 189; 21 Del. C. 1953, § 6105; 57 Del. Laws, c. 495, § 3; 57 Del. Laws, c. 670, § 17B; 71 Del. Laws, c. 282, §§ 8, 9; 74 Del. Laws, c. 110, § 109; 76 Del. Laws, c. 415, § 6; 83 Del. Laws, c. 453, §§ 8, 11; 84 Del. Laws, c. 345, § 1.)

§ 6105. Liability of owner for negligence of minor.

Except as provided under § 6106 of this title, every owner of a motor vehicle who causes or knowingly permits a minor under the age of 18 years to drive such vehicle upon a highway and any person who gives or furnishes a motor vehicle to such minor shall be jointly and severally liable with such minor for any damages caused by the negligence of such minor in driving such vehicle, and the negligence of such minor shall be imputed to such owner or such person for all purposes of civil damages.

(36 Del. Laws, c. 10, § 72; Code 1935, § 5610; 21 Del. C. 1953, § 6106; 49 Del. Laws, c. 407; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 453, §§ 8A, 11; 84 Del. Laws, c. 345, § 1.)

§ 6106. Liability of foster parent for negligence of a child or individual.

(a) For purposes of this section, "foster parent" means as defined in § 2302 of Title 13.

(b) When a child or an individual identified in § 9011A(g)(1) of Title 29 procures a valid policy of insurance through participation in the program established under § 9011A of Title 29, a foster parent of that child or individual, who causes or knowingly permits the child or individual to drive a vehicle on a highway, or who gives or furnishes a motor vehicle to the child or individual, is not jointly and severally liable with the child or individual for damages caused by the negligence of the child or individual in driving the vehicle, and the negligence of the child or individual may not be imputed to the foster parent for purposes of civil damages.

(c) When a child or an individual identified in § 9011A(g)(1) of Title 29 does not procure a separate valid policy of insurance and is instead insured by the private passenger insurance policy of the foster parent, a foster parent of that child or individual who causes or knowingly permits the child or individual to drive a vehicle on a highway, or gives or furnishes a motor vehicle to the child or individual, may be liable for damages caused by the negligence of the child or individual in driving the vehicle only up to the policy limits of the foster parent's applicable insurance coverage.

(d) When a child or individual identified in § 9011A(g)(1) of Title 29 is within the first 6 months after issuance of a Level 1 Learner's Permit under § 2710 of this title, a foster parent of that child or individual who causes or knowingly permits the child or individual to drive a vehicle on a highway or who gives or furnishes a motor vehicle to the child or individual, may be liable for damages caused by the negligence of the child or individual in driving the vehicle only up to the policy limits of the foster parent's applicable insurance coverage.

(83 Del. Laws, c. 453, §§ 8B, 11; 84 Del. Laws, c. 39, § 1; 84 Del. Laws, c. 345, § 1.)

Part IV
Miscellaneous
Chapter 63
Sale of Motor Vehicles

§ 6301. Definitions [For application of this section, see 79 Del. Laws, c. 161, § 5].

As used in this chapter:

(1) "Consignment" is when a vehicle owner enters into an agreement with a dealer for the sale of a vehicle without a transfer of ownership to the dealer.

(2) "Dealer" or "motor vehicle dealer" includes all of the following:

a. A person, corporation, partnership, proprietorship or any other legal entity who is in the business of buying, selling or exchanging during any 12-month period 5 or more vehicles.

b. Any person, corporation, partnership, proprietorship or any other legal entity who offers to sell, sells, displays or permits the display for sale, of 5 or more vehicles within a 12-month period.

(3) "Dealer" or "motor vehicle dealer" does not include:

a. A receiver, trustee, personal representative, or other person appointed by or acting under the authority of any court of competent jurisdiction.

b. A public official who sells or disposes of vehicles in the performance of the official's duties.

c. Any financial institution chartered or authorized to do business in Delaware, including its subsidiaries or affiliates, which receives title to a motor vehicle in the normal course of its business by reason of a lease, foreclosure, repossession, judicial sale or voluntary conveyance or reconveyance of the motor vehicle as a result of any lease of the motor vehicle or any extension of credit secured by the motor vehicle or the enforcement of any lien on the motor vehicle.

d. A licensed auctioneer acting on behalf of a seller, secured party or owner and when title does not pass to the auctioneer and the auction is not for the purpose of avoiding this chapter.

e. An insurance company authorized to do business in Delaware that sells or disposes vehicles under a contract with its insured in the regular course of business.

f. Either a manufacturer or distributor who sells or distributes vehicles to licensed dealers or a person employed by a manufacturer or distributor to promote the sale of the vehicles of the manufacturer or distributor, if that manufacturer, distributor, or person does not sell vehicles to retail buyers. A manufacturer or distributor engaged in selling vehicles to retail buyers may be licensed as a dealer, subject to the limitations set forth in § 6302(g) of this title.

g. A nonprofit educational foundation organized to promote instructional effectiveness and educational achievement.

(4) "Department" shall mean the Department of Transportation, Division of Motor Vehicles.

(5) "Director" shall mean the Director of the Division of Motor Vehicles or the Director's authorized or delegated representative.

(6) "Division" shall mean the Division of Motor Vehicles.

(7) "Franchised motor vehicle dealer" means a dealer in new vehicles that has a franchise agreement with a manufacturer or distributor of vehicles or, in the case of a recreational vehicle dealer, has a manufacturer-dealer agreement with a manufacturer of distributor to sell a particular line-make of new recreational vehicle or new recreational trailer. As used in this section, the term "line-make" is defined in § 8402(7) of this title.

(8) "New motor vehicle" means a motor vehicle with a manufacturer's certificate of origin that has not been titled or registered by any state or country in the name of an end user via sale or lease and that has never been the subject of a completed, successful, or conditional sale that was subsequently approved other than between new motor vehicle dealers, or between a manufacturer and a new motor vehicle dealer of the same franchise.

(9) "New motor vehicle dealer" means a dealer or motor vehicle dealer who sells new motor vehicles.

(10) "Retail dealer" means a dealer who may sell vehicles to another dealer, licensed auto auction, or retail customers.

(11) "Used motor vehicle" means a motor vehicle that has been sold, bargained, exchanged, given away, or title transferred from the person who first acquired it from the manufacturer or importer, dealer or agent of the manufacturer or importer and so used as to have become what is commonly known as "secondhand" within the ordinary meaning thereof. "Used motor vehicle" also includes a motor vehicle that has been driven for 7500 miles or more, or that has been used for personal use by an employee or owner of a new motor vehicle dealer, or by a family member of an employee or owner of a new motor vehicle dealer, regardless of whether the motor vehicle would otherwise qualify as a new motor vehicle.

(12) "Used motor vehicle dealer" means a dealer or motor vehicle dealer who exclusively sells used motor vehicles.

(13) "Vehicle" means motor vehicles, trailers, recreational vehicles, recreational trailers, mobile homes, and any other device, in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by animal power, human power, electric bicycles, off-highway vehicles, special mobile equipment and farm equipment.

(14) “Wholesale dealer” means a dealer who may sell vehicles only to another dealer or licensed auto auction.

(71 Del. Laws, c. 449, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 110; 75 Del. Laws, c. 33, § 2; 79 Del. Laws, c. 44, § 2; 79 Del. Laws, c. 161, § 2; 83 Del. Laws, c. 505, § 3; 84 Del. Laws, c. 389, § 7.)

§ 6302. License requirements [For application of this section, see 85 Del. Laws, c. 40, § 15].

(a) *Department approval.* — No person, corporation, partnership, proprietorship or any other legal entity shall carry on or conduct the business of buying, selling or dealing in new or used vehicles unless issued a dealer’s license by the Department. A dealer license issued under this title is not transferrable.

(b) *Application.* — Application for a dealer’s license shall be made upon the form prescribed by the Department and shall contain the name and address of the applicant. When the applicant is a partnership the name and address of each partner shall appear on the application. When the application is a corporation, the names of the principal officers of the corporation, the state in which incorporated, the place or places where the business is to be conducted and such other information as may be required by the Department shall appear on the application. Every such application shall contain a certification by the applicant that the information provided is true and accurate to the best of the applicant’s knowledge.

(c) *Resident requirements.* — The owner of a dealership must have been issued a Delaware driver’s license and established residency in Delaware at least 90 days prior to the time of application. Franchised and new vehicle dealers are exempted from this requirement.

(d) *Age requirement.* —

The applicant must be at least 18 years of age on the date the application is submitted to the Department.

(e) *Fingerprinting requirement.* — (1) An applicant seeking a license or license renewal, if more than 5 years have passed since original licensure process, must submit fingerprints and other necessary information in order to obtain a report of the applicant’s entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Central Repository contains no such information relating to the applicant.

(2) All information obtained under this subsection shall be forwarded to the Division for review to determine the applicant’s suitability for licensure pursuant to § 6313 of this title. Information obtained under this subsection is confidential and may only be disclosed to the Director of the Division or the Director’s designee. The State Bureau of Identification may release subsequent criminal history to the Division.

(f) Fee. —

(1) The application fee for a license is $100.

(2) The license renewal fee is $50.

(3) All dealerships must obtain a yearly dealer business license from the Department of Finance, Division of Revenue. Wholesale dealers must also obtain an additional wholesale license pursuant to § 6307 of this title. The business license or licenses must be kept at the business location and be available for inspection by the Department.

(g) *Restriction upon ownership of dealership by manufacturer, importer or distributor*. — A manufacturer, importer, or distributor, or agent of a manufacturer, importer, or distributor, or parent, subsidiary, common entity, officer, or currently employed representative of the manufacturer, importer, or distributor, may not directly or indirectly own, operate, or control, by contract, agreement, or otherwise, a motor vehicle dealership in this State if the manufacturer, importer, or distributor has manufactured, imported, or distributed motor vehicles of any line-make which have been or are offered for sale under a franchise agreement in this State with an independent person. Any person who is not prohibited by this section from owning, operating, or controlling a motor vehicle dealership may be issued a dealer license, provided that all applicable licensing requirements are satisfied. Any person prohibited by this section from owning, operating, or controlling a motor vehicle dealership may not be issued a dealer license.

Whenever used in this section, unless the context otherwise requires, the following words and terms have the following meanings:

(1) “Common entity” means a person:

a. Who is directly or indirectly controlled by or has more than 30% of its equity interest directly or indirectly owned, beneficially or of record, through any form of ownership structure, by a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof; or

b. Who has more than 30% of its equity interest directly or indirectly controlled or owned, beneficially or of record, through any form of ownership structure, by 1 or more persons who also directly or indirectly control or own, beneficially or of record, more than 30% of the equity interests of a manufacturer, an importer, or any affiliate thereof.

(2) “Importer” means any person who imports motor vehicles from a foreign country into the United States or into this State for the purpose of sale or lease.

(3) “Independent person” means a person who is not an agent, a parent, a subsidiary, a common entity, an officer, a director, or an employed representative of a manufacturer, importer, or distributor.

(36 Del. Laws, c. 10, § 46; Code 1935, § 5583; 21 Del. C. 1953, § 6301; 65 Del. Laws, c. 79, §§ 1-4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 449, § 1; 83 Del. Laws, c. 511, § 1; 84 Del. Laws, c. 389, § 8; 85 Del. Laws, c. 40, § 12.)

§ 6303. Location requirements; records [For application of this section, see 79 Del. Laws, c. 161, § 5].

(a) Except as provided in § 6311(b) of this title, no dealers license shall be issued to any vehicle dealer unless the dealership has an established place of business owned, rented, or leased by the dealership and which:

(1) Satisfies all local zoning requirements. Zoning approval shall be submitted to the Division when the application is submitted;

(2) Has sales and office space devoted to the dealership and has adequate display space for 5 or more vehicles, and, in the case of a new recreational vehicle dealer, has a service facility;

(3) Has a telephone installed in the office and listed in the business name;

(4) Has adequate liability insurance as required by § 2118 of this title;

(5) Has a sign on the premises measuring at least 24 x 36 inches which lists the dealership's approved name.

(b) The dealership office shall maintain and have adequate file cabinets to maintain records required by the Department. All dealer records regarding purchases, sales, transfers of ownership, collection of vehicle document fees, titling, registration fees, odometer disclosure statements, temporary license plates and records of dealer registration plates assigned to the dealer shall be maintained on the premises of the licensed location. All records shall be maintained for a minimum of 5 years. The Director may, on written request by a dealer, permit records to be maintained at a location other than the premises of the licensed location for good cause shown.

(c) Every dealer shall have in its possession a certificate of title assigned to the dealership or other documentary evidence of the dealer's right to the possession of, and for every vehicle in the dealership's possession or on the dealership premises.

(d) During business hours, the records of the dealership shall be open to inspection by Department officials, any police officer or any duly authorized investigator at the Department of Justice while discharging their official duties.

(71 Del. Laws, c. 449, § 1; 79 Del. Laws, c. 161, § 2.)

§ 6304. Expiration and renewal of license.

Each license issued under this title shall expire at midnight on December 31 of the period for which it was issued and may be renewed upon application to the Department prior to its expiration. Dealers who have not sold a minimum of 5 vehicles between January 1 and December 31 of each year shall be denied license renewal. The Director of the Division of Motor Vehicles may, on written request by a dealer, permit renewal of a dealer's license for dealers selling less than 5 vehicles for good cause shown in writing to the Department.

(71 Del. Laws, c. 449, § 1.)

§ 6305. Bill of sale.

Every motor vehicle dealer shall complete, in duplicate, a bill of sale for each sale or exchange of a motor vehicle. The original shall be retained for a period of 5 years. A duplicate copy shall be delivered to the purchaser at the time of sale or exchange. The bill of sale shall be signed by both buyer and seller. A bill of sale shall include the following:

(1) The name and address of the person to whom the vehicle was sold or traded;

(2) The date of the sale or trade;

(3) The name and address of the motor vehicle dealer selling or trading the vehicle;

(4) The make, model, year, vehicle identification number and body style of the vehicle;

(5) The sale price of the vehicle;

(6) The amount of any deposit made by the buyer;

(7) A description of any Delaware titled vehicle used as a trade-in and the amount credited the buyer for the trade-in;

(8) The amount of the document fee, title fee, registration fee or any other fee for which the buyer is responsible and the dealer has collected; each fee shall be individually listed and identified; and

(9) The amount of any balance due at settlement.

(36 Del. Laws, c. 10, § 47; Code 1935, § 5585; 21 Del. C. 1953, § 6303; 65 Del. Laws, c. 79, § 11; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 449, § 1.)

§ 6306. Consignment vehicles-contract.

Any motor vehicle dealer offering a vehicle for sale on consignment shall have in their possession a consignment contract for the vehicle, executed and signed by the dealer and the consignor. The consignment contract shall include the following:

(1) The complete name and address of the owner(s);

(2) The name, address and dealer identification number of the selling dealer;

(3) A complete description of the vehicle on consignment, including the make, model, year, vehicle identification number and body style;

(4) The beginning and termination dates of the contract;

(5) The percentage or the net amount the owner is to receive, if the vehicle is sold;

(6) A disclosure of all unsatisfied liens on the vehicle and the location of the certificate of title to the vehicle.

Any dealer offering a vehicle for sale on consignment shall inform any prospective customer that the vehicle is on consignment. Dealer license plates shall not be used to demonstrate a vehicle on consignment. The owners license plate may be used if liability insurance coverage is in effect in the amount prescribed by Delaware law.

(71 Del. Laws, c. 449, § 1.)

§ 6307. Wholesale Dealers.

(a) A wholesale dealer who is licensed by the Division is authorized to do the following:

(1) Buy a vehicle from another dealer, a licensed auto auction or retail seller;

(2) Sell a vehicle to, or exchange vehicles only with another dealer or through a licensed auto auction;

(3) A wholesale dealer may operate from a private residence and is not required to comply with § 6303(a)(2) and (5) of this title.

(b) A wholesale dealer may not:

(1) Sell or exchange vehicles with a retail buyer; and

(2) Buy, sell or exchange new vehicles; and

(3) Sell vehicles on consignment.

(71 Del. Laws, c. 449, § 1.)

§ 6308. Auctions.

(a) Each person who conducts auctions of vehicles shall keep a record of each of the following:

(1) The name and address of the consignor or seller;

(2) The date on which the vehicle was consigned;

(3) The year, make, model and vehicle identification number of each vehicle consigned;

(4) The title number and State where the vehicle was last registered;

(5) The odometer mileage reading at the time of consignment;

(6) The name and address of the person to whom the vehicle was sold;

(7) The buyer's driver's license number and state which issued the license;

(8) The selling price; and

(9) The date of sale.

(b) During business hours, auction records shall be open for inspection by Division of Motor Vehicle officials, any police officer or any duly authorized investigator at the Department of Justice while discharging their official duties.

(c) Auction sales must be performed at the approved auction location.

(d) All records required by this section shall be maintained for 5 years after the sale of the vehicle to which such records apply.

(e) Auctions are authorized to issue 30-day temporary license plates under § 2130 of this title to allow vehicles to be removed from the auction lot. The temporary plates shall only be issued to individuals with a valid driver's license. The auction shall witness and record proof of any legally required liability insurance on a vehicle prior to the issuance of the temporary license plate.

(71 Del. Laws, c. 449, § 1; 72 Del. Laws, c. 97, § 1.)

§ 6309. Prohibited acts.

(a) A dealer, its agent or an employee of a dealer may not permit any individual to road test a motor vehicle if they know the individual does not have a valid driver's license.

(b) A dealer or an agent or employee of a dealer may not commit any fraud in the execution of, or any material alteration of, a contract, power of attorney or other document incident to a sale or exchange of a vehicle.

(c) A dealer or an agent or employee of a dealer may not wilfully fail to comply with the terms of a warranty or guarantee. A Federal Trade Commission Buyers Guide will be properly completed and displayed on all used vehicles. Buyer(s) will be provided a copy of the Guide prior to completion of the sale.

(d) A dealer or agent of a dealer must disclose to a buyer if the vehicle title has been branded "reconstructed", "flood damaged", "salvage" or was a "taxi". The buyer(s) shall acknowledge the disclosure as described in this subsection by signing a disclosure statement which has been approved by the Division of Motor Vehicles and is provided by the dealership. A copy of the disclosure statement shall be provided to the Delaware Division of Motor Vehicles with the title application. In the absence of any disclosure statement, the contract may be rescinded at any time by the buyer and the dealer shall provide a full and complete refund to the buyer of all purchase moneys, including interest paid, plus all fees paid. Disclosure shall not prevent any person from otherwise bringing any action under any law for a failure to disclose material information concerning the condition or prior use of any vehicle.

(71 Del. Laws, c. 449, § 1.)

§ 6310. Acts of officers, directors, partners, and sales persons.

If a licensee is a partnership or corporation, it shall be sufficient cause for the denial or suspension of a license if any officer, director or trustee of the partnership or corporation, or any member in the case of a partnership, has committed any act or omitted any duty which would be cause for denial or suspending a license issued to such licensee as an individual under this chapter. Each licensee shall be responsible for all acts of any of their salespersons while acting as their agent, if the licensee approved of those acts or had knowledge of those acts or other similar acts and after such knowledge retained the benefit, proceeds, profits or advantages accruing from those acts.

(71 Del. Laws, c. 449, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1.)

§ 6311. License requirements [For application of this section, see 79 Del. Laws, c. 161, § 5].

(a) In the event any dealer intends to change a licensed location, the dealer shall provide the Division of Motor Vehicles advance written notice. A successful inspection of the new location shall be required prior to approval of a change of location by the dealer. All requirements of § 6303 of this title shall be completed prior to final approval.

(b) Notwithstanding anything herein to the contrary, a recreational vehicle dealer may sell and display new and used recreational vehicles or recreational trailers at trade or public retail vehicle shows, rallies, or exhibitions, including those in enclosed malls, for up to 14 days per event, provided that:

(1) Delaware recreational vehicle dealers outside of their "area of sales responsibility," as the term is defined in § 8402(1) of this title, do not exhibit, sell or offer for sale the same line-make of recreational vehicle or recreational trailers as a Delaware dealer whose area of sales responsibility encompasses the location of the recreational vehicle trade show or public retail vehicle show, or rally or exhibition, where the term "line-make" has the same meaning as defined in § 8402(7) of this title; and without the written permission of the dealer whose area of responsibility encompasses the show, rally, or exhibition site;

(2) An out-of-state recreational vehicle dealer, without an established place of business in Delaware, must meet all of the following conditions:

a. The dealer must be from a state contiguous to Delaware that permits Delaware dealers to participate in recreational vehicle trade shows, or public retail vehicle shows, or rallies, or exhibitions, including those in enclosed malls, in the dealer's state under conditions substantially equivalent to those imposed on out-of-state dealers by Delaware;

b. The dealer must be in compliance with the laws of the dealer's state of residence;

c. The recreational vehicle trade show or public retail vehicle show, or rally, or exhibition in which the dealer is participating must have a minimum of 3 participating dealers, the majority of which are from Delaware;

d. The dealer may not exhibit, sell, or offer for sale the same line-make of recreational vehicle or recreational trailers as a Delaware dealer who is participating in the same recreational vehicle trade show or public retail vehicle show, rally, or exhibition without the Delaware dealer's written permission, where the term "line-make" has the same meaning as defined in § 8402(7) of this title; and

(3) In the event that an out-of-state dealer is in violation of paragraph (b)(2) of this section, the affected in-state dealer may bring a cause of action pursuant to § 8411(c) of this title.

(71 Del. Laws, c. 449, § 1; 79 Del. Laws, c. 161, § 2.)

§ 6312. Issuance of dealer license [For application of this section, see 79 Del. Laws, c. 161, § 5].

Upon receiving a dealer license application for approval, and satisfied that the applicant is of good character and, so far as can be ascertained, the applicant has complied with and will comply with, the laws of this and other states, the Department shall approve the application and issue a dealer license. A license entitles a dealer to carry on and conduct the business of a dealer during the calendar year in which the license is issued. Franchised new vehicle dealers must provide the Division a copy of the franchise agreement, or, in the case of a recreational vehicle dealer, a manufacturer-dealer agreement, prior to being licensed as a new vehicle dealer.

(36 Del. Laws, c. 10, § 46; Code 1935, § 5584; 21 Del. C. 1953, § 6302; 52 Del. Laws, c. 191; 65 Del. Laws, c. 79, §§ 5-10; 71 Del. Laws, c. 449, § 1; 79 Del. Laws, c. 161, § 2.)

§ 6313. Grounds for denying application for, or renewal of, dealer license; suspension or revocation of license [For application of this section, see 79 Del. Laws, c. 161, § 5].

A dealer license or renewal of license, applied for or issued pursuant to this chapter may be denied, suspended, or revoked for any 1 of the following reasons:

(1) Material misstatement or omission on the original or renewal application for a dealer license.

(2) Failure to maintain an established place of business, business phone or Division of Revenue Dealer Business License.

(3) Failure to comply subsequent to receipt from the Division of a cease and desist order or a written warning or arrest.

(4) Failure to comply with this title or Title 30.

(5) Conviction of a felony in this State or any other jurisdiction. For waiver of a felony conviction, at the time of application, more than 10 years must have elapsed since the date of conviction. At the time of the application the applicant may not be incarcerated, on

work release, on probation, on parole, or serving any part of a suspended sentence, and must be in substantial compliance with all court orders pertaining to fines, restitution, and community service.

(6) Conviction of a misdemeanor involving theft, fraud, dishonesty, false pretense, or moral turpitude, in this State or any other jurisdiction. For waiver of a misdemeanor conviction, at the time of application, more than 5 years must have elapsed since the date of conviction. At the time of application the applicant may not be incarcerated, on work release, on probation, on parole, or serving any part of a suspended sentence, and must be in substantial compliance with all court orders pertaining to fines, restitution, and community service.

(7) The Department will defer any license application or renewal if the applicant has pending felony or misdemeanor charges, as specified in paragraphs (5) and (6) of this section, during the pendency of the charges.

(8) Failure of the applicant to notify the Department within 72 hours of any known change in criminal history.

(9) The Department makes a determination, so far as can be ascertained, that the applicant or licensee no longer meets the standard set forth in § 6312 of this title.

(10) Failure to maintain a service facility, if the licensee is a dealer of new recreational vehicles. Recreational vehicle dealers with multiple locations in Delaware may maintain a service facility at 1 location to satisfy this requirement.

(11) The applicant was a previous holder of a license that was suspended or revoked by the Department and the terms of such suspension have not been satisfied.

(12) The applicant or licensee solely employs call forwarding, telephone answering services and/or mail forwarding services during scheduled business hours or otherwise sells motor vehicles from a remote or otherwise unlicensed location.

(13) Failure to maintain fiscal responsibility including failure to timely file personal and business federal and state tax returns.

(71 Del. Laws, c. 449, § 1; 79 Del. Laws, c. 161, § 2; 81 Del. Laws, c. 342, § 1; 83 Del. Laws, c. 511, § 1.)

§ 6314. Suspension and hearing notices.

(a) No license issued under this title shall be suspended, revoked or renewal thereof refused, until a written copy of the complaint made has been furnished to the licensee against whom the same is directed. The written notice of complaint shall be sent to the licensee by certified mail, return receipt requested, addressed to the last known address as shown on the license or dealership application or other record of information in possession of the Division. The written notice shall inform the licensee of the following:

(1) This Division's intention to suspend, revoke or deny renewal of the dealership license.

(2) The nature of the complaint and the law or regulation allegedly violated by the dealership.

(3) The notice shall cite the law or regulation giving the Division authority to act.

(4) The notice shall inform the dealer of its right to request a hearing to dispute the complaint. The hearing must be requested within 10 days from earlier of the dates that the dealer received the certified letter or the Division received the return receipt on the certified letter.

(5) The notice shall inform the dealer of its right to present evidence, to be represented by counsel and to appear personally or by other representative at the hearing.

(b) The Division shall inform a dealer requesting a hearing of the date, time and place the hearing shall be held. The notification shall be provided by certified mail, return receipt requested, and shall give at least 20 days prior notice to all parties involved, unless waived by the dealer. The notice shall inform the parties of the Division's obligation to reach its decision based upon the evidence received.

(c) The Division Director or designated representative may order a temporary emergency dealer license suspension. Any suspension issued under this subsection shall be exempt from the provisions required in subsections (a) and (b) of this section, except as provided herein.

The following guidelines shall apply for this temporary suspension.

(1) If a dealer has 5 outstanding violations of §§ 2306(e) and/or 2509 of this title for not submitting a buyer's vehicle title application to the Division within the required 30 days from the date of sale; and

(2) A dealer has been provided 5 days' written notice by the Division to submit the required paperwork but has failed to comply, then the Division will place a temporary emergency dealer license suspension notice on or near the entrance of the dealer's place of business to notify potential buyers that the dealer's license is temporarily suspended.

(3) Unauthorized removal of the notice or failure to comply with the temporary emergency dealer license suspension order may result in the immediate permanent suspension of the dealer's license, after notice and an opportunity for a hearing under subsections (a) and (b) of this section.

(4) The temporary emergency dealer license suspension will be lifted by the Division when the required vehicle title applications and payments are submitted to the division.

(5) A dealer who fails to submit the required vehicle title applications and payments within 10 days after receiving a temporary emergency dealer license suspension may have its dealer license permanently suspended, after notice and an opportunity for a hearing under subsections (a) and (b) of this section.

(71 Del. Laws, c. 449, § 1; 77 Del. Laws, c. 108, § 1.)

§ 6314A. Effect of suspension, revocation, or renewal refusal on licensee.

(a) Dealers who have their dealer license suspended, revoked, or renewal refused pursuant to this title are prohibited from being employed at any dealership licensed pursuant to this title in any of the following positions:

(1) Manager.

(2) Sales person in any capacity.

(3) Authorized signer.

(4) Any other position in which the individual would interact with customers, handle financial transactions, or complete any paperwork required to be submitted to the Division.

(b) Dealers who have their dealer license suspended, revoked, or renewal refused pursuant to this title are prohibited from being employed in any of the capacities listed in this section for the following time periods:

(1) If a license is revoked, for 5 years from the effective date of the revocation.

(2) If a license is suspended, for the length of the suspension from the effective date of the suspension.

(3) If renewal is refused, for 12 months from the date that the dealer received the certified letter sent pursuant to § 6314(a) of this title or any time period set forth in a decision issued by the Division on appeal. If the certified letter is unable to be delivered, the 12-month period will start 30 days after the Division mails the certified letter required by § 6314(a) of this title.

(4) If the dealer receives a notice pursuant to § 6314 of this title that its license will be suspended, or renewal refused, and the dealer chooses not to request a hearing pursuant to § 6314(a) of this title, for 12 months from the date that the dealer received the certified letter sent pursuant to § 6314(a) of this title. If the certified letter is unable to be delivered, the 12-month period will start 30 days after the Division mails the certified letter required by § 6314(a)(4) of this title.

(5) If the dealer receives a notice pursuant to § 6314 of this title that its license will be revoked and the dealer chooses not to request a hearing pursuant to § 6314(a) of this title, for 5 years from the date that the dealer received the certified letter sent pursuant to § 6314(a) of this title. If the certified letter is unable to be delivered, the 5-year period will start 30 days after the Division mails the certified letter required by § 6314(a)(4) of this title.

(c) The Division shall notify any dealer subject to the restrictions set forth in this section by certified mail, return receipt requested, addressed to the last known address as shown on the license or dealership application or other record of information in possession of the Division, to turn in all documentation required by § 6316 of this title. If the dealer does not return the documentation required by § 6316 of this title within 10 days from the date that the dealer receives the certified letter, the time periods set forth above will be extended out by 1 day for every day past day 10 the § 6316 of this title documentation is outstanding. If the certified letter is unable to be delivered, the counting for the purposes of the extension period will start 30 days after the Division mails the certified letter. The Division shall notify the dealer in writing on a monthly basis of any extensions for failure to turn in documentation required by § 6316 of this title. If the documentation required by § 6316 of this title is not turned in within 6 months from the date required in this section, the time periods set forth above will be extended indefinitely. A dealer may turn in documentation at any time after the 6-month period and the prohibited employment time period will end 12 months after the date the documentation is turned in, or when the extended time period was set to end, whichever is longer.

(d) The prohibitions set forth in this section apply to any individual licensee, or if the licensee is a partnership, each individual partner listed on the application submitted pursuant to § 6302 of this title, or if the licensee is a corporation, the individual or individuals who signed the application submitted pursuant to § 6302 of this title on behalf of the corporation.

(e) Should the Division learn that a dealer has been employed in violation of the section, the period of time set forth in this section shall be extended by 6 months for every month the dealer is employed in violation of this section. The Division shall notify the dealer of any violation in writing by certified mail, return receipt requested, addressed to the last known address as shown on the license or dealership application or other record of information in possession of the Division. The written notice shall inform the dealer of the following:

(1) This Division’s intention to extend the suspension, revocation, or other time period set forth in this section.

(2) The nature of the violations by the dealer.

(3) The notice shall inform the dealer of its right to request a hearing to dispute the violation. The hearing must be requested within 10 days from earlier of the dates that the dealer received the certified letter or the Division received the return receipt on the certified letter.

(4) The notice shall inform the dealer of its right to present evidence, to be represented by counsel and to appear personally or by other representative at the hearing.

(f) Any hearings requested by a dealer under this section shall follow the procedures set forth in §§ 6314(b) and 6315 of this title.

(83 Del. Laws, c. 163, § 1.)

§ 6315. Hearings.

(a) If the Division refuses an application for a license, denies a renewal of a license or proposes the suspension or revocation of a dealer’s license, the Division shall provide a hearing when requested under § 6314 of this title. At the hearing the licensee shall have the right to be heard personally, by counsel or by its agent. The Director may initiate investigations, appoint a hearing officer and

subpoena witnesses. After the hearing, the Director, upon receiving a decision from the hearing officer upholding the Division's position, may suspend or revoke a dealer's license, deny a renewal or refuse to approve an application. The Director shall consider prior to any suspension, revocation, denial of renewal or refusal to approve an application:

(1) The nature of the violation(s) and the dealer's willingness to make restitution to all parties harmed by dealership actions.

(2) The effect of the proposed action on the community.

The Director shall provide written notice to all parties involved of the decision by certified mail, return receipt requested. The decision is appealable to the Superior Court. Any appeal must be filed within 30 days of the earlier of the receipt of the decision by the dealer or the date of receipt of the return receipt by the Division.

(b) Should a dealer fail to maintain an established place of business, the Division may cancel the license without a hearing after notification of the intent to cancel has been sent by certified mail, to the dealer at the dealer's residence and business addresses, and the notices are returned undelivered or the dealer does not respond within 20 days from the date the notices were sent.

(71 Del. Laws, c. 449, § 1.)

§ 6316. Return of license, dealer number plates, temporary license plates, and dealer reassignment forms.

If the Division suspends, revokes or denies the renewal of the license of any dealer licensed under this chapter, the dealer immediately shall return the license, dealer number plates, temporary license plates and dealer reassignment forms belonging to the dealer. The Division may grant the licensee up to 30 days to dispose of vehicles belonging to the dealer.

(71 Del. Laws, c. 449, § 1.)

§ 6317. Cease and desist orders and injunctive relief [For application of this section, see 79 Del. Laws, c. 161, § 5].

In addition to the legal remedies provided for in this chapter, the Division of Motor Vehicles is authorized to issue cease and desist orders to any person, corporation, partnership, proprietorship or other legal entity who violates this chapter. The Division is also authorized to file a complaint for injunctive relief with the Court of Chancery upon notice that a cease and desist order is violated. The Chancery Court is authorized to award attorney fees and costs to the Division if a preliminary or permanent injunction is granted by the court. Nothing herein shall prevent the Attorney General from seeking any other civil remedy or criminal sanction for any conduct constituting a violation of this chapter.

(71 Del. Laws, c. 449, § 1; 79 Del. Laws, c. 161, § 2.)

§ 6318. Penalties.

(a) Whoever violates any provision of this chapter shall be guilty of an unclassified misdemeanor and shall be fined not less than $50 nor more than $575.

(b) Subsection (a) of this section shall not apply to violations for which penalties are prescribed elsewhere in this title.

(36 Del. Laws, c. 10, § 49; Code 1935, § 5587; 21 Del. C. 1953, § 6306; 68 Del. Laws, c. 9, § 56; 71 Del. Laws, c. 449, § 1; 73 Del. Laws, c. 407, § 1.)

Part IV
Miscellaneous
Chapter 64
Odometers

§ 6401. Findings; purpose.

The General Assembly hereby finds that purchasers when buying motor vehicles rely heavily on the odometer reading as an index of the condition and value of such vehicle; that purchasers are entitled to rely on the odometer reading as an accurate reflection of the mileage actually traveled by the vehicle; that an accurate indication of the mileage traveled by a motor vehicle assists the purchasers in determining its safety and reliability; and that motor vehicles move in the current of interstate and foreign commerce or affect such commerce. It is therefore the purpose of this chapter to prohibit tampering with odometers on motor vehicles and to establish certain safeguards for the protection of purchasers with respect to the sale of motor vehicles having altered or reset odometers.

(62 Del. Laws, c. 255, § 1.)

§ 6402. Definitions.

As used in this chapter:

(1) “Dealer” or “dealership” means any person, corporation, partnership or limited partnership who has sold 5 or more motor vehicles within the 12 months preceding the date of a violation of this chapter.

(2) “Lessee” means any person, or the agent for any person, who has leased for a term of at least 4 months.

(3) “Lessor” means any person, or the agent for any person, who has leased 5 or more motor vehicles in the past 12 months.

(4) “Mileage” means actual distance that a vehicle has traveled.

(5) “Odometer” means an instrument for measuring and recording the actual distance a motor vehicle travels while in operation; but shall not include any auxiliary odometer designed to be reset by the operator of the motor vehicle for the purpose of recording mileage on trips.

(6) “Repair and replacement” means to restore to a sound working condition by replacing the odometer or any part thereof by correcting what is inoperative.

(7) “Secure printing process or other secure process” means any process which deters and detects counterfeiting and/or unauthorized reproduction and allows alterations to be visible to the naked eye.

(8) “Transfer” means to change ownership of a motor vehicle by purchase, gift or any other means.

(9) “Transferee” means any person to whom ownership in a motor vehicle is transferred by purchase, gift or other means other than by creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferee.

(10) “Transferor” means any person who transfers ownership of a motor vehicle by sales, gift or any means other than by creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferor.

(62 Del. Laws, c. 255, § 1; 69 Del. Laws, c. 113, § 1.)

§ 6403. Unlawful devices.

No person shall advertise for sale, sell, use or install or cause to be installed, any device which causes an odometer to register any mileage other than the true mileage traveled by a motor vehicle. For purposes of this section, the true mileage traveled by a motor vehicle is that mileage traveled by a motor vehicle as registered by the odometer within the manufacturer’s designed tolerance.

(62 Del. Laws, c. 255, § 1.)

§ 6404. Unlawful change of mileage.

(a) Unless otherwise provided in § 6406 of this title, no person shall disconnect, reset or alter or cause to be disconnected, reset or altered, the odometer of any motor vehicle.

(b) Unless otherwise provided in § 6406 of this title, no person shall disconnect, reset or alter or cause to be disconnected, reset or altered, the odometer of any motor vehicle with intent to change the number of miles indicated thereon.

(62 Del. Laws, c. 255, § 1.)

§ 6405. Possession with intent to defraud.

No person shall, with intent to defraud, possess a motor vehicle knowing that the odometer of such vehicle is disconnected or nonfunctional.

(62 Del. Laws, c. 255, § 1.)

§ 6406. Lawful service, repair or replacement.

(a) Nothing in this chapter shall prevent the service, repair or replacement of an odometer, provided the mileage indicated thereon remains the same as before the service, repair or replacement. Where the odometer is incapable of registering the same mileage as before

such service, repair or replacement, the odometer shall be adjusted to read "0" and a notice in writing shall be attached to the left door frame of the vehicle by the owner or the owner's agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced.

(b) (1) No person shall fail to adjust an odometer or affix a notice regarding such adjustment as required pursuant to subsection (a) of this section.

(2) No person shall, with intent to defraud, remove or alter any notice affixed to a motor vehicle pursuant to subsection (a) of this section.

(62 Del. Laws, c. 255, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6407. Disclosure of odometer information.

(a) Each Delaware title, at the time it is issued to the transferee, must contain the mileage disclosed by the transferor when ownership of the vehicle was transferred and contain a space for the information required to be disclosed under subsections (c)-(f) of this section at the time of any future transfer.

(b) Any documents which are used to reassign a title shall contain a space for the information required to be disclosed under subsections (c)-(f) of this section at the time of transfer of ownership.

(c) In connection with the transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title or on the document being used to reassign the title. This written disclosure must be signed by the transferor, including the transferor's printed name. In connection with the transfer of ownership of a motor vehicle in which more than 1 person is a transferor, only 1 transferor need sign the written disclosure. In addition to the signature and printed name of the transferor, the written disclosure must contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model, year and body type and its vehicle identification number.

(d) In addition to the information provided under subsection (c) of this section, the statement shall refer to the federal law and shall state that failing to complete or providing false information may result in a fine and/or imprisonment. Reference may also be made to applicable state law.

(e) In addition to the information provided under subsections (c) and (d) of this section:

(1) The transferor shall certify that to the best of the transferor's knowledge the odometer reading reflects the actual mileage;

(2) If the transferor knows that the odometer reading reflects a total mileage in excess of the designed mechanical odometer limit, the transferor shall include a statement to that effect; or

(3) If the transferor knows that the odometer reading otherwise differs from the actual mileage and that the difference is greater than that caused by odometer calibration error, the transferor shall include a statement that the odometer reading does not reflect the actual mileage, and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and actual mileage.

(f) The transferee shall sign the disclosure statement, print the transferor's name, and return a copy to the transferor.

(g) If the vehicle has not been titled or if the title does not contain a space for the information required, the written disclosure shall be executed as a separate document.

(h) No person shall sign an odometer disclosure statement as both the transferor and the transferee in the same transaction, unless permitted by §§ 6410 and 6411 of this title.

(62 Del. Laws, c. 255, § 1; 69 Del. Laws, c. 113, § 2; 70 Del. Laws, c. 186, § 1.)

§ 6408. Exemptions.

Notwithstanding the requirements of § 6407 of this title:

(1) A transferor or lessee of any of the following motor vehicles need not disclose the vehicle's odometer mileage:

a. A vehicle having a gross vehicle weight rating of more than 16,000 pounds.

b. A vehicle that is not self-propelled.

c. A vehicle manufactured in or before the 2010 model year that is transferred at least 10 years after January 1 of the calendar year corresponding to its designated model year.

d. A vehicle manufactured in or after the 2011 model year that is transferred at least 20 years after January 1 of the calendar year corresponding to its designated model year.

e A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications.

(2) A transferor of a new vehicle prior to its first transfer for purposes other than resale need not disclose the vehicle's odometer mileage.

(3) A lessor of any of the vehicles listed in paragraph (1) of this section need not notify the lessee of these vehicles of the disclosure requirements of § 6409 of this title.

(69 Del. Laws, c. 113, § 4; 83 Del. Laws, c. 161, § 1.)

§ 6409. Disclosure of odometer information for leased motor vehicles.

(a) Before executing any transfer of ownership document, each lessor of a leased motor vehicle shall notify the lessee in writing that the lessee is required to provide a written disclosure to the lessor regarding the mileage. This notice shall contain a reference to the federal law and shall state that failing to complete or providing false information may result in a fine and/or imprisonment. Reference may also be made to applicable state law.

(b) In connection with the transfer of ownership of a leased motor vehicle, the lessee shall furnish to the lessor a written statement regarding the mileage of the vehicle. This statement must be signed by the lessee and, in addition to the information required by subsection (a) of this section, shall contain the following information:

(1) The printed name of the person making the disclosure;

(2) The current odometer reading (not to include tenths of miles);

(3) The date of the statement;

(4) The lessee's name and current address;

(5) The lessor's name and current address;

(6) The identity of the vehicle, including its make, model, year, body type and its vehicle identification number;

(7) The date that the lessor notified the lessee of the disclosure requirements;

(8) The date that the completed disclosure statement was received by the lessor; and

(9) The signature of the lessor.

(c) In addition to the information provided under subsections (a) and (b) of this section:

(1) The lessee shall certify that to the best of the lessee's knowledge the odometer reading reflects the actual mileage;

(2) If the lessee knows that the odometer reading reflects a total mileage in excess of the designed mechanical odometer limit, the lessee shall include a statement to that effect; or

(3) If the lessee knows that the odometer reading otherwise differs from the actual mileage and that the difference is greater than that caused by odometer calibration error, the lessee shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.

(d) If the lessor transfers the leased vehicle without obtaining possession of it, the lessor may indicate on the title the mileage disclosed by the lessee does not reflect the actual mileage of the vehicle.

(69 Del. Laws, c. 113, § 4; 70 Del. Laws, c. 186, § 1.)

§ 6410. Disclosure of odometer information by power of attorney.

(a) If the transferor's title is physically held by a lienholder, or if the transferor to whom the title was issued by the State has lost the title and the transferee obtains a duplicate title on behalf of the transferor, and if otherwise permitted by State law, the transferor may give a power of attorney to the transferee for the purpose of mileage disclosure. The power of attorney shall be on a form issued by the State to the transferee that is set forth by means of a secure printing process or other secure process, and shall contain in part A, a space for the information required to be disclosed under subsections (b)-(e) of this section. If a state permits the use of a power of attorney in the situation described in § 6411(a) of this title, the form must also contain, in part B, a space for the information required to be disclosed under § 6411 of this title, and, in part C, a space for the certification required to be made under § 6412 of this title.

(b) In connection with the transfer of ownership of a motor vehicle, each transferor to whom a title was issued by the State whose title is physically held by a lienholder or whose title has been lost, and who elects to give the transferee a power of attorney for the purpose of mileage disclosure, must appoint the transferee as the transferor's attorney-in-fact for the purpose of mileage disclosure and disclose the mileage on the power of attorney form issued by the State. This written disclosure must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model, year, body type and vehicle identification number.

(c) In addition to the information provided under subsection (b) of this section, the power of attorney form shall refer to the federal odometer law and state that providing false information or the failure of the person granted the power of attorney to submit the form to the State may result in a fine and/or imprisonment. Reference may also be made to applicable state law.

(d) In addition to the information provided under subsections (b) and (c) of this section:

(1) The transferor shall certify that to the best of the transferor's knowledge the odometer reading reflects the actual mileage;

(2) If the transferor knows that the odometer reading reflects mileage in excess of the designed mechanical odometer limit, the transferor shall include a statement to the effect; or

(3) If the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by a calibration error, the transferor shall include a statement the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(e) The transferee shall sign the power of attorney form, print the transferee's name, and return a copy of the power of attorney form to the transferor.

(f) Upon receipt of the transferor's title, the transferee shall complete the space for mileage disclosure on the title exactly as the mileage was disclosed by the transferor on the power of attorney form to the state that issued it, with the application for new title and the transferor's title. If the vehicle is sold out-of-state or reassigned to another dealer, a copy of the front and back of the title must be made after the dealership completes the disclosure. This copy of the title and § 1 of the odometer power of attorney must be returned to the Delaware Division of Motor Vehicles. If the mileage disclosed on the power of attorney form is lower than the mileage appearing on the title, the power of attorney is void and the dealer shall not complete the mileage disclosure on the title.

(69 Del. Laws, c. 113, § 4; 70 Del. Laws, c. 186, § 1.)

§ 6411. Power of attorney to review title documents and acknowledge disclosure.

(a) In circumstances where part A of a secure power of attorney form has been used pursuant to § 6410 of this title, and if otherwise permitted by State law, a transferee may give a power of attorney to the transferor to review the title and any reassignment documents for mileage discrepancies, and if no discrepancies are found, to acknowledge disclosure on the title. The power of attorney shall be on part B of the form referred to in § 6410(a) of this title, which shall contain a space for the information required to be disclosed under subsections (b)-(e) of this section and, in part C, a space for the certification required to be made under § 6412 of this title.

(b) The power of attorney must include a mileage disclosure from the transferor to the transferee and must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model year, body type and vehicle identification number.

(c) In addition to the information provided under subsection (b) of this section, the power of attorney form shall refer to the federal odometer law and state that providing false information or the failure of the person granted the power of attorney to submit the form to the State may result in a fine and/or imprisonment. Reference may also be made to applicable State law.

(d) In addition to the information provided under subsections (b) and (c) of this section:

(1) The transferor shall certify that to the best of the transferor's knowledge the odometer reading reflects the actual mileage;

(2) If the transferor knows that the odometer reading reflects mileage in excess of the designed mechanical odometer limit, the transferor shall include a statement to that effect; or

(3) If the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by a calibration error, the transferor shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(e) The transferee shall sign the power of attorney form, and print the transferee's name.

(f) The transferor shall give a copy of the power of attorney form to the transferee.

(69 Del. Laws, c. 113, § 4; 70 Del. Laws, c. 186, § 1.)

§ 6412. Certification by person exercising powers of attorney.

(a) A person who exercises a power of attorney under both §§ 6410 and 6411 of this title must complete a certification that the person has disclosed on the title document the mileage as it was provided to the person on the power of attorney form, and that upon examination of the title and any reassignment documents, the mileage disclosure made on the title pursuant to the power of attorney is greater than that previously stated on the title and reassignment documents. This certification shall be under part C of the same form as the powers of attorney executed under §§ 6410 and 6411 of this title and shall include:

(1) The signature and printed name of the person exercising the power of attorney;

(2) The address of the person exercising the power of attorney; and

(3) The date of the certification.

(b) If the mileage reflected by the transferor on the power of attorney is less than that previously stated on the title and any reassignment documents, the power of attorney shall be void.

(69 Del. Laws, c. 113, § 4; 70 Del. Laws, c. 186, § 1.)

§ 6413. Access of transferee to prior title and power of attorney documents.

(a) In circumstances in which a power of attorney has been used pursuant to § 6410 of this title, if a subsequent transferee elects to return to the transferee's transferor to sign the disclosure on the title when the transferor obtains the title and does not give the transferor a power of attorney to review the title and reassignment documents, upon the transferee's request, the transferor shall show to the transferee a copy of the power of attorney received from the previous transferor.

(b) Upon request of a purchaser, a transferor who was granted a power of attorney by the previous transferor and who holds the title to the vehicle in the transferor's own name, must show to the purchaser the copy of the previous owner's title and the power of attorney form.

(69 Del. Laws, c. 113, § 4; 70 Del. Laws, c. 186, § 1.)

§ 6414. Odometer disclosure statement retention.

(a) Dealers and distributors of motor vehicles who are required by this chapter to execute an odometer disclosure statement shall retain for 5 years a photostat, carbon or other facsimile copy of each odometer mileage statement which they issue and receive. All odometer disclosure statements shall be retained at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

(b) Lessors shall retain each odometer disclosure statement which they receive from a lessee for a period of 5 years following the date they transfer ownership of the leased vehicle. All odometer disclosure statements shall be retained at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

(c) Dealers and distributors of motor vehicles who are granted a power of attorney by their transferor pursuant to § 6410 of this title, or by their transferee pursuant to § 6411 of this title shall retain for 5 years a photostat, carbon or other facsimile copy of each power of attorney that they receive. They shall retain all powers of attorney at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

(69 Del. Laws, c. 113, § 4.)

§ 6415. Odometer record retention for auction companies.

Each auction company shall establish and retain at its primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval, for 5 years following the date of sale of each motor vehicle, the following records:

(1) The name of the most recent owner (other than the auction company);

(2) The name of the buyer;

(3) The vehicle identification number; and

(4) The odometer reading on the date which the auction company took possession of the motor vehicle.

(69 Del. Laws, c. 113, § 4.)

§ 6416. Security of title documents.

Each title shall be set forth by means of a secure printing process or other secure process. In addition, any other documents which are used to reassign the title shall be set forth by a secure process.

(69 Del. Laws, c. 113, § 4.)

§ 6417. Review of disclosure statements.

(a) All disclosure statements and motor vehicles in the possession of a dealer shall be made available for review upon demand by the Division of Motor Vehicles or by its authorized agents.

(b) The Secretary shall have the authority to promulgate regulations for administering this chapter.

(69 Del. Laws, c. 113, § 4.)

§ 6418. Responsibilities of motor vehicle dealers.

(a) No motor vehicle dealer, licensed in accordance with this title and Title 30 shall purchase or accept any motor vehicle unless the seller has indicated the mileage on a disclosure statement pursuant to this chapter.

(b) No licensed motor vehicle dealer shall have in possession as inventory for sale any used motor vehicle for which the dealer does not have in possession the disclosure statement required under this chapter.

(c) A licensed motor vehicle dealer reassigning or transferring a certificate of ownership shall not be guilty of a violation of this section if such dealer has in possession the disclosure statement as required by this chapter and if the dealer has no knowledge that the statement is false and that the odometer does not reflect the vehicle's actual mileage.

(69 Del. Laws, c. 113, § 4; 70 Del. Laws, c. 186, § 1.)

§ 6419. Documents acceptable as odometer disclosure statements.

(a) Except as provided in subsections (b) and (c) of this section, any Delaware certificate of title issued which includes the odometer disclosure information, as prescribed by this chapter, shall satisfy all the requirements for issuance of odometer disclosure statements by dealers licensed in the State.

(b) Nothing in this section shall exempt a dealer and/or dealership from complying with the provisions of § 6418 of this title.

(c) Any manufacturer's statement of origin accompanying an "original application for a Delaware certificate of title" shall satisfy the requirements of the odometer disclosure statement as provided in this chapter.

(69 Del. Laws, c. 113, § 4.)

§ 6420. Penalties; jurisdiction.

(a) Any person who violates any of the provisions of § 6404(a) of this title, shall be fined not less than $10 nor more than $100.

(b) Any person who violates any provisions in this chapter except § 6404(a) of this title shall be guilty of a misdemeanor and shall be fined not less than $1,000 nor more than $5,000 for each such violation. Any person who is guilty of a second or subsequent violation of this chapter except § 6404(a) of this title shall be fined not less than $2,000 nor more than $10,000 for each subsequent violation.

(c) In the case of a first offense by a dealer or dealership, such dealer or dealership may be placed on probation as a licensed Delaware motor vehicle dealer by the Division of Motor Vehicles for a period of 1 year. Any violation of this chapter by a dealer or dealership during any year of probation may result in the suspension of the license of the dealer or dealership for a period not exceeding 1 year.

(d) In the case of a second or subsequent violation of this chapter by a dealer or dealership, the Division of Motor Vehicles may suspend the license and/or privileges of the dealer or dealership for a period not to exceed 1 year.

(e) Common Pleas Court shall have jurisdiction violations of this chapter.

(69 Del. Laws, c. 113, § 4.)

Part IV
Miscellaneous

Chapter 65
Traction Engines and Tractors [Repealed].

§§ 6501-6521. Definitions; registration and license to operate; application for registration; issuance of registration certificate and tag; registration of manufacturers and dealers; application; issuance of certificate and number tags; expiration of registration upon transfer or destruction; registration of another vehicle by original owner; registration fees; display of number tags; refusal or revocation of license or permit; appeal; display of lights; equipment and weight; attached vehicles permitted; limitation; weight of attached vehicle and load; stopping and weighing of vehicles; permit for excess weight; permit for moving extra-heavy engines, loads or objects; permits to move vehicles without tires; limitation on regulations respecting unreasonable weights and use of highways; power to exempt from liability for damages to highways; speed limitations; stopping on meeting or passing horse-drawn vehicles; allowing overtaking vehicles to pass; applicability of traffic laws; penalty [Repealed].

Repealed by 68 Del. Laws, c. 300, effective July 2, 1992.

Part IV
Miscellaneous

Chapter 67
Theft, Unauthorized Use and Damage to Motor Vehicles

Subchapter I
General Provisions

§ 6701. Injuring vehicle or obstructing its operation.

No person shall, individually or in association with 1 or more others, wilfully break, injure, tamper with or remove any part or parts of any vehicle for the purpose of injuring, defacing or destroying such vehicle, or temporarily or permanently preventing its useful operation, or for any purpose against the will or without the consent of the owner of such vehicle or shall in any other manner wilfully or maliciously interfere with or prevent the running or operation of such vehicle.

(36 Del. Laws, c. 10, § 30; Code 1935, § 5568; 21 Del. C. 1953, § 6701.)

§ 6702. Driving vehicle without consent of owner.

(a) No person shall drive another person's vehicle without the consent of the owner thereof, and with intent temporarily to deprive the owner of possession of such vehicle, but without intent to steal the vehicle. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of such vehicle by the same or a different person.

(b) Whoever violates this section shall be fined not less than $115 nor more than $575, or imprisoned not more than 90 days, or both; for each subsequent like offense the person shall be fined not less than $230 and imprisoned for not less than 30 days nor more than 2 years.

(36 Del. Laws, c. 10, § 28; 37 Del. Laws, c. 10, § 9; Code 1935, § 5566; 21 Del. C. 1953, § 6702; 53 Del. Laws, c. 358; 68 Del. Laws, c. 9, § 58; 70 Del. Laws, c. 186, § 1.)

§ 6703. Tampering with vehicle.

No person shall, without the consent of the owner or person in charge of a vehicle, climb into or upon such vehicle with the intent to commit any crime, malicious mischief or injury thereto or, while a vehicle is at rest and unattended, attempt to manipulate any of the levers, starting crank or other starting device, brakes or other mechanism thereof or to set the vehicle in motion.

This section shall not apply when any such act is done in an emergency in furtherance of public safety or convenience or by or under the direction of an officer in the regulation of traffic or performance of any other official duty.

(36 Del. Laws, c. 10, § 31; Code 1935, § 5569; 21 Del. C. 1953, § 6703.)

§ 6704. Receiving or transferring stolen vehicle; penalty.

Whoever, with intent to procure or pass title to a motor vehicle or vehicle which the person knows or has reason to believe has been stolen, receives or transfers possession of the same from or to another or has in possession any motor vehicle or vehicle which the person knows or has reason to believe has been stolen and who is not an officer of the law engaged at the time in the performance of duty as such officer, is guilty of a felony and shall be fined not less than $575 nor more than $5,750, or imprisoned not less than 1 year nor more than 5 years or both.

(36 Del. Laws, c. 10, §§ 29, 33; Code 1935, §§ 5567, 5571; 21 Del. C. 1953, § 6704; 57 Del. Laws, c. 547; 68 Del. Laws, c. 9, § 60; 70 Del. Laws, c. 186, § 1.)

§ 6705. Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity; penalty.

(a) A person who wilfully removes to falsify or falsifies an identification number of a vehicle, a bicycle or an engine for a vehicle is guilty of a misdemeanor.

(b) A person who wilfully and with intent to conceal or misrepresent the identity of a vehicle, a bicycle or engine removes or falsifies an identification number of the vehicle or engine is guilty of a felony.

(c) A person who buys, sells, receives, possesses or disposes of a vehicle, a bicycle or an engine of a vehicle, knowing that an identification number of the vehicle or engine has been removed or falsified, is guilty of a misdemeanor.

(d) A person who buys, sells, receives, possesses or disposes of a vehicle, a bicycle or an engine for a vehicle, with knowledge that an identification number of the vehicle or engine has been removed or falsified and with intent to conceal or misrepresent the identity of the vehicle or engine, is guilty of a felony.

(e) A person who removes a license/registration plate from a vehicle or affixes to a vehicle a license/registration plate not authorized by law for use on it, in either case with intent to conceal or misrepresent the identity of the vehicle or its owner, is guilty of a misdemeanor.

(f) An identification number may be placed on a vehicle, a bicycle or engine by its manufacturer in the regular course of business or placed or restored on a vehicle, a bicycle or engine by authority of the Division without violating this section; an identification number so placed or restored is not falsified.

(g) No person, unless duly authorized by the Director of the Division of Motor Vehicles or an agent of the Director, shall remove or alter a license/registration plate from any motor vehicle, trailer or semitrailer, or part thereof, or have in possession any motor vehicle, trailer or semitrailer, or part thereof, where the license/registration has been removed without first obtaining permission, in writing, from the said Director.

(h) Whoever is found guilty of a misdemeanor under this section shall be fined not less than $57.50 nor more than $575, or imprisoned not less than 30 days nor more than 6 months or both. Whoever is found guilty of a felony under this section shall be fined not less than $575 nor more than $5,750, or imprisoned not less than 1 year nor more than 5 years or both. Superior Court shall have jurisdiction. In addition to any fine levied for conviction of theft under this section, the defendant shall be ordered to pay restitution to the victim of the theft.

(36 Del. Laws, c. 10, §§ 44, 50; Code 1935, §§ 5582, 5588; 21 Del. C. 1953, § 6705; 57 Del. Laws, c. 544; 58 Del. Laws, c. 202; 63 Del. Laws, c. 60, §§ 1-6, 8; 68 Del. Laws, c. 9, § 61; 71 Del. Laws, c. 61, §§ 1, 2.)

§ 6706. Seizure of vehicle where number is altered or removed.

(a) Any member of the State Highway Police or any automobile inspector shall summarily seize in the name of the State and take from any person, other than the rightful owner thereof, any motorcycle or motor vehicle or other vehicle in the person's possession, if the manufacturer's serial number or any other manufacturer's trade or distinguishing number or identification mark has been removed and effaced, changed, covered or destroyed or wherever there is reasonable grounds to believe such serial number, trade number or other distinguishing number or identification mark has been removed and effaced, changed, covered or destroyed. The officer making the seizure shall at once deliver the motorcycle or motor vehicle or other vehicle to the Secretary of Safety and Homeland Security (hereinafter "Secretary") who may hold the motor vehicle or other vehicle until the Secretary has determined the true owner thereof. Upon such determination, the Secretary shall notify the true owner that the Secretary has such motorcycle or motor vehicle or other vehicle in possession, and the Secretary shall deliver the same to such owner upon payment to the Secretary of the cost of the delivery.

(b) The Secretary of Safety and Homeland Security shall hold in possession any motorcycle or motor vehicle or other vehicle seized under subsection (a) of this section for at least 10 days after such seizure, during which time the person from whom the vehicle was taken shall have the right to replevy it.

(c) If, at the end of 10 days, the person from whom the said vehicle or engine has been seized fails to provide the Director of the Division of Motor Vehicles, or 1 of the Director's authorized agents, sufficient proof of the origin and the ownership of a vehicle and the origin of its engine, the vehicle or engine shall be considered abandoned and disposed of pursuant to Chapter 44 of this title.

(36 Del. Laws, c. 10, § 140; Code 1935, § 5678; 42 Del. Laws, c. 167, § 2; 21 Del. C. 1953, § 6706; 57 Del. Laws, c. 546, §§ 1-3; 57 Del. Laws, c. 670, § 20; 59 Del. Laws, c. 543, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, §§ 111, 112.)

§ 6707. Penalty.

(a) Whoever violates this chapter shall be fined not less than $28.75 nor more than $115, or imprisoned not less than 30 days nor more than 90 days or both. For each subsequent like offense the person shall be fined not less than $115 nor more than $230, or imprisoned not less than 90 days nor more than 6 months or both.

(b) This section shall not apply to violations for which a specific punishment is provided in this chapter.

(36 Del. Laws, c. 10, § 32; 37 Del. Laws, c. 10, § 10; Code 1935, § 5570; 21 Del. C. 1953, § 6707; 68 Del. Laws, c. 9, § 59; 70 Del. Laws, c. 186, § 1.)

§ 6708. Possession of blank title; blank registration card; vehicle identification plate; warranty sticker and registration card; class E felony; penalty.

(a) No person, unless duly authorized by the Director of the Division of Motor Vehicles, shall have in possession any blank certificate of title, blank registration card, blank vehicle identification plate, warranty sticker or vehicle inspection card.

(b) No person, unless duly authorized by the Director of the Division of Motor Vehicles, shall sell or deliver any blank certificate of title, blank registration card, vehicle identification plate, warranty sticker or vehicle inspection card.

(c) Any person found guilty of the violation of this section shall be guilty of a class E felony as the same is defined in Chapter 42 of Title 11 and shall be sentenced in accordance therewith.

(59 Del. Laws, c. 542, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6709. Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers; penalty; class E felony.

(a) No person, unless duly authorized by the Director of the Division of Motor Vehicles or an agent of the Director, shall remove or alter a vehicle identification plate, warranty or certification sticker or confidential vehicle identification number from any motor vehicle,

trailer or semitrailer, or part thereof, or have in possession any motor vehicle, trailer or semitrailer, or part thereof, where the vehicle identification plate, warranty or certification sticker or confidential vehicle identification number has been removed without first obtaining permission, in writing, from the said Director.

(b) Any person found guilty of the violation of this section shall be guilty of a class E felony as the same is defined in Chapter 42 of Title 11 and shall be sentenced in accordance therewith.

(59 Del. Laws, c. 557, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6710. Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers; penalty; class E felony.

(a) No person shall have in possession an assigned certificate of title, registration card, vehicle identification plate or warranty sticker or deliver for sale any assigned certificate of title, registration card, vehicle identification plate or warranty sticker unless such motor vehicle document is accompanied by 75% of the vehicle described on the assigned certificate of title, registration card, vehicle identification plate or warranty sticker.

(b) Any person found guilty of a violation of this section shall be guilty of a class E felony as the same is defined in Chapter 42 of Title 11 and shall be sentenced in accordance therewith.

(59 Del. Laws, c. 558, § 1; 70 Del. Laws, c. 186, § 1.)

Subchapter II

Salvage Yards

§ 6715. Rebuilt motor vehicles.

If any vehicle being kept in a motor vehicle salvage yard or junkyard is rebuilt and application is made for a negotiable title to the vehicle, said vehicle shall be examined by members of the State Police Auto Theft Unit or by a person designated by the Director of the Division of Motor Vehicles prior to the issuance of any negotiable title to such vehicle.

(59 Del. Laws, c. 544, § 1.)

§ 6716. Administrative inspections and warrants.

(a) Any person engaged in the business of maintaining or operating a motor vehicle salvage yard, junkyard or automotive graveyard, or who is a dealer in used motor vehicle parts, or the employees of such person or business, shall admit any police officer acting within the officer's jurisdiction onto the premises after the police officer has been identified as such. Upon entrance, the police officer is empowered to examine any junk or salvage motor, vehicle or parts thereof, all books and records required to be kept pursuant to this subchapter and buildings and may search for and take into possession any junk or salvage motor vehicle or part thereof if it is known to have been stolen or if the police officer has reason to believe it has been stolen.

(b) Insurance and execution of administrative search warrants shall be as follows:

(1) Any person authorized to issue search warrants in this State may, within the person's jurisdiction and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this chapter and rules hereunder and seizures of property appropriate to the inspection. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter and rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

(2) A warrant shall issue only upon an affidavit of a designated police officer having knowledge of the facts alleged, sworn to before the judge or the justice of the peace and establishing the grounds for issuing the warrant. If the judge or the justice of the peace is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the judge or the justice of the peace shall issue a warrant identifying the area, premises, building or conveyance to be inspected, the purpose of the inspection and, if appropriate, the type of property to inspect, if any. The warrant shall:

a. State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

b. Be directed to a person designated as a police officer to execute it;

c. Command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

d. Identify the item or types of property to be seized, if any;

e. Direct that it be served during normal business hours and designate the judge or justice of the peace to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within 10 days of its date unless, upon a showing of the need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. A return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the premises of the person

executing the warrant and of the person from whose possession or premises the property was taken, if present at the time, or in the presence of at least 1 credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge or justice of the peace who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the prothonotary in the county in which the inspection was made.

(5) This section shall not prevent the inspection without a warrant of books and records required to be kept pursuant to statute or the areas designated by this section, nor does it prevent any entries and administrative inspections, including seizures of property without a warrant:

a. If the owner/operator or agent in charge of the controlled premises consents; or

b. In all other situations in which a warrant is not constitutionally required.

(59 Del. Laws, c. 534, § 1; 70 Del. Laws, c. 186, § 1.)

Part IV
Miscellaneous

Chapter 68
Registration and Control of Off-Highway Vehicles

§ 6801. OHV registration — Required.

(a) Except as hereinafter provided, no person shall operate any off-highway vehicle within the State unless such vehicle has been registered in accordance with this chapter. Such registration shall not permit the vehicle to be operated on any highway except as hereinafter specifically provided. No person shall sell an OHV without furnishing the buyer a bill of sale.

(b) Proof of such registration shall be available for inspection upon demand by any peace, environmental protection or law-enforcement officer; however, the operator shall be allowed 24 hours to produce the registration card before a conviction can be obtained under this chapter, such registration having been legally issued at a time prior to the operator's arrest.

(c) Snowmobiles are excluded from this chapter.

(61 Del. Laws, c. 142, § 6; 66 Del. Laws, c. 222, §§ 1, 2; 70 Del. Laws, c. 186, § 1.)

§ 6802. OHV registration — Application; issuance.

Application for registration shall be made to the Department or their authorized agent as provided for in Chapter 21 of this title in such form and in such manner as the Department shall prescribe and shall state the name and address of every owner and be signed by at least 1 owner. Upon receipt of the application and the appropriate fee as provided in § 6803 of this title, such OHV shall be registered and a registration number decal assigned which shall be affixed to the OHV in such manner as provided in § 6805 of this title. In the event that an off-highway vehicle sought to be registered or reregistered does not, after inspection and testing, comply with the provisions respecting equipment established by this chapter or by the regulations of the Department promulgated pursuant to this chapter, the Department may deny the issuance of a registration certificate.

(61 Del. Laws, c. 142, § 6.)

§ 6803. OHV registration — Fees.

(a) The fee for registration of each off-highway vehicle, other than those registered by a dealer or manufacturer pursuant to subsection (b) of this section, shall be $6.00 for 3 years. The fee for a duplicate registration certificate shall be $2.00. The fee for a duplicate registration number decal shall be $2.00. The fee for a transfer of registration certificate shall be $2.00. All fees shall be waived for OHVs owned and used by the United States, or other state or of this State or political subdivision thereof.

(b) OHVs owned by a licensed OHV dealer, as specified in § 6809 of this title, and operated for demonstration or testing purposes are exempt from a registration fee.

(61 Del. Laws, c. 142, § 6.)

§ 6804. OHV registration — Renewal of registration.

Every owner of an off-highway vehicle shall renew the registration in such manner as the Department shall prescribe, upon payment of the same registration fees provided in § 6803 of this title.

(61 Del. Laws, c. 142, § 6; 70 Del. Laws, c. 186, § 1.)

§ 6805. OHV registration — Procedure.

(a) Upon receipt of the required fee and an application on forms prescribed by it, the Department shall issue to the applicant a registration certificate stating the registration number, the name and address of the owner and such other information as the Department deems necessary. The Department shall also issue 1 registration number decal per OHV. Such number decal shall contain reference to the State and the registration number and shall be of such size and displayed in such manner as prescribed by the Department. Records of the Department made or kept pursuant to this chapter shall be public records except as otherwise provided.

(b) Upon receipt of the required fee and an application form prescribed by it, the Department shall issue to the applying dealer or manufacturer 10 registration number decals with additional decals being available for a fee of $2.00 per decal.

(c) If a registration certificate or decal is lost or destroyed, the owner may apply for a duplicate on forms provided for by the Department accompanied by a fee of $2.00. Upon receipt of a proper application and the required fee, the Department shall issue a duplicate registration certificate or number decal to the owner.

(61 Del. Laws, c. 142, § 6.)

§ 6806. Surrender of registration certificate.

(a) The owner of an OHV shall notify the Department within 15 days if the OHV is destroyed or abandoned, stolen, sold or an interest therein transferred either wholly or in part to another person or if the owner's address no longer conforms to the address appearing on

the registration certificate. The notice shall consist of a surrender of the registration certificate on which the proper information shall be noted or written notice to the Department that the registration certificate has been stolen.

(b) When surrender of the certificate is because the OHV has been destroyed or abandoned or has been stolen, the Department shall cancel the certificate and enter such fact in its records. If the surrender is because of a change of address of the owner, the new address shall be recorded by the Department and a registration certificate bearing such information shall be returned to the owner. The transferee of a vehicle registered under this chapter, within 15 days after acquiring it, shall apply to the Department for transfer to the transferee of the registration certificate issued to the OHV, giving the transferee's name, address and the number of the vehicle and pay the Department a fee of $2.00. Upon receipt of the application and fee, the Department shall transfer the registration certificate issued for the OHV to the new owner. Unless the application is made and the fee paid within 15 days, the vehicle shall be deemed to be without a registration certificate and no person shall operate the OHV until a certificate is issued.

(61 Del. Laws, c. 142, § 6; 70 Del. Laws, c. 186, § 1.)

§ 6807. Out-of-state OHV registration.

The Department shall issue a 1-year registration number decal, valid for the present calendar year, to out-of-state OHVs operated by a resident of a state or county where registration is not required. The fee for this decal shall be $6.00.

(61 Del. Laws, c. 142, § 6.)

§ 6808. Age requirements.

No application for an original certificate of registration shall be accepted by the Department from any person under 18 years of age unless said certificate is signed by at least 1 parent or guardian of said person, stating consent to said application.

(61 Del. Laws, c. 142, § 6.)

§ 6809. OHV dealer license required.

OHV dealers, as defined in § 101 of this title, shall be licensed by the Department in accordance with such rules and regulations as may be promulgated by the Secretary. A fee of $50 shall be assessed for such license which shall be valid for 3 years. OHV dealer licenses are not transferable and may be revoked for violation of such rules and regulations as may be specified for that privilege. OHV dealers shall be required to carry personal liability insurance in an amount at least equal to that required of dealers under no-fault insurance provisions or as otherwise specified by the Department.

(61 Del. Laws, c. 142, § 6.)

§ 6810. Exceptions and exemptions to OHV registration.

(a) A vehicle registered under this title, Title 23 (boats) or Title 2 (aircraft) is exempt from the registration provisions of this chapter.

(b) Registration is not required for an OHV which is operated exclusively in a special event upon a special area location of limited duration which is conducted according to a prearranged schedule under a permit from the governmental unit having jurisdiction.

(c) No registration hereunder shall be required for the following described off-highway vehicles:

(1) OHVs covered by a valid registration of another state or country and which have not been within this State for more than 15 consecutive days.

(2) OHVs being operated by a resident of a state or country which does not require off-highway vehicle registration and which have been issued a 1-year permit sticker as provided for in § 6807 of this title.

(61 Del. Laws, c. 142, § 6.)

§ 6811. Vehicle identification number.

(a) Beginning not later than January 1, 1978, a manufacturer of an OHV shall stamp or permanently affix to the frame or body members of the OHV an identifying number unique to that vehicle in an easily visible location. The vehicle identification number shall be entered on the registration certificate issued by the Department to the OHV owner.

(b) Possession of an OHV with an intentionally altered, defaced, or obliterated vehicle identification number is punishable by the penalties in § 6831 of this title.

(61 Del. Laws, c. 142, § 6; 68 Del. Laws, c. 9, § 63; 76 Del. Laws, c. 295, § 1.)

§ 6812. Special vehicles.

The owner of a specially constructed or reconstructed OHV may make application, accompanied by the required fees, in such form as may be prescribed by the Department, for a special vehicle identifying number. The owner shall furnish such information as will satisfy the Department that the person is the owner, whereupon the Department shall assign a special vehicle identification number for the vehicle. The owner shall cause said number to be affixed as directed by the Department. Such special number shall be regarded as the permanent vehicle identification number of said vehicle.

(61 Del. Laws, c. 142, § 6; 70 Del. Laws, c. 186, § 1.)

§ 6813. Specific OHV dealer responsibilities for rented or leased OHVs.

(a) A dealer shall maintain in safe operating condition an OHV offered for rent or lease by the dealer. The dealer, the dealer's agents or employees shall explain the operation of the OHV being rented or leased and if the dealer, the dealer's agent or employee believes that person to whom the OHV is to be rented or leased is not competent to operate the OHV with personal safety or safety to others, the dealer shall refuse to rent or lease such OHV.

(b) The Department shall require such insurance and compliance with such additional rules and regulations regarding rental or lease of OHVs as it may deem necessary.

(61 Del. Laws, c. 142, § 6; 70 Del. Laws, c. 186, § 1.)

§ 6814. Operation of OHVs — Upon public highways, streets, sidewalks or rights-of-way; penalties for violation.

(a) OHVs shall not be operated upon a public highway or street or sidewalk or right-of-way thereof located within this State except under the following conditions:

(1) An OHV may be pushed across or along such public way provided such OHV is in neutral or that the power train is otherwise disengaged, and further provided that such use shall be in conformance with Chapter 41 of this title.

(2) An OHV may be operated on a street or highway located within this State for a special event of limited duration, conducted according to a prearranged schedule only under permit from the governmental unit having jurisdiction.

(b) A person convicted of a violation of any provision of subsection (a) of this section shall be punished by the penalties in § 6831 of this title.

(61 Del. Laws, c. 142, § 6; 65 Del. Laws, c. 112, §§ 1, 2; 65 Del. Laws, c. 398, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 295, § 2.)

§ 6815. Operation of OHVs — Excessive rate of speed.

A person shall not operate an OHV at a rate of speed which cannot be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance.

(61 Del. Laws, c. 142, § 6.)

§ 6816. Operation of OHVs — While under the influence or with a prohibited alcohol or drug content.

A person shall not operate an OHV while under the influence of alcohol, any drug, a combination of drugs and alcohol, or with a prohibited concentration of alcohol or illicit or recreational drugs as defined in § 4177 of this title. A violation of this section shall be an unclassified misdemeanor.

(1) When such operation is upon private property with the express permission of the person in control of the property or such operation is not upon public property, a public highway or street or sidewalk or right-of-way thereof, the penalty provisions of this chapter shall apply.

(2) The provisions of this section, § 6831, § 6832, or § 6833 of this title, or any other statute to the contrary notwithstanding, all provisions of § 4177 of this title and provisions of this Code related thereto shall be applicable to the operation of an OHV while under the influence of alcohol, any drug, a combination of drugs and alcohol, or with a prohibited concentration of alcohol or illicit or recreational drugs as defined in § 4177 of this title when such operation is upon private property without the express permission of the person in control of the property or such operation is upon public property, a public highway or street or sidewalk or right-of-way thereof located within this State.

(3) The provisions of this section, § 6831, § 6832, or § 6833 of this title, or any other statute to the contrary notwithstanding, all provisions of § 4177 of this title and provisions of this Code related thereto shall be applicable to the operation of an OHV while under the influence of alcohol, any drug, a combination of drugs and alcohol, or with a prohibited concentration of alcohol or illicit or recreational drugs as defined in § 4177 of this title when such operation causes physical injury, serious physical injury, or death to another person. Nothing in this section shall preclude conviction for a violation of either this section or § 4177 of this title and any offense as defined elsewhere in this Code.

(61 Del. Laws, c. 142, § 6; 77 Del. Laws, c. 60, § 17; 78 Del. Laws, c. 250, § 1.)

§ 6817. Operation of OHVs — Without lights.

A person shall not operate an OHV during the period after sunset until sunrise without displaying a lighted headlight and lighted taillight.

(61 Del. Laws, c. 142, § 6.)

§ 6818. Operation of OHVs — Without brakes.

A person shall not operate an OHV unless such OHV is equipped with a brake or similar device adequate to control the movement of and to stop and to hold such OHV.

(61 Del. Laws, c. 142, § 6.)

§ 6819. Operation of OHVs — In a manner causing damage or disturbance.

(a) A person shall not operate an OHV in a manner to cause excessive damages or disturbances of the land, wildlife or vegetative resources, or endanger, disturb or annoy other persons or property. Disturbance or annoyance of other persons shall be presumed if the operator has received either verbally or in written form notice of such annoyance or disturbance from the complaining party. However, nothing in this subsection shall be construed as prohibiting the operation of OHVs at a race track designed for the lawful racing of said vehicles.

(b) The operator of the OHV shall be held liable for any damage to private property, including, but not limited to, damage to trees, shrubs or growing crops, injury to living creatures or damage through OHV operation in a manner so as to maliciously create erosive or other ecological damage to private property. However, if the operator is a minor, the parents or legal guardian of the operator shall be held personally liable for any and all damage and/or injuries, including civil or criminal liability, caused by the minor in the operation of the OHV.

(c) The owner of such private property may recover from the person responsible nominal damages of not less than the amount of damage or injury.

(61 Del. Laws, c. 142, § 6; 68 Del. Laws, c. 424, § 1; 69 Del. Laws, c. 219, §§ 1, 2.)

§ 6820. Operation of OHVs — Without spark arrestor type muffler.

(a) A person shall not operate an OHV unless such OHV is equipped with a spark arrestor type muffler, in good working order and in constant operation, from which noise emission under 60% of the maximum RPM, measured at 50 feet at right angles from the vehicle path on a constant speed pass, by measurement does not exceed 88 DBA on a sound level meter which meets the requirements of ANSI-514197, using procedure and ancillary equipment therein described. During the test procedure, the ambient sound including wind effects due to sources other than the OHV being measured shall be at least 10 DBA lower than the anticipated level of the test OHV. A vehicle subject to this chapter, manufactured or assembled after January 1, 1978, and used, sold or offered for sale in this State shall conform to the noise emission levels of this chapter unless preempted by federal E.P.A. legislation.

(b) Competition vehicles shall be exempted from this section only while in competition.

(61 Del. Laws, c. 142, § 6.)

§ 6821. Operation of OHVs — On property.

(a) A person shall not operate an OHV upon any property in either public or private ownership without the express permission of the person in control of the property or knowingly in violation of any restrictions imposed on such use by the person in control of the property.

(b) *Penalties.* — (1) A person who violates subsection (a) of this section shall be subject to the following penalties:

a. For the first offense, a fine of $100 and an impoundment of the OHV at time of conviction for up to 30 days, which may be suspended by the court.

b. For each subsequent offense, the OHV owner shall be fined $1,000 and the OHV will be impounded for a minimum of 60 days from date of conviction. A subsequent offense, before being punishable as such, shall have been committed within 24 months after commission of the first offense.

c. Under this section, the OHV will be returned to the owner once the fine and impoundment costs have been paid by the OHV owner or, if the fine is appealed, once the owner has complied with the court's decision or the court decides the owner and/or operator is not guilty of the offense under subsection (a) of this section. The owner will not be responsible for impoundment costs if found not guilty by the court.

(2) In addition, restitution shall be made for value of damage to real or personal property which results from a violation of this section.

(61 Del. Laws, c. 142, § 6; 73 Del. Laws, c. 305, § 1.)

§ 6822. Operation of OHVs — In violation of traffic controllers or traffic-control devices.

A person shall not operate an OHV in violation of instructions of any person authorized to direct, control or regulate traffic or in violation of any official traffic-control device applicable thereto.

(61 Del. Laws, c. 142, § 6.)

§ 6823. Operation of OHVs — Helmets.

(a) A person shall not operate a 2-wheel or 3-wheel OHV unless the operator and all passengers are wearing a protective helmet meeting U.S. Department of Transportation standards on their heads, with the chin straps properly fastened.

(b) A person under 18 years of age shall not operate any ATV unless the operator is wearing a protective helmet meeting U.S. Department of Transportation standards on the operator's head, with the chin straps properly fastened. A person under 18 years shall not be a passenger on an ATV unless the passenger is wearing a protective helmet meeting U.S. Department of Transportation standards on the passenger's head, with the chin straps properly fastened.

(61 Del. Laws, c. 142, § 6; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 136, § 2; 84 Del. Laws, c. 42, § 1.)

§ 6824. Operation of OHVs — By minors, incompetent persons or persons under mental or physical disabilities.

(a) A person less than 12 years of age may operate an OHV only if:

(1) The person is under the direct supervision of a person who is at least 18 years of age; or

(2) The person is on land owned by or under the control of the person's parent or legal guardian.

(b) Persons 12 years of age and older may operate an OHV without adult supervision provided such use is in compliance with all other provisions of this chapter.

(c) A parent or legal guardian shall not permit a child under the age of 12 to operate an OHV except under the direct supervision of an adult.

(d) The owner of an OHV shall not permit:

(1) The vehicle to be operated by a person under the age of 12 except under direct adult supervision.

(2) The vehicle to be operated by a person who is incompetent to operate such vehicle because of mental or physical disability or because of being under the influence of intoxicating liquor or controlled substance as defined by § 4177 of this title.

(e) No person under 18 years of age shall operate an ATV while carrying passengers, regardless of whether or not the vehicle was specifically designed by the manufacturer to carry passengers.

(f) No person under 18 years of age shall be a passenger on an ATV unless the ATV was specifically designed by the manufacturer to carry passengers and is being operated by an individual who is 18 years of age or older.

(61 Del. Laws, c. 142, § 6; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 136, § 3.)

§ 6825. Identification of persons operating OHVs upon public or private property.

Any person operating an OHV upon public or private property shall stop and give identification upon the request of the person in control of the property and shall promptly comply with such restriction as may be imposed or remove the OHV from the premises if requested to do so.

(61 Del. Laws, c. 142, § 6; 70 Del. Laws, c. 186, § 1.)

§ 6826. Safety education program.

(a) The Department shall implement a comprehensive OHV information and safety education program which shall include the preparation and dissemination of information and safety advice to the public.

(b) In implementing a program which is established pursuant to this section, the Department shall cooperate with private organizations and associations, private and public corporations, the Department of Education, state and local parks and recreation departments, local governmental units and local and county law-enforcement agencies.

(61 Del. Laws, c. 142, § 6; 73 Del. Laws, c. 65, § 27.)

§ 6827. Accidents.

(a) The operator of an OHV involved in an accident resulting in an injury to another person or in a death shall immediately report such accident by the quickest available means of communication, to a State Police officer or the local law-enforcement officer for New Castle County or the municipality wherein the accident occurred.

(b) The operator of an OHV involved in an accident resulting in damage to private property, except that of the operator, shall notify the owner of said property within 48 hours of the occurrence of such accident.

(c) Accidents resulting only in injury to the operator and/or damage to the operator's personal equipment need not be reported.

(d) The operator of an OHV involved in an accident upon either public or private property, resulting in injury to or death of any person, shall immediately stop and remain at the scene of such accident and shall render to any person injured in the accident reasonable assistance in securing medical aid or transportation for the injured person or persons.

(e) This section shall not apply to accidents involving competition vehicles damaged while engaging in special or competition events.

(61 Del. Laws, c. 142, § 6; 70 Del. Laws, c. 186, § 1.)

§ 6828. Enforcement of chapter.

Any peace, police or environmental protection officer, acting in the lawful performance of duty, shall be empowered to enforce this chapter.

(61 Del. Laws, c. 142, § 6; 70 Del. Laws, c. 186, § 1.)

§ 6829. Registration numbers or numbered decals as prima facie evidence.

In a proceeding for a violation of this chapter involving prohibited operation and conduct, the registration number or numbered decal displayed on an OHV shall constitute prima facie evidence that the owner of the vehicle was the person operating the vehicle at the time of the offense, unless the OHV committing the violation was in fact a stolen vehicle at the time of the violation.

(61 Del. Laws, c. 142, § 6.)

§ 6830. Unlawful for operators of OHVs to disobey command to stop.

It shall be unlawful for any operator of an OHV to wilfully disobey a signal to bring such OHV to a stop when such signal is given by hand, voice, emergency lights, siren or other visual or audible signal by a uniformed police, peace or environmental protection officer acting in the lawful performance of duty. A violation of this section shall be an unclassified misdemeanor with the penalties set forth in § 6831 of this title.

(61 Del. Laws, c. 142, § 6; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 60, § 18.)

§ 6831. Penalties.

A person convicted of a violation of any provision of this chapter is subject to the following penalties, unless otherwise provided for in this chapter.

(1) For a first offense, a fine of $100 and impoundment for up to 100 days, at the expense of the owner, of the OHV at the time of conviction.

(2) For a subsequent offense that occurs within 24 months of a prior conviction of this chapter or of a similar off-highway vehicle state or local law, statute, or ordinance, a fine of $400 and impoundment for a mandatory minimum time period of 6 months, at the expense of the owner, of the OHV at the time of conviction.

(3) In addition to impoundment of an OHV upon conviction, a uniformed police, peace, or environmental protection officer acting in the lawful performance of duty may have an OHV towed and impounded if that law-enforcement officer has probable cause to believe that the OHV was used in violation of this chapter.

(61 Del. Laws, c. 142, § 6; 68 Del. Laws, c. 9, § 62; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 295, § 3.)

§ 6832. Jurisdiction.

The Courts of the Justices of the Peace shall have jurisdiction over violations of this chapter except that the Family Court shall have jurisdiction over violations of this chapter when such violation is committed by any person under the age of 18 years of age.

(61 Del. Laws, c. 142, § 6.)

§ 6833. Conflicts with other statutes.

Should any provision of this chapter conflict with other statutes, the provisions or requirements of this chapter shall apply.

(61 Del. Laws, c. 142, § 6.)

§ 6834. Rules and regulations.

The Secretary of Transportation may adopt and enforce such rules and regulations concerning off-highway vehicles and designate such agencies as may be necessary to carry out this chapter, provided such rules and regulations are not contrary to this chapter.

(61 Del. Laws, c. 142, § 6; 74 Del. Laws, c. 110, § 113.)

§ 6835. Civil liability.

Any other statute notwithstanding, a violation of § 6823 or § 6824 of this title shall not be considered as evidence of either comparative or contributory negligence in any civil suit or insurance claim arising out of any ATV or OHV accident.

(80 Del. Laws, c. 136, § 4.)

Part IV
Miscellaneous

Chapter 69
Removal of Motor Vehicles From Public Highways by Police

§ 6901. Removal of motor vehicles from public highways by police; sale of vehicles; towers.

(a) Any police officer of this State, or a county or municipality therein, while in the performance of duty, may remove, store or cause to be removed or stored from any public highway, highway right-of-way, street or alley, at the owner's or operator's expense, any motor vehicle, trailer or part thereof which:

(1) Is unregistered or has an expired registration; or

(2) Is parked or left standing in such manner as to create a hazard by interfering with the normal movement of traffic:

a. By preventing the exit from or entrance to any public highway, private road or driveway;

b. By interfering with emergency firefighting equipment;

c. By being involved in a collision and rendered incapable of being moved under its own power, when the owner or operator has been arrested and detained; or

d. When the owner or operator is unable, unwilling or not available to do so immediately.

Anyone so removing any motor vehicle, trailer or part thereof shall have a possessory lien against said motor vehicle, trailer or part thereof for the costs of removing, towing, preserving and storing said motor vehicle, trailer or part thereof and shall have the right to sell said motor vehicle, trailer or part thereof after complying with the notice and sale provisions outlined in Chapter 39 of Title 25, with the exception that the proceeds of the sale shall be applied first to the costs of the sale, then to the costs of removing, towing, preserving and storing and then to the payment of any liens to which said motor vehicle, trailer or part thereof may be subject in order of their priority, then to the State Treasurer who shall create a special fund thereof and who shall pay to the owner the moneys held if a claim is made within 1 year of the removal or deposit the moneys in the General Fund if no claim is made within 1 year of removal. Any possessory lien created under this section shall not extend to any personal property that is not attached to or considered necessary for the proper operation of any motor vehicle, and such property shall be returned to the owner of the motor vehicle if the owner of the motor vehicle claims the items prior to the sale of such motor vehicle.

There shall be no liability incurred by any police officer of this State or a county or municipality therein, or agents directed by them, whether or not they are also police officers, while in the performance of duty, for damages incurred to immobilized motor vehicle or vehicles moved under this subsection, or to the vehicle's contents or surrounding area caused by the emergency measures employed by the officer or employee to move the vehicle or vehicles for the purpose of clearing the lane or lanes to remove any threat to public safety, unless the circumstances meet the conditions for liability established in § 4001(2) or (3) or § 4011(c) of Title 10.

(b) In effecting the removal and subsequent storage of such vehicles, any police officer of this State, or a county or municipality therein, may select and engage the services, vehicles, equipment or facilities of another person, hereinafter called the "tower", who shall be compensated at the expense of the owner or operator. Such selection shall be made pursuant to the regulations promulgated under subsection (c) of this section.

(c) The Department of Safety and Homeland Security shall promulgate regulations governing the selection of towers by State Police officers. Such regulations shall prescribe qualifications for eligibility of towers to be selected by police officers under this section, shall describe the method to be used by police officers in selecting from eligible towers, and may make such other provisions as the Department of Safety and Homeland Security deems fit; provided, however, that there shall be no prohibitions against the owner of a vehicle from choosing the tower of that person's choice if no emergency exists. All eligible towers shall file with the Superintendent of the Delaware State Police a schedule of towing charges of such towers and other incidental charges of such tower customarily incurred in connection with the towing and storage of vehicles under the section.

(21 Del. C. 1953, § 6901; 55 Del. Laws, c. 340; 61 Del. Laws, c. 247, § 1; 61 Del. Laws, c. 367, § 3; 63 Del. Laws, c. 173, § 1; 63 Del. Laws, c. 355, § 1; 66 Del. Laws, c. 313, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, §§ 115, 138; 76 Del. Laws, c. 401, § 16; 83 Del. Laws, c. 125, § 2.)

§ 6902. Notification to owner of removal of vehicle; disposal of removed vehicle.

(a) Anyone rendering services under this chapter or Chapter 44 of this title has the right to detain the vehicle or motor vehicle rendered services to, about or for, to secure the payment of such services and shall have a lien upon said vehicle or motor vehicle.

(b) The lienor shall, by certified mail, return receipt requested, notify the lienee of the towing charges and, if compensation for storage is claimed, the per diem rate of storage charges, and a statement that the lienee must pay such charges on or before the date mentioned in the notice, said date not to be less than 15 days from service thereof. Notice shall be sent to last known address of the lienee and secured party. If the identity of the last registered owner or secured party cannot be determined with reasonable certainty, the contents of the notice set forth in this subsection shall be published 1 time in the newspaper of general circulation in the area where the vehicle was removed.

The notice may contain multiple listings of removed vehicles. Notice by publication locally shall be the responsibility of the lienor. The notice shall have the same effect as notice sent by certified mail.

(c) The lienor may, after the expiration of 15 days from date of notification, request the Division of Motor Vehicles to schedule a hearing to determine the intentions of the registered owner and/or secured party as to the disposition of said vehicle.

(1) Upon receiving such request the Division of Motor Vehicles shall, by certified mail, notify the owner of record if known and each secured party as shown on the records of the Division of Motor Vehicles of the date and time of the hearing and the right to be present and contest said proposed disposition of such vehicle.

(2) The hearing officer of the Division of Motor Vehicles shall notify the lienor and the Delaware State Police Auto Theft Unit of the date and time of the hearing.

(3) If identity of the last registered owner and of all secured parties cannot be determined with reasonable certainty the Division of Motor Vehicles shall notify the Delaware State Police Auto Theft Unit.

(4) The nonappearance of the owner and/or secured party at the scheduled hearing is:

a. A waiver of all rights, title, interest in the vehicle; and

b. A consent to dispose of the vehicle.

(5) The hearing officer shall determine the disposition of the vehicle if there is no objection at the hearing and shall certify that all applicable regulations of the Division have been met. The owner and/or secured party shall have 15 days from the date of the hearing with the Division of Motor Vehicles to appeal such disposition of said vehicle to the Director of Motor Vehicles. If after 15 days the owner and/or secured party has not filed an appeal to the Director of the Division of Motor Vehicles, the Division of Motor Vehicles shall issue a salvage certificate of title to the lienor.

(6) If, however, the owner and/or secured party objects to the disposition of the vehicle at the hearing, further proceedings by the Division of Motor Vehicles shall cease and all parties will be notified of their right to file with a court of proper jurisdiction to seek judicial disposition.

(61 Del. Laws, c. 247, § 2; 70 Del. Laws, c. 186, § 1.)

Part IV
Miscellaneous

Chapter 69A
Removal of Motor Vehicles from Private or Public Property Without Consent of the Motor Vehicle Owner or Operator

(85 Del. Laws, c. 226, § 1.)

§ 6901A. Definitions.

For purposes of this chapter:

(1) "Abandoned motor vehicle" means as described in Chapter 44 of this title.

(2) "Nonconsensual tow" means the towing of a nonabandoned motor vehicle weighing 5,000 pounds or less other than at the direction of the police, without the consent of the motor vehicle's owner, operator, or other person designated by the owner or operator from a private or public parking area. A "nonabandoned motor vehicle" is a motor vehicle that is not an abandoned motor vehicle.

(3) "Operator" means the person who most recently operated a motor vehicle and parked the vehicle in a private or public parking area.

(4) "Private parking area" means any privately-owned facility or portion thereof held open to the general public for motor vehicle parking and that includes 1 or more spaces for motor vehicle parking and that are intended by the owner of the facility to be used primarily by the owner's customers, residents, lessees, or guests.

(5) "Private tow company" means any person engaged in the towing of motor vehicles pursuant to a contract or other agreement to remove a motor vehicle from private or public parking areas without the consent of the motor vehicle owner or operator. For the purpose of this chapter, "private tow company" does not mean a person hired or contracted to remove a motor vehicle with the consent of the motor vehicle owner or operator, nor does "private tow company" mean a person that removes an abandoned motor vehicle under Chapter 44 of this title or that is contracted to remove motor vehicles at the direction of the police under Chapter 69 of this title.

(6) "Public parking area" means any facility or roadway space owned by this State, or any political subdivision thereof, consisting of 1 or more spaces for motor vehicle parking that is accessible to the general public and designated for parking during specified times or for a specified length of time. "Public parking area" does not mean noncommercial roadways or other roadways on which motor vehicles are commonly parked for periods of time in excess of 24 hours.

(7) "Storage facility" means a facility to which privately-towed motor vehicles are brought and kept until retrieved or disposed of pursuant to this chapter.

(8) "Towing" means the transportation on the streets and highways of this State of motor vehicles, together with personal effects or cargo, by tow trucks. "Wrecking service" or "wrecker service," "tow car service," and "garage tow truck service" are synonymous with and included within this definition.

(85 Del. Laws, c. 226, § 1.)

§ 6902A. Applicability.

(a) This chapter applies to nonconsensual towing of motor vehicles weighing 5,000 pounds or less from private or public parking areas.

(b) Sections 6903A through 6905A of this title do not apply to the following:

(1) The towing of motor vehicles at the direction of police under Chapter 69 of this title.

(2) The towing of abandoned motor vehicles under Chapter 44 of this title or an equivalent municipal ordinance, code, or regulation.

(3) The towing of motor vehicles by a city, county, or state agency authorized to tow such vehicles under § 4181A or § 7003 of this title.

(4) The towing of motor vehicles by a municipality authorized to tow such vehicles under a municipal ordinance, code, or regulation that permits the towing of a vehicle due to unpaid parking tickets issued to the vehicle or unpaid traffic citations incurred while operating the vehicle.

(85 Del. Laws, c. 226, § 1.)

§ 6903A. Pre-towing requirements.

(a) Prior to towing a motor vehicle from a private or public parking area, a person employed by, contracted by, or otherwise preparing to tow a motor vehicle on behalf of a private tow company must do the following:

(1) Ensure that the parking area has posted 1 or more signs in accordance with § 6904A of this title.

(2) Photograph the motor vehicle in a manner that clearly documents the unauthorized parking of the motor vehicle.

(3) Obtain a prior written authorization from the owner of the private parking area to tow the motor vehicle if the towing will take place from a private parking area during a time when the parking area is held open to the general public for parking. The prior written authorization may be conveyed electronically and must include all of the following:

a. The name of the person authorizing the tow.

b. A phone number and email address at which the person authorizing the tow can be reached during normal business hours.

c. The date and time the tow was authorized.

d. The signature of the person authorizing the tow.

(b) Photographs and documentation required by this section must be maintained in the records of the private tow company and be made available for inspection upon request for a minimum of 2 years from the date of the nonconsensual tow.

(c) The photographs and documentation required by this section must be provided to the owner or operator of the motor vehicle upon request and without any charge to the owner or operator of the motor vehicle. The photographs and documentation must be provided to the owner or operator of the motor vehicle by email or other equally-convenient electronic means if the owner or operator of the motor vehicle requests electronic copies of the photographs and documents.

(85 Del. Laws, c. 226, § 1.)

§ 6904A. Consent for towing; exceptions.

(a) No private tow company may tow any motor vehicle parked for an unauthorized purpose or during a time at which such parking is not permitted from any private parking area without the consent of the owner or operator of the motor vehicle unless the following criteria are met:

(1) The private tow company entered into a contract for towing with the owner or operator of the private parking area.

(2) A sign is posted in a conspicuous place at all vehicular entrances to the property which can easily be seen by drivers entering the private parking area. The sign must have lettering of no less than 1 inch in height and contain the following:

a. A statement of the purpose or purposes for which parking is authorized and the times during which such parking is permitted.

b. A statement that unauthorized parking is prohibited and, if applicable, that unauthorized motor vehicles will be towed and stored at the owner's expense.

c. The name, address, and telephone number of the private tow company that will perform the towing.

d. The charges for the towing and storage of towed motor vehicles.

e. The street address of the storage facility where the towed motor vehicles can be redeemed after payment of the posted charges and the times during which the motor vehicles may be redeemed.

f. Contact information for the owner and operator of the private parking area.

(3) A sign is affixed to each door of the tow truck with lettering of no less than 3 inches in height that contains the name and telephone number of the private tow company.

(b) The owner, operator, or agent of a private parking area may not permit the towing of any motor vehicle parked for an unauthorized purpose or during a time at which such parking is not permitted from the private parking area without the consent of the motor vehicle owner or operator, unless the following criteria are met:

(1) The private property owner contracted with a private tow company for nonconsensual towing of motor vehicles parked on the property without authorization.

(2) A sign conforming to the requirements of paragraph (a)(2) of this section is posted on the property.

(c) No private tow company may tow any motor vehicle parked for an unauthorized purpose or during a time at which such parking is not permitted from any public parking area unless all of the following criteria are met:

(1) The private tow company entered into a contract for public property towing with this State or political subdivision.

(2) A sign as described in paragraph (a)(2) of this section is posted in a conspicuous place at all vehicular entrances to the property that can easily be seen by drivers entering a private parking area or in a conspicuous place visible from the place at which the motor vehicle is parked if on a public roadway. If the motor vehicle is parked in a metered or paid public parking area, the sign may be affixed to or conspicuously placed near the device or place at which payment may be tendered, if any.

(85 Del. Laws, c. 226, § 1.)

§ 6905A. Incomplete tows.

(a) A private tow company that has undertaken the nonconsensual tow of a motor vehicle must stop the tow if the owner or operator returns before the motor vehicle has left the parking area and requests that the tow be stopped.

(b) A private tow company may require the owner or operator of a motor vehicle to pay a decoupling fee or drop fee prior to releasing a motor vehicle that the private tow company has undertaken to tow. The decoupling or drop fee may not exceed 50% of the nonconsensual tow fee that would otherwise be charged.

(c) A private tow company may return a motor vehicle to a parking area or another location at the request of a motor vehicle owner or operator who makes telephone contact with the tow company before the motor vehicle has been placed in storage at a storage facility. The private tow company may collect the full nonconsensual tow fee that would otherwise be charged. No storage fee or ancillary fees

other than the tow fee may be assessed if the motor vehicle is retrieved within 24 hours from the time the private tow company first undertakes a tow.

(d) A private tow company may not nonconsensually tow a motor vehicle if the owner or operator has returned prior to the physical attachment between the motor vehicle to a tow truck or other towing vehicle. No fee may be charged to the owner or operator where the owner or operator returns prior to the physical attachment between a motor vehicle and a towing vehicle.

(85 Del. Laws, c. 226, § 1.)

§ 6906A. Storage of nonconsensually-towed motor vehicles.

(a) No person may nonconsensually tow a motor vehicle to a storage facility or store such a motor vehicle at a storage facility unless the storage facility meets the following criteria:

(1) The storage facility has a business office open to the public between 8 a.m. and 6 p.m. at least 5 days a week, excluding holidays.

(2) The storage facility is secured and, if it is an outdoor storage facility, lighted from dusk to dawn.

(3) The storage facility allows motor vehicle owners, lessees, lienholders, or persons authorized by such owners, lessees, or lienholders of a nonconsensually-towed motor vehicle, to, at no fee, obtain personal items from a towed motor vehicle during the normal business hours of the storage facility upon a showing of valid identification.

(4) The storage facility accepts as a means of payment all major credit cards and debit cards, or the storage facility has an operating automated teller machine (ATM). An ATM service or access fee must be reasonable.

(5) The storage facility is in compliance with § 6907A of this title.

(b) A private tow company must provide reasonable accommodations for after-hours access to and release of stored motor vehicles.

(1) A storage facility must post instructions on how to request after-hours access to or release of a stored motor vehicle in each of the following manners:

a. Outside the private tow company and storage facility’s place of business in a location easily viewable by the general public.

b. Prominently on the private tow company’s or storage facility’s website.

c. In any recorded phone message that members of the public seeking after-hours access to a motor vehicle are likely to hear.

(2) A private tow company or storage facility may charge a maximum fee of $50 for after-hours access to or release of stored motor vehicles.

(3) No private tow company or storage facility may charge storage fees or an after-hour access fee for any portion of a day during which an owner or operator of a motor vehicle is unable to obtain access to and release of the stored motor vehicle during the hours of 8 a.m to 6 p.m. within 90 minutes of following the instructions posted under paragraph (b)(1) of this section

(85 Del. Laws, c. 226, § 1.)

§ 6907A. Fees and payments.

(a) Any person operating or in charge of a storage facility must display, in that portion of the storage facility where business is conducted with the public, a notice containing the following:

(1) That the owner, lessee, lienholder, or person authorized by such owner, lessee, or lienholder of a nonconsensually-towed motor vehicle, may, at no fee, obtain personal items from a towed motor vehicle during the normal business hours of the storage facility upon a showing of valid identification.

(2) The rates for towing and storage related to the nonconsensual tow of a motor vehicle.

(3) A statement that it is unlawful for a tow company or storage facility to refuse payment by major credit card if the facility does not have an ATM with reasonable access or service fees.

(b) (1) All fees charged for the nonconsensual tow of a motor vehicle and related storage services must be reasonable and not excessive. Fees are presumptively excessive if:

a. They exceed by more than 25% the usual and customary fee charged by the private towing company or storage facility for such services when provided with the consent of the owner or operator of a motor vehicle.

b. They exceed by more than 50% the usual and customary fee charged for such nonconsensual towing or related storage service by other towing companies or storage facilities operating in the county from which the motor vehicle was towed.

(2) Notwithstanding the foregoing, such fees may not exceed the maximum amounts that may be charged for such services in accordance with any applicable schedule of permissible fees adopted by municipal or other local ordinance.

(c) An owner or operator of a noncommercial motor vehicle or rental vehicle under § 2002 of Title 18 may not be charged a towing fee in excess of $250 or a daily storage rate in excess of $50. No other towing-related charges may be charged in addition to the maximum towing and storage fees.

(d) No person may assert any lien on a nonconsensually-towed motor vehicle for unpaid towing or storage fees, unless the following criteria are met:

(1) The person seeking a lien notifies the owner, lessor, and, if applicable, the lienholder of a motor vehicle by certified U.S. mail within 30 days of the date the motor vehicle was nonconsensually towed.

(2) The notification includes an itemized list of all fees incurred as of the date of the notice and any periodic fees that may be assessed.

(3) The notification informs the owner, lessor, and lienholder of the motor vehicle that the private tow company may assert a lien against the motor vehicle if the motor vehicle is not retrieved and the fees are not paid within 60 days of the delivery of the notice.

(e) Private tow companies and storage facilities must accept as a means of payment all major credit cards and debit cards, or have an ATM for which any service or access fee is reasonable.

(85 Del. Laws, c. 226, § 1.)

§ 6908A. Unlawful practices.

(a) It is an unlawful practice for a person to violate any provision of this chapter.

(b) It is unlawful for a private tow company to do any of the following:

(1) To give any benefit or advantage, including a pecuniary benefit, to any person for providing information about motor vehicles parked for unauthorized purposes on privately-owned property or otherwise in connection with private property towing of motor vehicles parked without authorization or during a time at which such parking is not permitted.

(2) To charge a fee for the retrieval of private property from a nonconsensually-towed motor vehicle during a storage facility's normal business hours.

(3) To monitor, patrol, or otherwise surveil a private or public parking area for the purposes of identifying motor vehicles parked for unauthorized purposes and towing a motor vehicle parked for an unauthorized purpose from such a parking area without having been specifically requested to tow the motor vehicle by the owner of the property, if a private parking area, or by an authorized or designated agent of this State or political subdivision, if a public parking area, unless the following apply:

a. The private tow company has a contract with the owner of a private parking area or authorized or designated agent of this State or political subdivision of a public parking area to tow vehicles from the parking area.

b. The private tow company complies with the requirements of § 6903A of this title for each vehicle it tows from the parking area, including obtaining prior written authorization to tow a vehicle from a private parking area.

(c) An owner, manager, director, or other person in charge of overseeing a private tow company, storage facility, or public or private parking area may not direct or knowingly allow employees, agents, or other individuals working on behalf of the private tow company or storage facility to violate this chapter.

(d) A violation of this chapter shall be deemed an unlawful practice under § 2513 of Title 6 and a violation of subchapter II of Chapter 25 of Title 6.

(85 Del. Laws, c. 226, § 1.)

§ 6909A. Damages, compensation, and penalties.

(a) Where a nonconsensual tow was initiated or completed in violation of this chapter, the owner or operator of the nonconsensually-towed motor vehicle is entitled to reimbursement of all fees paid to the private tow company or storage facility, in addition to actual damages incurred to retrieve the motor vehicle. If a private tow company or storage facility fails to allow the owner or operator of a motor vehicle access to personal property in the vehicle as required by this chapter, the private tow company or storage facility is liable for consequential damages incurred by the owner or operator of the motor vehicle.

(b) If an owner or operator of a motor vehicle is entitled to reimbursement or damages under this section, all private tow companies and storage facilities involved in the nonconsensual towing and subsequent storage of the motor vehicle are jointly and severally liable for such reimbursement or damages.

(c) If a court holds that an owner or operator of a motor vehicle is entitled to reimbursement or damages under this section, the court shall order the reasonable attorneys' fees and costs to the owner or operator of the motor vehicle be paid by the defendant or defendants in the action if all of the following are true:

(1) At least 10 business days prior to the filing of the action, the owner or operator of the motor vehicle made an offer of settlement to the defendant or defendants in an amount equal to or less than the amount finally awarded by the court to such owner or operator.

(2) The defendant or defendants rejected the offer of settlement. The failure of a defendant to respond to the offer of settlement within 10 business days is deemed to be a rejection of the offer.

(d) The remedies provided for in this section are not exclusive and are in addition to any other procedures, rights or remedies that exist with respect to any other provisions of law including but not limited to state or federal criminal prosecutions or actions brought by private parties.

(85 Del. Laws, c. 226, § 1.)

Part IV
Miscellaneous

Chapter 70
Fire Lanes

§ 7001. Stopping, standing or parking in fire lanes; penalty.

(a) No person shall stop, stand or park a vehicle in any place which has been designated and properly identified as a fire lane wherever a curb is marked yellow or a yellow line is placed at the edge of a roadway or shoulder and where official traffic control devices prohibit stopping, standing or parking or in an area designated for a fire hydrant, standpipe or sprinkler connection, except in compliance with the directions of a police officer or traffic control device.

(b) Any person authorized to enforce this chapter is hereby authorized to remove or cause to be removed, and stored at the owner's expense, any unattended vehicle left standing wholly or partially within a fire lane or any unattended vehicle left standing in a location so as to cause an obstruction to the accessibility to a fire lane, fire hydrant or standpipe connection.

(c) The State Fire Marshal and the State Fire Marshal's deputies shall be authorized to enforce this chapter. Any fire officer in charge of firefighters of a fire company responding to, operating at or returning from a fire, service call or other emergency shall be authorized to enforce this chapter.

(d) This chapter shall apply upon highways and elsewhere throughout the State.

(e) A uniform parking summons may be attached to an unattended vehicle found in violation of this section by any person authorized to enforce this section.

(f) Whoever violates this section shall be assessed a civil penalty not less than $50 or more than $100.

(g) Any violation of this section or any municipal or county ordinance, code or regulation regulating parking in fire lanes shall be subject to a civil penalty only. Such violation shall not be classified as a criminal offense, shall not qualify as a prior conviction for purposes of § 4218(c)(1)f. of Title 11, whether or not such violation occurred prior to July 10, 2006, and shall not be made a part of the operating record of the person upon whom such civil penalty is imposed.

(h) Justice of the Peace Courts shall have jurisdiction of offenses under this section.

(62 Del. Laws, c. 135, § 1; 63 Del. Laws, c. 214, § 2; 63 Del. Laws, c. 350, §§ 1, 2; 68 Del. Laws, c. 9, § 64; 70 Del. Laws, c. 19, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 503, § 1; 75 Del. Laws, c. 405, §§ 14-18.)

§ 7002. Immunity for enforcement; exception.

No law-enforcement officer, fire officer in charge or the fire officer's delegate or fire marshal or fire marshal's deputy, enforcing this chapter, and no one who removes a vehicle from a prohibited area as described in this chapter or stores such a vehicle, having been directed to remove or store such vehicle by a person authorized to enforce this chapter, shall be liable for criminal prosecution for any conduct directly relating to the enforcement of this chapter or be liable to any person for negligence, resulting in the injury to or loss or destruction of any real or personal property if such negligence arises out of the enforcement of this chapter; provided, however, that such persons shall be liable for loss or destruction of any real or personal property caused by acts or omissions amounting to gross negligence or wilful or wanton misconduct.

(62 Del. Laws, c. 135, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7003. Payment by voluntary assessment; presumptions; procedure for contesting; failure to pay or contest.

(a) *Payment by voluntary assessment.* — An owner or operator shall pay the amount on the summons to the voluntary assessment center listed on the summons. No court costs or other administrative fee shall be assessed if a civil penalty is paid by voluntary assessment. In lieu of payment, an owner or operator may notify the applicable voluntary assessment center, within the time period specified on the summons, that such owner or operator requests a hearing in the Justice of the Peace Court.

(b) *Presumptions.* — (1) If any vehicle found to be in violation of this subchapter or any ordinance, code or regulation regulating stopping, standing or parking is unattended at the time the violation is discovered and the identity of the operator is not otherwise apparent, the person in whose name such vehicle is registered as the owner shall be held responsible for such violation, unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody or control of another person. Such presumption shall be rebutted if the owner:

a. Prior to the due date furnishes to the voluntary assessment center either:

1. An affidavit stating that the owner was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person, or company who leased, rented or otherwise had the care, custody or control of the vehicle; or

2. Attaches a certified copy of a police report showing that the vehicle or license plate(s) thereof had been reported to the police as stolen prior to the time of the alleged violation; or

b. Provides proof in court that the owner was not the operator of the vehicle at the time of the alleged violation.

(2) A summons may be issued by the prosecuting agency to a person identified by affidavit or evidence in court as the actual operator of the vehicle shown to have violated this chapter. There shall be a presumption that the person so identified as the driver. The presumption may be rebutted as described in this subsection.

(c) *Procedure for contesting.* — (1) A request for a hearing must be made no later than the due date indicated on the summons, which date shall not be sooner than 20 days from the date the summons was issued.

(2) The voluntary assessment center shall notify the appropriate Justice of the Peace Court when a hearing is requested.

(d) *Failure to pay or contest the violation.* — If the owner or operator:

(1) Fails to respond to the summons on or before the due date in any of the manners permitted by this section, or

(2) Requests a hearing and fails to appear,

the Court may, upon motion, enter a default judgment against such owner or operator. However, when the default judgment is sought for a failure to respond to the summons, no default judgment shall be entered until notice by first class mail is sent by the Court to such owner or operator providing the owner or operator with 10 days to pay the civil penalty to the Court or request a hearing to contest the charge. A default judgment may include any applicable increases in the amount of the civil penalty for failure to timely pay or contest. The applicable city, county or state agency may seek execution on any judgment entered by the Court.

In addition, the applicable city, county or state agency may tow the vehicle if it is located in its jurisdiction and levy on it for the amount of unpaid tickets plus towing charges.

(75 Del. Laws, c. 405, § 19; 70 Del. Laws, c. 186, § 1.)

§ 7004. Enforcement by cadets appointed by the Superintendent of the State Police.

(a) The Superintendent of the State Police is hereby authorized to appoint cadets who shall have authority to enforce violations of this chapter within the unincorporated areas of each county. Cadets appointed pursuant to this section must be at least 18 years of age. The Superintendent may establish such other qualifications as are deemed necessary or desirable.

(b) A summons issued by a cadet appointed by the Superintendent pursuant to this section shall have the same force and effect as a summons issued by the State Police.

(c) The proceeds of any civil penalty collected from a summons issued by the State Police or a cadet appointed pursuant to this section shall be deposited into the General Fund.

(d) The authority of the State Police or a cadet appointed by the Superintendent to enforce this chapter shall not be limited by any jurisdictional agreement between the State Police and any local law-enforcement agency.

(71 Del. Laws, c. 287, § 2; 75 Del. Laws, c. 405, § 20.)

Part IV
Miscellaneous

Chapter 71
Funeral Processions

§ 7101. Definitions.

(a) “Funeral director” and “funeral establishment” shall have the same meaning as set forth in § 3101 of Title 24.

(b) “Funeral escort” means a person or entity that provides escorts for funeral processions, including funeral home personnel, law-enforcement personnel and/or any other agency authorized by the Department of Safety and Homeland Security to operate emergency vehicles.

(c) “Funeral escort vehicle” means any motor vehicle that is properly equipped pursuant to § 7102 of this title [omitted] and which escorts a funeral procession.

(d) “Funeral lead vehicle” means any authorized law-enforcement vehicle, or non-law-enforcement motor vehicle properly equipped pursuant to § 7102 of this title [omitted] or a funeral escort vehicle being used to lead and facilitate the movement of a funeral procession. A hearse may serve as the funeral lead vehicle.

(e) “Funeral procession” means 2 or more vehicles, including a funeral lead vehicle or a funeral escort vehicle, accompanying the body of a deceased person or traveling to the church, chapel or other location where the funeral service or entombment is to be held.

(72 Del. Laws, c. 456, § 1; 74 Del. Laws, c. 110, § 138.)

§ 7102. [Omitted].

(72 Del. Laws, c. 456, § 1.)

§ 7103. Driving in funeral processions.

(a) Pedestrians and operators of vehicles not part of a funeral procession shall not drive between, obstruct, hinder or in any way interfere with the vehicles of a funeral procession being led by a funeral lead vehicle or funeral escort vehicle.

(b) All vehicles comprising a funeral procession shall follow the preceding vehicle in the funeral procession as closely as is practical and safe.

(c) Any ordinance, law or regulation stating that motor vehicles shall be operated to allow sufficient space enabling any other vehicle to enter and occupy such space without danger shall not be applicable to vehicles in a funeral procession.

(d) Each vehicle which is part of a funeral procession shall have its headlights, either high or low beam, and tail lights activated, and except for funeral lead vehicles and funeral escort vehicles, must have the flashing hazard lights activated if the vehicle is so equipped.

(e) Funeral processions shall be subject to the following conditions and exceptions:

(1) Operators of vehicles in a funeral procession shall yield the right-of-way to an approaching emergency vehicle giving an audible and/or visual signal.

(2) Operators of vehicles in a funeral procession shall yield the right-of-way when directed to do so by a police officer.

(3) Operators in a funeral procession must exercise due care when participating in a funeral procession.

(72 Del. Laws, c. 456, § 1.)

§ 7104. Penalties.

Whoever violates this chapter shall be guilty of a moving violation, the penalty for which shall be prescribed by § 4205 of this title.

(72 Del. Laws, c. 456, § 1.)

Part IV
Miscellaneous

Chapter 75
Automotive Recyclers

§ 7501. Definitions.

As used in this chapter:

(1) “Automotive recyclers” means any person engaged in:

a. Dismantling, destroying or scrapping any vehicle for the purpose of resale of its used parts; or

b. Otherwise acquiring vehicles for the benefit of their usable parts; and

c. Notwithstanding any provision to the contrary, any reference to motor vehicle salvage yard, junkyard, automotive graveyard, wrecking and dismantling, salvage dealer or junk dealer in any statute or rule or regulation shall apply to an automotive recycler.

(2) “Department” means the Department of Transportation unless otherwise specified.

(3) “License” means any license issued by the Department of Transportation for the operation of an automotive recycler.

(4) “Person” means an individual, partnership or corporation.

(5) “Vehicle” means any vehicle or motor vehicle as defined in Chapter 1 of this title or body or chassis of any vehicle to be dismantled, destroyed, scrapped or resold.

(65 Del. Laws, c. 318, § 1; 74 Del. Laws, c. 110, §§ 116, 117.)

§ 7502. License requirements; exception.

(a) A person may not conduct the business of an automotive recycler or engage in the business of purchasing vehicles which are to be dismantled in whole or in part by that person for the sale of usable parts, or store vehicles more than 30 days that are to be dismantled unless said person is licensed under this chapter.

(b) This chapter does not prohibit an unlicensed person from transporting a vehicle to a licensed automotive recycler for dismantling, destroying or scrapping; or to a scrap processor in the business of selling iron, steel and nonferrous scrap for resmelting purposes; or apply to abandoned vehicles or vehicles left in the possession of a garage or service station for storage purposes only pursuant to Chapter 44 of this title.

(c) A person must possess a valid license issued by the Division of Revenue and if applicable a license issued pursuant to Chapter 12 of Title 17.

(d) Any other provision of this chapter notwithstanding, in a case in which an automotive recycler is also the owner or has an interest in a junkyard, the recycler must comply with all requirements of Chapter 12 of Title 17.

(e) Any other provision of this chapter notwithstanding, in a case in which an automotive recycler is purchasing or selling a “catalytic converter,” as defined in § 2301 of Title 24, the automotive recycler must comply with the requirements of Chapter 23 of Title 24 relating to the purchase and sale of catalytic converters.

(65 Del. Laws, c. 318, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 207, § 1.)

§ 7503. Location requirements.

A person may not be licensed to conduct an automotive recycler business under this chapter unless:

(1) The business is conducted from a building that is adequate and appropriate for automotive recycling as approved by the Division of Motor Vehicles;

(2) The business has a storage area for at least 25 vehicles, the area is properly fenced and screened and the automotive recycler has complied with all of the requirements of Chapter 12 of Title 17 and all rules and regulations adopted pursuant thereto;

(3) The location is properly zoned by the local zoning authority for the operation of an automotive recycler business;

(4) The business be at a fixed location, as specified in the license application; and

(5) There be a substantial and legible sign:

a. That advertises the type of business conducted at the location;

b. That is placed in a manner that is readily seen by the public; and

c. That is in conformance with all state and local regulations, laws and ordinances.

(65 Del. Laws, c. 318, § 1.)

§ 7504. Application for license.

The Department shall devise an automotive recycler license application which shall include the following:

(1) The name of the business;

(2) The address of the business; and

(3) If the business is a proprietorship, partnership or corporation, the names and addresses of all principals, partners or corporate officers and resident agents.

(65 Del. Laws, c. 318, § 1.)

§ 7505. Issuance of licenses.

The Department shall issue an "automotive recycler" license under this chapter to an applicant who is in compliance with this chapter and otherwise is entitled to a license.

(65 Del. Laws, c. 318, § 1.)

§ 7506. License fee and renewal.

(a) Each automotive recycler under this chapter shall pay an annual fee for each license issued in the amount of $100.

(b) A license issued under this chapter shall expire on December 31 of each year, and may be renewed by application and payment of license fees.

(65 Del. Laws, c. 318, § 1.)

§ 7507. Record of vehicles and catalytic converters; inspections.

(a) Each automotive recycler shall keep accurate and complete records of all vehicles, motor vehicles, and catalytic converters acquired in the business. The records shall be maintained in an accessible place and shall contain the following information:

(1) The names and addresses of the person or persons from whom the vehicle or catalytic converter was acquired or sold.

(2) The date of acquisition and sale of the vehicle or catalytic converter.

(3) Documentary evidence of ownership as required by the Department.

(b) The Department may promulgate further rules designed to implement recordkeeping for catalytic converters pursuant to the requirements of this section.

(c) During business hours, vehicles, vehicle parts, catalytic converters, and records and premises of the automotive recycler shall be open to inspection by the Department or any police officer while discharging official duties.

(65 Del. Laws, c. 318, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 207, § 1.)

§ 7508. Refusal, suspension or revocation of license.

The Department may refuse to grant a license under this chapter to a person and may suspend, revoke or refuse to renew a license of any person if it finds that:

(1) The person has violated or is attempting to violate this chapter or any rule or regulation adopted by the Department under this chapter;

(2) The person has violated or is attempting to violate any other provisions of the Delaware Code that relate to the business activity of that person; or

(3) Any automotive recycler or employee has violated or is attempting to violate this chapter and any rule or regulation adopted under this chapter or any other provisions of the Delaware Code that relate to the business activities of the person unless the Department is satisfied that the management of the business:

a. Had no knowledge of the wrongful conduct; or

b. Was unable to prevent the violation or attempted violation.

(65 Del. Laws, c. 318, § 1.)

§ 7509. Hearing notice.

A license issued under this chapter may be suspended, revoked, refused or not renewed only after notice of hearing has been served upon the person or the person's representatives. Said hearing notice shall contain:

(1) All charges made against said person; and

(2) The date, approximate time and place of the hearing must be specified.

(65 Del. Laws, c. 318, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7510. Hearing procedures.

All hearings shall conform to the provisions of the Administrative Procedures Act, Chapter 101 of Title 29.

(65 Del. Laws, c. 318, § 1.)

§ 7511. Judicial review.

Any aggrieved party to a hearing may appeal a decision or order of the Department to the Superior Court for review de novo.

(65 Del. Laws, c. 318, § 1.)

§ 7512. Penalty.

Any person who violates the provisions of this chapter relating to the requirements of licensing or the maintenance of vehicle records shall be guilty of a class B misdemeanor as the same is defined in Chapter 42 of Title 11, and shall be subject to the penalties prescribed therein.

(65 Del. Laws, c. 318, § 1.)

Part IV
Miscellaneous

Chapter 80
Vehicle Equipment Safety Compact [Repealed].

Subchapter I

Vehicle Equipment Safety Compact [Repealed].

§ 8001. Vehicle Equipment Safety Compact [Repealed].

Repealed by 65 Del. Laws, c. 448, § 1, eff. July 8, 1986.

Subchapter II

Effectuation of Compact [Repealed].

§§ 8011-8018. Legislative findings; retention by General Assembly of authority; Secretary of Public Safety to be Commissioner; cooperation by state agencies; filing of documents; notices; submission of budget; inspection of accounts; Governor is executive head [Repealed].

Repealed by 65 Del. Laws, c. 448, § 1, eff. July 8, 1986.

Part IV
Miscellaneous
Chapter 81
Driver's License Compact
Subchapter I
Driver's License Compact

§ 8101. Driver's License Compact.

The Driver's License Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

DRIVER'S LICENSE COMPACT

ARTICLE I Findings and Declaration of Policy

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II Definitions

As used in this compact:

(a) "State" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(b) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III Reports of Conviction

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted, describe the violation specifying the section of the statute, code or ordinance violated, identify the court in which action was taken, indicate whether a plea of guilty or not guilty was entered or the conviction was a result of the forfeiture of bail, bond or other security and shall include any special findings made in connection therewith.

ARTICLE IV Effect of Conviction

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) of this article as being applicable to and identifying those offenses or violations of a substantially similar nature and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

ARTICLE V Applications for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of 1 year from the date the license was revoked such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

ARTICLE VII Compact Administrator and Interchange of Information

(a) The head of the licensing authority of each party state shall be the administrator of this compact for that licensing authority's head's state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII Entry Into Force and Withdrawal

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 6 months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(21 Del. C. 1953, § 8101; 54 Del. Laws, c. 241, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1.)

Subchapter II

Effectuation of Compact

§ 8111. Definitions.

As used in this chapter and in the compact with reference to this State:

(1) "Compact administrator" means the Secretary of Transportation.

(2) "Executive head" means the Governor.

(3) "Licensing authority" means the Department of Transportation.

(21 Del. C. 1953, § 8111; 54 Del. Laws, c. 241, § 1; 57 Del. Laws, c. 670, §§ 22A, 22B; 74 Del. Laws, c. 110, §§ 118, 119.)

§ 8112. Compensation of compact administrator.

The compact administrator provided for in Article VII of the compact shall not be entitled to any additional compensation on account of the compact administrator's service as such administrator but shall be entitled to expenses incurred in connection with the compact

administrator's duties and responsibilities as such administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of the compact administrator's office or employment.

(21 Del. C. 1953, § 8112; 54 Del. Laws, c. 241, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8113. Furnishing of information to other states.

The Department of Transportation shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV and V of the compact.

(21 Del. C. 1953, § 8113; 54 Del. Laws, c. 241, § 1; 57 Del. Laws, c. 670, § 22A; 74 Del. Laws, c. 110, § 120.)

Part IV
Miscellaneous

Chapter 83
Commercial Driver Training School Licensing

§ 8301. Definitions.

As used in this chapter:

(1) "Commercial driver training school" or "school" means a business enterprise conducted by a person for the education and training of persons, either practically or theoretically, or both, to operate motor vehicles or to prepare an applicant for an examination given by the State for a driver's license or learner's permit and charging a consideration or tuition for such services.

(2) "Instructor" means any person, whether acting as operator of a commercial driver training school or for any such school for compensation, who teaches, conducts classes of, gives demonstrations to or supervises practice of persons learning to operate or drive motor vehicles or preparing to take an examination for a driver's license or learner's permit, and any person who supervises the work of any other such instructor.

(21 Del. C. 1953, § 8301; 56 Del. Laws, c. 417, § 1; 65 Del. Laws, c. 77, § 8; 70 Del. Laws, c. 186, § 1.)

§ 8302. Enforcement by the Secretary.

(a) The Secretary shall adopt and prescribe such regulations concerning the administration and enforcement of this chapter as are necessary to carry out the intent of this chapter and to protect the public. The Secretary or the Secretary's authorized representative shall inspect the school facilities and equipment of applicants and licensees and examine applicants for instructor's licenses.

(b) The Secretary shall administer and enforce this chapter, and may call upon the Secretary of Education for assistance in developing and formulating appropriate regulations.

(21 Del. C. 1953, § 8302; 56 Del. Laws, c. 417, § 1; 57 Del. Laws, c. 670, § 30; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 65, § 28.)

§ 8303. License for schools; requirements.

(a) No commercial driver training school shall be established nor any such existing school continued after January 1, 1969, unless such school applies for and obtains from the Secretary a license in the manner and form prescribed by the Secretary.

(b) Regulations adopted by the Secretary shall state the requirements for a school license, including requirements concerning location, equipment, courses of instruction, instructors, previous records of the school and instructors, financial statements, schedule of fees and charges, character and reputation of the operators and instructors, insurance in such sum and with such provisions as the Secretary deems necessary to protect adequately the interests of the public and such other matters as the Secretary may prescribe for the protection of the public.

(21 Del. C. 1953, § 8303; 56 Del. Laws, c. 417, § 1; 57 Del. Laws, c. 670, § 30.)

§ 8304. License for instructors; requirements.

(a) No person shall act as an instructor after January 1, 1969, unless such person applies for and obtains from the Secretary a license in the manner and form prescribed by the Secretary.

(b) Regulations adopted by the Secretary shall state the requirements for an instructor's license, including requirements concerning moral character, physical condition, knowledge of the courses of instruction, motor vehicle laws and safety principles and practices, previous personnel and employment records and such other matters as the Secretary may prescribe for the protection of the public.

(21 Del. C. 1953, § 8304; 56 Del. Laws, c. 417, § 1; 57 Del. Laws, c. 670, § 30.)

§ 8305. License fees.

All licenses shall expire on the last day of the calendar year and may be renewed upon application to the Secretary as prescribed by regulation. Each application for an original or renewal school license fee shall be accompanied by a fee of $115 and each application for an original or renewal instructor's license shall be accompanied by a fee of $50. No license fee shall be refunded in the event that the license is rejected, suspended or revoked.

(21 Del. C. 1953, § 8305; 56 Del. Laws, c. 417, § 1; 57 Del. Laws, c. 188, § 13; 57 Del. Laws, c. 670, § 30; 66 Del. Laws, c. 84, § 1; 67 Del. Laws, c. 260, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8306. Issuance, renewal, suspension and revocation of licenses.

The Secretary may cancel, suspend, revoke or refuse to issue or renew a school or instructor's license in any case where the Secretary finds the licensee or applicant has not complied with or has violated any of the provisions of this chapter or any regulation adopted by

the Secretary. Any canceled, suspended or revoked license shall be returned to the Secretary by the licensee, and its holder shall not be eligible to apply for a license under this chapter until 3 months have elapsed since the date of such suspension or revocation.

(21 Del. C. 1953, § 8306; 56 Del. Laws, c. 417, § 1; 57 Del. Laws, c. 670, § 30; 70 Del. Laws, c. 186, § 1.)

§ 8307. Exemptions.

This chapter shall not apply to any person giving driver training lessons without charge, to employers maintaining driver training schools without charge for their employees only. Driver education classes conducted by state colleges, universities and high schools and programs approved and contracted by the Department of Education are exempt from the licensing requirements of this chapter when the courses are taught by certified driver training teachers using curriculum approved by those institutions.

(21 Del. C. 1953, § 8307; 56 Del. Laws, c. 417, § 1; 74 Del. Laws, c. 18, §§ 1, 2.)

§ 8308. Penalties.

Violation of this chapter or any regulation promulgated pursuant thereto shall constitute a misdemeanor, and any person, firm or corporation upon conviction therefor shall be punished by a fine of not more than $115, or imprisonment for not more than 30 days or by both such fine and imprisonment.

(21 Del. C. 1953, § 308; 56 Del. Laws, c. 417, § 1; 68 Del. Laws, c. 9, § 65.)

Part IV
Miscellaneous

Chapter 84
New Recreational Vehicle or New Recreational Trailer Manufacturer-Dealer Agreements [For application of this chapter, see 79 Del. Laws, c. 161, § 5]

§ 8401. Legislative intent [For application of this section, see 79 Del. Laws, c. 161, § 5].

(a) The intent of the General Assembly is to protect the public health, safety, and welfare of the residents of the State by regulating the relationship among new recreational vehicle dealers, manufacturers, distributors, and suppliers; maintaining competition; and providing consumer protection and fair trade.

(b) The intent of the General Assembly is that the provisions of this chapter be applied to manufacturer-dealer agreements in regard to new recreational vehicles, or new recreational trailers, entered into on or after July 1, 2014.

(79 Del. Laws, c. 161, § 1.)

§ 8402. Definitions [For application of this section, see 79 Del. Laws, c. 161, § 5].

As used in this chapter, the following definitions apply:

(1) "Area of sales responsibility" means the geographical area, agreed to by the new recreational vehicle dealer and the manufacturer in the manufacturer-dealer agreement, within which the new recreational vehicle dealer has the exclusive right to display or sell the manufacturer's new recreational vehicles and new recreational trailers of a particular line-make to the retail public.

(2) "Distributor" means a person, firm, corporation, or business entity that purchases new recreational vehicles or new recreational trailers from a manufacturer for resale to new recreational vehicle dealers.

(3) "Factory campaign" means an effort on the part of a warrantor to contact new recreational vehicle or new recreational trailer owners or new recreational vehicle dealers in order to address a part or equipment issue.

(4) "Family member" means a spouse, child, grandchild, parent, sibling, niece, or nephew, or the spouse thereof.

(5) "Fifth-wheel trailer" means a vehicle, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use. A "fifth-wheel trailer" must be of such size and weight as to not require a special highway movement permit, and must be designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

(6) "Folding camping trailer" means a vehicle that is mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

(7) "Line-make" means a specific series of new recreational vehicles or new recreational trailers that:

a. Are identified by a common series trade name or trademark;

b. Are targeted to a particular market segment, as determined by their decor, features, equipment, size, weight, and price range;

c. Have lengths and interior floor plans that distinguish the new recreational vehicles or new recreational trailers from other new recreational vehicles or new recreational trailers with substantially the same decor, equipment, features, price, and weight;

d. Belong to a single, distinct classification of new recreational vehicle or new recreational trailer types having a substantial degree of commonality in the construction of the chassis, frame, and body; and

e. The manufacturer-dealer agreement authorizes a new recreational vehicle dealer to sell.

(8) "Manufacturer" means a person, firm, corporation, or business entity that engages in the manufacturing of new recreational vehicles or new recreational trailers.

(9) "Manufacturer-dealer agreement" means a written agreement or contract entered into between a manufacturer and a new recreational vehicle dealer that fixes the rights and responsibilities of the parties and pursuant to which the new recreational vehicle dealer sells new recreational vehicles or new recreational trailers.

(10) "Motor home" means a motor vehicle designed to provide temporary living quarters for recreational, camping, or travel use. A "motor home" must contain at least 4 of the following permanently installed, independent life-support systems which meet the National Fire Protection Association standard for recreational vehicles:

a. A cooking facility with an on-board fuel source;

b. A potable water supply system that includes at least a sink, a faucet, and a water tank with an exterior service supply connection;

c. A toilet with exterior evacuation;

d. A gas or electric refrigerator;

e. A heating or air conditioning system with an on-board power or fuel source separate from the vehicle engine; or

f. A 110-125 volt electric power supply.

(11) "New recreational trailer" means a travel trailer, fifth-wheel trailer, or folding camping trailer which has not been titled.

(12) “New recreational vehicle” means a motorhome which has not been titled.

(13) “New recreational vehicle dealer” means a person, firm, corporation, or business entity who is engaged in the business of buying, selling, or exchanging new recreational vehicles or new recreational trailers.

(14) “Proprietary part” means any part manufactured by or for, and sold exclusively by, the manufacturer.

(15) “Supplier” means any person, firm, corporation, or business entity that engages in the manufacturing of new recreational vehicle or new recreational trailer parts, accessories, or components.

(16) “Transient customer” means a customer who is temporarily traveling through a new recreational vehicle dealer’s area of sales responsibility.

(17) “Travel trailer” means a vehicle, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use. A “travel trailer” must be of such size and weight as to not require a special highway movement permit when towed by a motorized vehicle.

(18) “Warrantor” means any person, firm, corporation, or business entity, including any manufacturer or supplier that provides a written warranty to the consumer in connection with a new recreational vehicle or new recreational trailer, or parts, accessories, or components thereof. The term “warrantor” does not include service contracts, mechanical or other insurance, or extended warranties sold for separate consideration by a new recreational vehicle dealer or other person not controlled by a manufacturer.

(79 Del. Laws, c. 161, § 1.)

§ 8403. Written agreements and designated territories [For application of this section, see 79 Del. Laws, c. 161, § 5].

(a) A manufacturer or distributor may not sell a new recreational vehicle or new recreational trailer in this State to or through a new recreational vehicle dealer without having first entered into a written and signed manufacturer-dealer agreement with a new recreational vehicle dealer.

(b) A manufacturer or distributor shall designate the area of sales responsibility exclusively assigned to a new recreational vehicle dealer in a manufacturer-dealer agreement and may not change the area or contract with another new recreational vehicle dealer for the sale of the same line-make in the designated area during the duration of the agreement, except as provided for in § 6311(b) of this title.

(c) The area of sales responsibility may not be reviewed or changed without the consent of both parties for 1 year after the execution of the manufacturer-dealer agreement.

(d) Except as provided in subsection (e) of this section, a new recreational vehicle dealer may not sell a new recreational vehicle or new recreational trailer in this State without having first entered into a manufacturer-dealer agreement with a manufacturer or distributor which has been signed by both parties.

(e) A new recreational vehicle dealer may not be prohibited from selling a particular line-make after a manufacturer-dealer agreement has been terminated or not renewed under § 8404 of this title, if new recreational vehicles or new recreational trailers of the terminated line-make are not returned or required to be returned to the manufacturer. The new recreational vehicle dealer may continue to sell all-line makes that were subject to the manufacturer-dealer agreement and are currently in stock until those line-makes are no longer in the new recreational vehicle dealer’s inventory.

(79 Del. Laws, c. 161, § 1.)

§ 8404. Termination, cancellation, nonrenewal, or alteration of a dealership [For application of this section, see 79 Del. Laws, c. 161, § 5].

(a) A manufacturer or distributor, directly or through any authorized officer, agent or employee, may not terminate, cancel, or fail to renew a manufacturer-dealer agreement without good cause. If the manufacturer or distributor with good cause terminates, cancels, or fails to renew the manufacturer-dealer agreement, § 8405 of this title does not apply.

(b) A manufacturer or distributor has the burden of showing good cause for terminating, canceling, or failing to renew a manufacturer-dealer agreement with a new recreational vehicle dealer. For purposes of determining whether there is good cause for the proposed action, any of the following factors may be considered:

(1) The extent of the affected new recreational vehicle dealer’s penetration in the area of sales responsibility.

(2) The nature and extent of the new recreational vehicle dealer’s investment in its business.

(3) The adequacy of the new recreational vehicle dealer’s service facilities, equipment, parts, supplies, and personnel.

(4) The effect of the proposed action on the community.

(5) The extent and quality of the new recreational vehicle dealer’s service under new recreational vehicle or new recreational trailer warranties.

(6) The new recreational vehicle dealer’s failure to follow agreed-upon procedures or standards related to the overall operation of the dealership.

(7) The new recreational vehicle dealer’s performance under the terms of its manufacturer-dealer agreement.

(c) Except as otherwise provided in this chapter, a manufacturer or distributor shall provide a new recreational vehicle dealer with at least 120 days prior written notice of termination, cancellation, or nonrenewal of the manufacturer-dealer agreement if the new recreational vehicle dealer is being terminated, cancelled, or nonrenewed for good cause.

(1) The notice must state all reasons for the proposed termination, cancellation, or nonrenewal, and must further state that if, within 30 days following receipt of the notice, the new recreational vehicle dealer provides to the manufacturer or distributor a written notice of intent to cure all claimed deficiencies, the new recreational vehicle dealer will then be entitled to the full 120-day notice period, commencing from the new recreational vehicle dealer's receipt of the manufacturer's or distributor's original notice to rectify the deficiencies. If the deficiencies are rectified within the 120-day notice period, the manufacturer's or distributor's notice is voided. If the new recreational vehicle dealer fails to provide the notice of intent to cure the deficiencies in the prescribed 30-day time period, the termination, cancellation, or nonrenewal takes effect 30 days after the new recreational vehicle dealer's receipt of the manufacturer's or distributor's original notice.

(2) The notice period may be reduced to 30 days if the manufacturer's or distributor's grounds for termination, cancellation, or nonrenewal are due to any of the following good cause factors:

a. A new recreational vehicle dealer being convicted of, or entering a plea of nolo contendere to, a felony;

b. The abandonment or closing of the business operations of the new recreational vehicle dealer for 10 consecutive business days unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the new recreational vehicle dealer has no control;

c. A significant misrepresentation by a new recreational vehicle dealer that materially affects the business relationship between the new recreational vehicle dealer and the manufacturer or distributor;

d. A suspension or revocation of a new recreational vehicle dealer's license, or refusal to renew the new recreational vehicle dealer's license, by the Division of Motor Vehicles;

e. A material violation of this chapter which the new recreational vehicle dealer does not cure within 30 days after written notice by the manufacturer or distributor; or

f. A declaration by a new recreational vehicle dealer of bankruptcy, insolvency, or the occurrence of an assignment for the benefit of creditors or bankruptcy;

(d) A new recreational vehicle dealer may terminate, cancel, or not renew its manufacturer-dealer agreement with a manufacturer or distributor with or without good cause by giving 30-days written notice. In the case of a new recreational vehicle dealer terminating, cancelling, or failing to renew a manufacturer-dealer agreement for good cause, the notice must state all the reasons for the proposed termination, cancellation, or nonrenewal, and must further state that if, within 30 days following receipt of the notice, the manufacturer or distributor provides to the new recreational vehicle dealer a written notice of intent to cure all claimed deficiencies, the manufacturer or distributor will then be entitled to a 90-day notice period commencing from the manufacturer's receipt of the new recreational vehicle dealer's original notice. If the deficiencies are rectified within the 90-day notice period, the new recreational vehicle dealer's notice is voided. If the manufacturer or distributor fails to provide the notice of intent to cure the deficiencies in the prescribed 30-day time period, the termination, cancellation, or nonrenewal takes effect 30 days after the manufacturer's or distributor's receipt of the new recreational vehicle dealer's original notice, unless the parties agree otherwise in writing.

(e) If the new recreational vehicle dealer terminates, cancels or fails to renew a manufacturer-dealer agreement without good cause, the provisions of § 8405 of this title do not apply. If the new recreational vehicle dealer terminates, cancels, or fails to renew the manufacturer-dealer agreement with good cause, § 8405 of this title applies. The new recreational vehicle dealer has the burden of showing good cause. Any of the following items are considered "good cause" for a proposed termination, cancellation, or nonrenewal action by the new recreational vehicle dealer:

(1) A manufacturer or distributor being convicted of, or entering a plea of nolo contendere to, a felony.

(2) The business operations of a manufacturer or distributor have been abandoned or closed for 10 consecutive business days, unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the manufacturer has no control.

(3) A significant misrepresentation by a manufacturer or distributor that materially affects the business relationship between the manufacturer and the new recreational vehicle dealer.

(4) A material violation of this chapter which the manufacturer or distributor does not cure within 30 days after written notice by the new recreational vehicle dealer.

(5) A declaration by a manufacturer or distributor of bankruptcy, insolvency, or the occurrence of an assignment for the benefit of creditors or bankruptcy.

(79 Del. Laws, c. 161, § 1.)

§ 8405. Repurchase of inventory [For application of this section, see 79 Del. Laws, c. 161, § 5].

(a) If a new recreational vehicle dealer terminates, cancels, or fails to renew a manufacturer-dealer agreement for good cause as defined in § 8404(e) of this title and the manufacturer fails to cure the claimed deficiencies as provided in § 8404(d) of this title, at the election of the new recreational vehicle dealer and within 45 days after termination, cancellation, or nonrenewal, the manufacturer shall, repurchase:

(1) All new, untitled recreational vehicles and recreational trailers that were acquired from the manufacturer or distributor within 12 months before the effective date of the notice of termination, cancellation, or nonrenewal that have not been used, except for demonstration purposes, and that have not been altered or damaged, at 100% of the net invoice cost, including transportation, less applicable rebates and discounts to the new recreational vehicle dealer. If any of the vehicles repurchased pursuant to this paragraph are damaged, but do not trigger a consumer disclosure requirement, the amount due the new recreational vehicle dealer must be reduced by the cost to repair the vehicle. Damage prior to delivery to the new recreational vehicle dealer that is disclosed at the time of delivery will not disqualify repurchase under this provision.

(2) All undamaged accessories and proprietary parts sold to a new recreational vehicle dealer for resale within the 12 months prior to termination, cancellation, or nonrenewal, if accompanied by the original invoice, at 105% of the original net price paid to the manufacturer or distributor to compensate the new recreational vehicle dealer for handling, packing, and shipping the parts; and

(3) Any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery at 100% of the new recreational vehicle dealer's net cost plus freight, destination, delivery, and distribution charges and sales taxes, if any, if the items were purchased by the new recreational vehicle dealer within 5 years before termination, cancellation, or nonrenewal upon the manufacturer's or distributor's request, and can no longer be used in the normal course of the new recreational vehicle dealer's ongoing business.

(b) The manufacturer or distributor shall pay the new recreational vehicle dealer within 30 days after receipt of the items returned pursuant to this section.

(79 Del. Laws, c. 161, § 1.)

§ 8406. Transfer of dealership; family succession [For application of this section, see 79 Del. Laws, c. 161, § 5].

(a) If a new recreational vehicle dealer desires to make a change in ownership by the sale of the business assets, stock transfer, or otherwise, the new recreational vehicle dealer shall give the manufacturer or distributor written notice at least 15 business days before the closing, along with all supporting documentation that may be reasonably required by the manufacturer or distributor to determine if an objection to the sale may be made. In the absence of a breach by the selling new recreational vehicle dealer of its manufacturer-dealer agreement or a provision of this chapter, the manufacturer or distributor may not object to the proposed change in ownership unless the prospective transferee:

(1) Has previously been terminated by the manufacturer for breach of its manufacturer-dealer agreement;

(2) Has been convicted of a felony or any crime of fraud, deceit, or moral turpitude;

(3) Lacks a license required by law;

(4) Does not have an active line of credit sufficient to purchase a manufacturer's or distributor's product; or

(5) Has undergone in the last 10 years bankruptcy, insolvency, a general assignment for the benefit of creditors, or the appointment of a receiver, trustee, or conservator to take possession of the transferee's business or property.

(b) If the manufacturer or distributor objects to a proposed change of ownership pursuant to subsection (a) of this section, the manufacturer or distributor shall give written notice of its reasons to the new recreational vehicle dealer within 10 business days after receipt of the new recreational vehicle dealer's notification and all supporting documentation. The manufacturer or distributor has the burden of proof with regard to its objection. If the manufacturer or distributor does not give timely notice of its objection, the change of ownership is deemed approved.

(c) It is unlawful for a manufacturer or distributor to fail to provide a new recreational vehicle dealer with an opportunity to designate, in writing, a family member as a successor to the dealership in the event of the death, incapacity, or retirement of the new recreational vehicle dealer. It is unlawful to prevent or refuse to honor the succession to a dealership by a family member of the deceased, incapacitated, or retired new recreational vehicle dealer, unless the manufacturer or distributor has provided to the new recreational vehicle dealer written notice of its objections within 10 days after receipt of the new recreational vehicle dealer's modification of the new recreational vehicle dealer's succession plan. In the absence of a breach of the manufacturer-dealer agreement, the manufacturer or distributor may object to the succession for the following reasons only:

(1) Conviction of the successor of a felony or any crime of fraud, deceit, or moral turpitude;

(2) Bankruptcy or insolvency of the successor during the past 10 years;

(3) Prior termination by the manufacturer or distributor of the successor for breach of a manufacturer-dealer agreement;

(4) The lack of an active line of credit for the successor sufficient to purchase the manufacturer's or distributor's product; or

(5) The lack of a license for the successor required by law.

(d) A manufacturer or distributor has the burden of proof regarding its objection under subsection (c) of this section. However, a family member may not succeed to a dealership if the succession involves, without the manufacturer's or distributor's consent, a relocation of the business or an alteration of the terms and conditions of the manufacturer-dealer agreement.

(79 Del. Laws, c. 161, § 1.)

§ 8407. Warranty obligations [For application of this section, see 79 Del. Laws, c. 161, § 5].

(a) A warrantor shall:

(1) Specify in writing to each of its new recreational vehicle dealers all new recreational vehicle dealer obligations, if any, for preparation, delivery, and warranty service on its products;

(2) Compensate the new recreational vehicle dealer for performing warranty service required of the new recreational vehicle dealer by the warrantor; and

(3) Provide the new recreational vehicle dealer with a schedule of compensation to be paid and the time allowances for the performance of any work and service. The schedule of compensation must include reasonable compensation for diagnostic work as well as for warranty labor.

(b) Time allowances for the diagnosis and performance of warranty labor must be reasonable for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration are the actual wage rates being paid by the new recreational vehicle dealer, and the actual retail labor rate being charged by the new recreational vehicle dealers in the community in which the new recreational vehicle dealer is doing business. The compensation of a new recreational vehicle dealer for warranty labor may not be less than the lowest retail labor rates actually charged by the new recreational vehicle dealer for like nonwarranty labor, as long as such rates are reasonable.

(c) A warrantor shall reimburse a new recreational vehicle dealer for warranty parts at actual wholesale cost plus a minimum 30% handling charge and the cost, if any, of freight to return warranty parts to the warrantor.

(d) Warranty audits of new recreational vehicle dealer records may be conducted by the warrantor on a reasonable basis, and new recreational vehicle dealer claims for warranty compensation may not be denied except for cause, such as performance of nonwarranty repairs, material noncompliance with the warrantor's published policies and procedures, lack of material documentation, fraud, or misrepresentation.

(e) A new recreational vehicle dealer shall submit warranty claims within 30 days after completing work.

(f) A new recreational vehicle dealer shall immediately notify a warrantor, verbally or in writing, if the new recreational vehicle dealer is unable to perform any warranty repairs within 10 days of receipt of verbal or written complaints from a consumer.

(g) A warrantor shall disapprove warranty claims in writing within 30 days after the work is completed and submitted by the new recreational vehicle dealer in the manner and form prescribed by the warrantor. Claims not specifically disapproved in writing within 30 days are construed to be approved and must be paid within 45 days after the work is completed and the claim submitted.

(h) It is a violation of this chapter for a warrantor to:

(1) Fail to perform any of its warranty obligations with respect to its warranted products;

(2) Fail to include, in written notices of factory campaigns to new recreational vehicle or new recreational trailer owners and new recreational vehicle dealers, the expected date by which necessary parts and equipment, including tires and chassis or chassis parts, will be available to new recreational vehicle dealers to perform the campaign work. A warrantor may ship parts to a new recreational vehicle dealer to effect the campaign work, and, if the parts are in excess of the new recreational vehicle dealer's requirements, the new recreational vehicle dealer may return unused parts to the warrantor for credit after completion of the campaign;

(3) Fail to compensate any of its new recreational vehicle dealers for authorized repairs effected by the new recreational vehicle dealer of merchandise damaged in manufacture or transit to the new recreational vehicle dealer, if the carrier is selected by the warrantor, factory branch, distributor, or distributor branch;

(4) Fail to compensate any of its new recreational vehicle dealers in accordance with the schedule of compensation provided to the new recreational vehicle dealer pursuant to this section, if performed in a timely and competent manner;

(5) Intentionally misrepresent in any way to purchasers of new recreational vehicles or new recreational trailers that warranties with respect to the manufacture, performance, or design of the vehicle are made by the new recreational vehicle dealer as warrantor or co-warrantor; or

(6) Require a new recreational vehicle dealer to make warranties to customers in any manner related to the manufacture of the new recreational vehicle or new recreational trailer.

(i) It is a violation of this chapter for a new recreational vehicle dealer to:

(1) Fail to perform predelivery inspection functions, as specified by the warrantor, in a competent and timely manner;

(2) Fail to perform warranty service work authorized by the warrantor in a competent and timely manner on any transient customer's vehicle of the same line-make;

(3) Fail to accurately document the time spent completing each repair, the total number of repair attempts conducted on a single unit, and the number of repair attempts for the same repair conducted on a single vehicle;

(4) Fail to notify the warrantor within 10 days of a second repair attempt which impairs the use, value or safety of the vehicle;

(5) Fail to maintain written records, including a consumer's signature, regarding the amount of time a unit is stored for the consumer's convenience during a repair; or,

(6) Make fraudulent warranty claims or misrepresent the terms of a warranty.

(79 Del. Laws, c. 161, § 1.)

§ 8408. Indemnification [For application of this section, see 79 Del. Laws, c. 161, § 5].

Notwithstanding the terms of any manufacturer-dealer agreement, it is a violation of this chapter for:

(1) A warrantor to fail to indemnify and hold harmless its new recreational vehicle dealer against any losses or damages to the extent that the losses or damages are caused by the negligence or wilful misconduct of the warrantor. A new recreational vehicle dealer may not be denied indemnification for failing to discover, disclose, or remedy a defect in the design or manufacturing of a new recreational vehicle or new recreational trailer. A new recreational vehicle dealer may be denied indemnification if the new recreational vehicle dealer fails to remedy a known and announced defect in accordance with the written instructions of a warrantor for whom the new recreational vehicle dealer is obligated to perform warranty service. A new recreational vehicle dealer shall provide to a warrantor a copy of any pending law suit in which allegations are made that are covered by the provisions of this paragraph within 10 days after receiving such suit. Notwithstanding anything to the contrary, this paragraph shall continue to apply even after the new recreational vehicle or new recreational trailer is titled.

(2) A new recreational vehicle dealer to fail to indemnify and hold harmless its warrantor against any losses or damages to the extent that the losses or damages are caused by the negligence or wilful misconduct of the new recreational vehicle dealer. A warrantor shall provide to a new recreational vehicle dealer a copy of any pending law suit or similar proceeding in which allegations are made that come within the provisions of this paragraph within 10 days after receiving such suit. Notwithstanding anything to the contrary, this paragraph shall continue to apply even after the new recreational vehicle or new recreational trailer is titled.

(79 Del. Laws, c. 161, § 1.)

§ 8409. Inspection and rejection by the dealer [For application of this section, see 79 Del. Laws, c. 161, § 5].

(a) If a new recreational vehicle or new recreational trailer is damaged prior to transit to a new recreational vehicle dealer or is damaged in transit to the new recreational vehicle dealer when the carrier or means of transportation has been selected by the manufacturer or distributor, the new recreational vehicle dealer shall notify the manufacturer or distributor of the damage within the timeframe specified in the manufacturer-dealer agreement and:

(1) Shall request from the manufacturer or distributor authorization to replace the components, parts, and accessories damaged or to otherwise correct the damage; or

(2) Shall reject the vehicle within the timeframe set forth in subsection (d) of this section.

(b) If a manufacturer or distributor refuses or fails to authorize repair of damage pursuant to subsection (a) of this section within 10 days after receipt of notification, or if the new recreational vehicle dealer rejects the new recreational vehicle or new recreational trailer because of damage, ownership of the new recreational vehicle or new recreational trailer reverts to the manufacturer or distributor.

(c) A new recreational vehicle dealer shall exercise due care while the damaged new recreational vehicle or new recreational trailer is in the new recreational vehicle dealer's custody, but the new recreational vehicle dealer has no other obligations, financial or otherwise, with respect to the vehicle.

(d) The timeframe for inspection and rejection of a new recreational vehicle or new recreational trailer by a new recreational vehicle dealer must be part of the manufacturer-dealer agreement and may not be less than 2 business days after the physical delivery of the vehicle.

(e) A new recreational vehicle or new recreational trailer that has, at the time of delivery to a new recreational vehicle dealer, an unreasonable amount of miles on its odometer as determined by the new recreational vehicle dealer, may be subject to rejection by the new recreational vehicle dealer and reversion of the vehicle to the manufacturer or distributor. In no instance may a new recreational vehicle dealer deem an amount less than the distance between the new recreational vehicle dealer and the manufacturer's factory or a distributor's point of distribution, plus 100 miles, as unreasonable.

(79 Del. Laws, c. 161, § 1.)

§ 8410. Coercion of new recreational vehicle dealer prohibited [For application of this section, see 79 Del. Laws, c. 161, § 5].

(a) A manufacturer or distributor may not coerce or attempt to coerce a new recreational vehicle dealer to:

(1) Purchase a product that the new recreational vehicle dealer did not order;

(2) Enter into an agreement with the manufacturer or distributor; or

(3) Enter into an agreement that requires the new recreational vehicle dealer to submit its disputes to binding arbitration or otherwise waive rights or responsibilities provided under this chapter.

(b) As used in this section, the term "coerce" includes, but is not limited to, threatening to terminate, cancel, or not renew a manufacturer-dealer agreement without good cause; or threatening to withhold product lines that the new recreational vehicle dealer is entitled to purchase pursuant to the manufacturer-dealer agreement; or threatening to delay product delivery as an inducement to amending the manufacturer-dealer agreement.

(79 Del. Laws, c. 161, § 1.)

§ 8411. Mediation [For application of this section, see 79 Del. Laws, c. 161, § 5].

(a) A new recreational vehicle dealer, manufacturer, distributor, or warrantor injured by another party's violation of this chapter may bring a civil action to recover actual damages. The court may award reasonable attorneys' fees and costs to the prevailing party in such an action. Venue for any civil action authorized by this section is in the county in which the new recreational vehicle dealer's business is located. In an action involving more than 1 new recreational vehicle dealer, venue may be in any county in which any new recreational vehicle dealer that is a party to the action is located.

(b) Prior to bringing suit under this chapter, the plaintiff shall serve upon the offending party a written demand for mediation. Mediation must take place in accordance with this section; Chapter 77 of Title 6 does not apply.

(1) In the case of a manufacturer, distributor, or new recreational vehicle dealer, a demand for mediation must be served upon the other party via certified mail at the address stated within the manufacturer-dealer agreement between the parties. In the case of a different warrantor, the notice must be sent via certified mail to the address identified in the warrantor's warranty, with a copy to the manufacturer or distributor.

(2) A demand for mediation must contain a brief statement of the dispute and the relief sought by the party filing the demand.

(3) Within 20 days after the date on which a demand for mediation is served, the parties shall mutually select an independent certified mediator and meet with that mediator for the purpose of attempting to resolve the dispute. The meeting place must be in this State in a location selected by the mediator. The mediator may extend the date of the meeting for good cause shown by either party or upon stipulation by both parties.

(4) The service of a demand for mediation under this section tolls the time for the filing of a complaint, petition, protest, or other action under this chapter until representatives of both parties have met with a mutually selected mediator for the purpose of attempting to resolve the dispute. If a complaint, petition, protest, or other action is filed before meeting with the mediator, the court shall enter an order suspending the proceeding or action until mediation has occurred, and, upon written stipulation by all parties to the proceeding or action that they wish to continue to mediate under this section, the court shall enter an order suspending the proceeding or action for as long a period as the court considers appropriate.

(5) The parties to the mediation shall bear their own costs for attorneys' fees and divide equally the cost of the mediator.

(c) In addition to the remedies provided in this section and notwithstanding the existence of any additional remedy at law, a manufacturer, distributor, warrantor, or new recreational vehicle dealer may make application to a court of competent jurisdiction for the grant, upon a hearing and for cause shown, of a temporary or permanent injunction, or both, restraining any person from acting as a new recreational vehicle dealer without being properly licensed, from violating or continuing to violate any of the provisions of this chapter, or from failing or refusing to comply with the requirements of this chapter or § 6311(b) of this title. An injunction must be issued without bond. A single act in violation of the provisions of this chapter is sufficient for a court to authorize the issuance of an injunction.

(79 Del. Laws, c. 161, § 1.)

§ 8412. Regulations [For application of this section, see 79 Del. Laws, c. 161, § 5].

The Division of Motor Vehicles shall have the authority to promulgate and adopt rules and regulations necessary to carry out the provisions of this chapter.

(79 Del. Laws, c. 161, § 1.)

Part IV
Miscellaneous

Chapter 85
Locomotive Idling

§ 8501. Purpose.

The General Assembly finds and determines that the people of this State are entitled to and should be ensured an environment free from the effects of nonessential idling of locomotives between 8 p.m. and 7 a.m., as such nonessential idling degrades the quality of their life, property, and environment.

(80 Del. Laws, c. 162, § 1.)

§ 8502. Definitions.

(1) "Idling" means the operation of the locomotive while it is stationary.

(2) "Law-enforcement officer" means a sworn member of a police force or other law-enforcement agency of this State, or of any county or municipality within this State, who is responsible for the prevention and detection of crime and the enforcement of the laws of this State, or the laws of any county or municipality within this State.

(3) "Person" means a company, corporation, association, firm, partnership, joint venture, or other legal entity. "Person" does not include individuals.

(80 Del. Laws, c. 162, § 1.)

§ 8503. Nonessential idling prohibited; defined.

(a) No person may permit the nonessential idling of a locomotive under its control or on its property between 8 p.m. and 7 a.m.

(b) Idling is nonessential if it is not a result of 1 or more of the following circumstances:

(1) Traffic conditions.

(2) The direction of a law-enforcement officer.

(3) The operation of defrosting, heating, or cooling equipment to ensure the health or safety of the driver or passenger.

(4) The operation of the primary propulsion engine for essential work-related mechanical or electrical operations other than propulsion.

(5) Required maintenance, servicing, repairing, diagnostics, or inspections.

(c) This section does not apply within the boundaries of property zoned for industrial activity by the county or municipality having jurisdiction over the property.

(80 Del. Laws, c. 162, § 1.)

§ 8504. Enforcement.

(a) Any law-enforcement officer in whose jurisdiction the locomotive, or any car attached to a locomotive, is located may enforce this chapter.

(b) The Superior Court shall have exclusive jurisdiction over offenses under this chapter.

(80 Del. Laws, c. 162, § 1.)

§ 8505. Penalties.

Any person who violates this chapter shall be punished by a fine of not less than $5,000 nor more than $10,000 for the first offense and not less than $10,000 nor more than $20,000 for each subsequent offense.

(80 Del. Laws, c. 162, § 1.)

Part IV
Miscellaneous

Chapter 86
Peer-to-Peer Car Sharing Program Act

§ 8601. Short title.

This chapter shall be known as the “Peer-to-Peer Car Sharing Program Act.”

(83 Del. Laws, c. 227, § 1.)

§ 8602. Definitions.

When used in this chapter:

(1) “Car sharing delivery period” means the period of time during which a shared vehicle is being delivered to the location of the car sharing start time, if applicable, as documented by the governing car sharing program agreement.

(2) “Car sharing period” means the period of time that commences with the car sharing delivery period or, if there is no car sharing delivery period, that commences with the car sharing start time and in either case ends at the car sharing termination time.

(3) “Car sharing program agreement” means the terms and conditions applicable to a shared vehicle owner and a shared vehicle driver that govern the use of a shared vehicle through a peer-to-peer car sharing program. “Car sharing program agreement” does not mean “rental agreement,” or similar, as defined in § 2002 of Title 18. “Car sharing program agreement” is not a “lease” as defined in § 4302 of Title 30.

(4) “Car sharing start time” means the time when the shared vehicle becomes subject to the control of the shared vehicle driver at or after the time the reservation of a shared vehicle is scheduled to begin as documented in the records of a peer-to-peer car sharing program.

(5) “Car sharing termination time” means the earliest of any of the following events:

a. The expiration of the agreed upon period of time established for the use of a shared vehicle according to the terms of the car sharing program agreement if the shared vehicle is delivered to the location agreed upon in the car sharing program agreement.

b. When the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver as communicated through a peer-to-peer car sharing program, and the alternatively agreed upon location shall be incorporated into the car sharing program agreement.

c. When the shared vehicle owner, or the shared vehicle owner’s authorized designee, takes possession and control of the shared vehicle.

(6) “Peer-to-peer car sharing” means the authorized use of a vehicle by an individual other than the vehicle’s owner through a peer-to-peer car sharing program. “Peer-to-peer car sharing” does not mean rental car or rental activity as defined in § 2002 of Title 18. “Peer-to-peer car sharing” does not include “lease of a motor vehicle” as used in § 4302(b) of Title 30.

(7) “Peer-to-peer car sharing program” means a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration. “Peer-to-peer car sharing program” does not mean “rental company” as defined in § 2002 of Title 18. “Peer-to-peer car sharing program” does not mean “Motor vehicle lessor” as defined in § 4301 of Title 30. “Peer-to-peer car sharing program” does not mean “motor vehicle lessor” as defined in § 2112 of this title.

(8) “Shared vehicle” means a vehicle that is available for sharing through a peer-to-peer car sharing program. “Shared vehicle” does not mean rental car or “rental vehicle” as defined in § 2002 of Title 18.

(9) “Shared vehicle driver” means an individual who has been authorized to drive the shared vehicle by the shared vehicle owner under a car sharing program agreement. “Shared vehicle driver” does not mean “motor vehicle lessee” as defined in § 4301 of Title 30.

(10) “Shared vehicle owner” means the registered owner, or a person or entity designated by the registered owner of a vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car sharing program. “Shared vehicle owner” does not mean “motor vehicle lessor” as defined in § 4301 of Title 30. “Shared vehicle owner” does not mean “motor vehicle lessor” as defined in § 2112 of this title.

(83 Del. Laws, c. 227, § 1.)

§ 8603. Insurance coverage during car sharing period.

(a) A peer-to-peer car sharing program shall assume liability, except as provided in subsection (b) of this section, of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the car sharing period in an amount stated in the peer-to-peer car sharing program agreement which amount may not be less than the minimum limits set forth in § 2118 of this title.

(b) Notwithstanding the definition of “car sharing termination time” as set forth in § 8602 of this title, the assumption of liability under subsection (a) of this section does not apply to any shared vehicle owner in either of the following circumstances:

(1) A shared vehicle owner makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car sharing program before the car sharing period in which the loss occurred.

(2) A shared vehicle owner acting in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of car sharing program agreement.

(c) Notwithstanding the definition of "car sharing termination time" as set forth in § 8602 of this title, the assumption of liability under subsection (a) of this section would apply to bodily injury, property damage, uninsured and underinsured motorist, or personal injury protection losses required by § 2118 of this title.

(d) A peer-to-peer car sharing program shall ensure that, during each car sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle liability insurance policy that provides insurance coverage in amounts no less than the minimum amounts set forth in § 2118 of this title and does 1 of the following:

(1) Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car sharing program.

(2) Does not exclude use of a shared vehicle by a shared vehicle driver.

(e) The insurance described under subsection (d) of this section may be satisfied by motor vehicle liability insurance maintained by any of the following:

(1) A shared vehicle owner.

(2) A shared vehicle driver.

(3) A peer-to-peer car sharing program.

(4) Any combination of a shared vehicle owner, a shared vehicle driver, or a peer-to-peer car sharing program.

(f) The insurance described in subsection (e) of this section that is satisfying the insurance requirement of subsection (d) of this section shall be primary during each car sharing period. In the event that a claim occurs during the car sharing period in another state with minimum financial responsibility limits higher than those set forth in § 2118 of this title, the coverage maintained under subsection (e) of this section shall satisfy the difference in minimum coverage amounts, up to the applicable policy limits.

(g) The insurer, insurers, or peer-to-peer car sharing program providing coverage under subsection (d) or (e) of this section shall assume primary liability for a claim in either of the following circumstances:

(1) A dispute exists as to who was in control of the shared motor vehicle at the time of the loss and the peer-to-peer car sharing program does not have available, did not retain, or fails to provide the information required by § 8606 of this title.

(2) A dispute exists as to whether the shared vehicle was returned to the alternatively agreed upon location as required under § 8602(5) of this title.

(h) If insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with subsection (e) of this section has lapsed or does not provide the required coverage, insurance maintained by a peer-to-peer car sharing program shall provide the coverage required by subsection (d) of this section beginning with the first dollar of a claim and have the duty to defend such claim except under circumstances as set forth in subsection (b) of this section.

(i) Coverage under an automobile insurance policy maintained by the peer-to-peer car sharing program shall not be dependent on another automobile insurer first denying a claim nor shall another automobile insurance policy be required to first deny a claim.

(j) Nothing in this section does either of the following:

(1) Limits the liability of the peer-to-peer car sharing program for any act or omission of the peer-to-peer car sharing program itself that results in injury to any person as a result of the use of a shared vehicle through a peer-to-peer car sharing program.

(2) Limits the ability of the peer-to-peer car sharing program to, by contract, seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the peer-to-peer car sharing program resulting from a breach of the terms and conditions of the car sharing program agreement.

(83 Del. Laws, c. 227, § 1.)

§ 8604. Notification of implications of lien.

At the time when a vehicle owner registers as a shared vehicle owner on a peer-to-peer car sharing program and prior to the time when the shared vehicle owner makes a shared vehicle available for car sharing on the peer-to-peer car sharing program, the peer-to-peer car sharing program shall notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car sharing program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

(83 Del. Laws, c. 227, § 1.)

§ 8605. Exclusions in motor vehicle liability insurance policies.

(a) An authorized insurer that writes motor vehicle liability insurance in the State may exclude any and all coverage beyond the minimum requirements contained in this title and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle liability insurance policy, including any of the following:

(1) Liability coverage for bodily injury and property damage.

(2) Personal injury protection coverage as described in § 2118 of this title.

(3) Uninsured and underinsured motorist coverage.

(4) Comprehensive physical damage coverage.

(5) Collision physical damage coverage.

(b) Nothing in this chapter invalidates or limits an exclusion contained in a motor vehicle liability insurance policy, including any insurance policy in use or approved for use that excludes coverage for motor vehicles made available for rent, sharing, or hire, or for any business use.

(c) Nothing in this chapter invalidates, limits, or restricts an insurer's ability under existing law to underwrite any insurance policy, or to cancel and non-renew policies.

(83 Del. Laws, c. 227, § 1.)

§ 8606. Recordkeeping; use of vehicle in car sharing.

A peer-to-peer car sharing program shall collect and verify records pertaining to the use of a vehicle, including times used, car sharing period pick-up and drop-off locations, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner, and provide that information upon request to the shared vehicle owner, the shared vehicle owner's insurer, the shared vehicle driver, or the shared vehicle driver's insurer to facilitate a claim coverage investigation, settlement, negotiation, or litigation. The peer-to-peer car sharing program shall retain the records for a time period not less than 4 years.

(83 Del. Laws, c. 227, § 1.)

§ 8607. Exemption; vicarious liability.

A peer-to-peer car sharing program and a shared vehicle owner shall be exempt from vicarious liability consistent with 49 U.S.C. § 30106 and under any state or local law that imposes liability solely based on vehicle ownership.

(83 Del. Laws, c. 227, § 1.)

§ 8608. Contribution against indemnification.

A motor vehicle insurer that defends or indemnifies a claim against a shared vehicle that is excluded under the terms of its policy shall have the right to seek recovery against the motor vehicle insurer of the peer-to-peer car sharing program if the claim meets all of the following conditions:

(1) The claim is against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the car sharing period.

(2) The claim is excluded under the terms of its policy.

(83 Del. Laws, c. 227, § 1.)

§ 8609. Insurable interest.

(a) Notwithstanding any other law, statute, rule, or regulation to the contrary, a peer-to-peer car sharing program shall have an insurable interest in a shared vehicle during the car sharing period.

(b) Nothing in this section creates liability on a peer-to-peer car sharing program to maintain the coverage mandated by § 8603 of this title.

(c) A peer-to-peer car sharing program may own and maintain as the named insured 1 or more policies of motor vehicle liability insurance that provides coverage for any of the following:

(1) Liabilities assumed by the peer-to-peer car sharing program under a peer-to-peer car sharing program agreement.

(2) Any liability of the shared vehicle owner.

(3) Damage or loss to the shared motor vehicle.

(4) Any liability of the shared vehicle driver.

(83 Del. Laws, c. 227, § 1.)

§ 8610. Disclosures.

Each car sharing program agreement made in the State shall disclose to the shared vehicle owner and the shared vehicle driver:

(1) Any right of the peer-to-peer car sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the peer-to-peer car sharing program resulting from a breach of the terms and conditions of the car sharing program agreement.

(2) That a motor vehicle liability insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car sharing program.

(3) That the peer-to-peer car sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each car sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the car sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage.

(4) The daily rate, fees, and if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver.

(5) That the shared vehicle owner's motor vehicle liability insurance may not provide coverage for a shared vehicle.

(6) An emergency telephone number to personnel capable of fielding roadside assistance and other customer service inquiries.

(7) If there are conditions under which a shared vehicle driver must maintain a personal automobile insurance policy with certain applicable coverage limits on a primary basis in order to book a shared motor vehicle.

(83 Del. Laws, c. 227, § 1.)

§ 8611. Driver's license verification and data retention.

(a) A peer-to-peer car sharing program may not enter into a peer-to-peer car sharing program agreement with a driver unless the driver who will operate the shared vehicle meets 1 of the following requirements:

(1) Holds a driver's license issued pursuant to this title that authorizes the driver to operate vehicles of the class of the shared vehicle.

(2) Is a nonresident who meets both of the following requirements:

a. Has a driver's license issued by the state or country of the driver's residence that authorizes the driver in that state or country to drive vehicles of the class of the shared vehicle.

b. Is at least the same age as that required of a resident to drive.

(b) A peer-to-peer car sharing program shall keep a record of all of the following:

(1) The name and address of the shared vehicle driver.

(2) The number of the driver's license of the shared vehicle driver and each other person, if any, who will operate the shared vehicle.

(3) The place of issuance of the driver's license.

(83 Del. Laws, c. 227, § 1.)

§ 8612. Responsibility for equipment.

A peer-to-peer car sharing program shall have sole responsibility for any equipment, such as a GPS system or other special equipment that is put in or on the vehicle to monitor or facilitate the car sharing transaction, and shall agree to indemnify and hold harmless the vehicle owner for any damage to or theft of such equipment during the sharing period not caused by the vehicle owner. The peer-to-peer car sharing program has the right to seek indemnity from the shared vehicle driver for any loss or damage to such equipment that occurs during the sharing period.

(83 Del. Laws, c. 227, § 1.)

§ 8613. Automobile safety recalls.

(a) At the time when a vehicle owner registers as a shared vehicle owner on a peer-to-peer car sharing program and prior to the time when the shared vehicle owner makes a shared vehicle available for car sharing on the peer-to-peer car sharing program, the peer-to-peer car sharing program must do all of the following:

(1) Verify that the shared vehicle does not have any safety recalls for which the repairs have not been made.

(2) Notify the shared vehicle owner in writing or electronically of the requirements under subsection (b) of this section.

(b) (1) If the shared vehicle owner has received an actual notice of a safety recall, a shared vehicle owner may not make a vehicle available as a shared vehicle on a peer-to-peer car sharing program until the safety recall repair has been made.

(2) If a shared vehicle owner receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car sharing program, the shared vehicle owner must remove the shared vehicle as available on the peer-to-peer car sharing program as soon as practicably possible after receiving the notice of the safety recall and until the safety recall repair has been made.

(3) If a shared vehicle owner receives an actual notice of a safety recall while the shared vehicle is being used in the possession of a shared vehicle driver, the shared vehicle owner must notify the peer-to-peer car sharing program about the safety recall as soon as practicably possible after receiving the notice of the safety recall, so that the shared vehicle owner may address the safety recall repair.

(83 Del. Laws, c. 227, § 1.)

§ 8614. Loss of use damages prohibited [For application of this section, see 84 Del. Laws, c. 363, § 3].

(a) For the purposes of this section, "loss of use" means the deprivation of the use of a person's vehicle during the period reasonably required to make repairs or replace the vehicle.

(b) Damages incurred by shared vehicle owners or peer-to-peer car sharing programs for the loss of use of a rental vehicle and related administrative fees shall not be recovered from any renter, authorized driver, or the renter's or authorized driver's insurer. Nothing in this section shall be construed as prohibiting recovery of loss of use damages from negligent third parties.

(c) Any car sharing program agreement or other contract inconsistent with the provisions of this section shall be deemed void as against public policy.

(84 Del. Laws, c. 363, § 2; 84 Del. Laws, c. 42, § 1.)