Legislative Council,
General Assembly
State of Delaware

Title 20

Military and Civil Defense

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Part I
Military
Chapter 1
DELAWARE NATIONAL GUARD
Subchapter I
General Provisions

§ 101 State militia; name.

The active militia of this State shall be organized and known as the Delaware National Guard and shall be subject at all times to the orders of the officers thereof.

(20 Del. Laws, c. 392, § 1; 24 Del. Laws, c. 62, § 1; Code 1915, § 293; 32 Del. Laws, c. 22, § 1; Code 1935, § 256; 20 Del. C. 1953, § 101; 64 Del. Laws, c. 258, § 1.)

§ 102 Definitions.

As used in this chapter:

(1) "National Defense Act" means an act of Congress, entitled, "An Act for making further and more effectual provisions for the national defense, and for other purposes" approved by the President, June 3, 1916, and any and all acts amendatory and supplementary thereto.

(2) "Unit" shall mean any part of the Delaware National Guard designated a "unit" by order of the Adjutant General.

(Code 1915, § 294; 32 Del. Laws, c. 22, § 1; Code 1935, § 257; 47 Del. Laws, c. 329, § 1; 20 Del. C. 1953, § 102; 64 Del. Laws, c. 258, § 1; 72 Del. Laws, c. 106, § 1.)

§ 103 Conformity with federal statutes; powers of Governor.

The National Guard of this State shall conform to federal statutes and regulations relating to and governing the armed forces of the United States, insofar as they are applicable and not inconsistent with the Constitution of Delaware or this title.

The Governor of Delaware shall be the Commander in Chief of the National Guard, except as to any part thereof called or ordered into federal service.

The Governor of this State, as Commander in Chief, may make such changes from time to time in matters or organization, administration and discipline as may be necessary to conform to the requirements made by Congress for participation in federal appropriations for the National Guard.

(24 Del. Laws, c. 62, § 1; Code 1915, § 295; 32 Del. Laws, c. 22, § 1; Code 1935, § 258; 20 Del. C. 1953, § 103; 64 Del. Laws, c. 258, § 1.)

§ 104 Rules and regulations.

(a) In order to fulfill the purposes of this chapter, the Adjutant General may make and publish rules and regulations for the government, discipline and exercise of the Delaware National Guard.

(b) Such rules and regulations shall, so far as practicable, conform to the rules, regulations and statutes, of the Department of Defense, the Army, the Air Force, and the National Guard Bureau of the United States.

(c) When such rules and regulations have been promulgated and published by the Adjutant General, they shall have the force and effect of law.

(20 Del. Laws, c. 392, § 56; 24 Del. Laws, c. 62, § 1; Code 1915, § 323; 32 Del. Laws, c. 22, § 1; Code 1935, § 297; 20 Del. C. 1953, § 104; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 106, § 2.)

§ 105 Uniforms, arms and equipment.

The Delaware National Guard shall be uniformed, armed and equipped, as nearly as practicable, in accordance with federal statutes and regulations in relation to uniforms, arms and equipment.

(20 Del. Laws, c. 392, § 23; Code 1915, § 303; 32 Del. Laws, c. 22, § 1; Code 1935, § 266; 20 Del. C. 1953, § 105; 64 Del. Laws, c. 258, § 1.)

§ 106 Disbanding of unit incapacitated to discharge its duties.

If it appears to the Commander in Chief that a company of the Delaware National Guard has failed to comply with the requirements of the law so that it is incapacitated to discharge the duties required of it, such company may be disbanded by the Commander in Chief.

(20 Del. Laws, c. 392, § 34; Code 1915, § 308; 32 Del. Laws, c. 22, § 1; Code 1935, § 271; 20 Del. C. 1953, § 106; 64 Del. Laws, c. 258, § 1.)

§ 107 Bills and allowances; how paid.

No bill or allowance, on account of the Delaware National Guard, authorized by this chapter, shall be paid by the State Treasurer unless the bill or allowance is itemized and its contents duly certified to by the Adjutant General or by an officer designated by the Adjutant General. The Adjutant General shall be permitted to draw a warrant on the State Treasurer to pay current expenses from funds which may be appropriated for such purpose.

(20 Del. Laws, c. 392, § 52; 22 Del. Laws, c. 284, § 1; Code 1915, § 319; 32 Del. Laws, c. 22, § 1; Code 1935, § 293; 47 Del. Laws, c. 329, § 12; 20 Del. C. 1953, § 107; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1.)

§ 108 Donations to National Guard.

(a) Any county, municipality or corporation in this State may appropriate money out of the treasury of such municipality, county or corporation, donate any other valuable thing or grant or lease any land belonging to it for the purpose of aiding the improvement of the Delaware National Guard.

(b) The Delaware National Guard may accept donations of money or property from any lawful source to improve its capabilities.

(c) The money so appropriated, other valuable thing donated or the land so granted or leased to the Delaware National Guard shall be, so far as practicable, expended or disposed of by the State Department of Military Affairs in such manner and under such lawful conditions as the donor may direct.

(24 Del. Laws, c. 64, §§ 1, 2; Code 1915, § 327; 32 Del. Laws, c. 22, § 1; Code 1935, § 301; 20 Del. C. 1953, § 108; 64 Del. Laws, c. 258, § 1; 72 Del. Laws, c. 106, § 3.)

§ 109 Delaware National Guard Counterdrug Task Force.

For purposes of transfers of property forfeited to the United States under the Controlled Substance Act (21 U.S.C. § 881), the Delaware National Guard Counterdrug Task Force shall be designated as a law-enforcement agency for that limited purpose. This section does not allow, authorize or entitle the Delaware National Guard Counterdrug Task Force to funds from the Special Law Enforcement Assistance Fund.

(79 Del. Laws, c. 145, § 1.)

Subchapter II

Department of Military Affairs

§ 121 Established; composition.

The Delaware National Guard, the Delaware State Defense Forces and the Delaware militia, when not in the service of the United States, shall be governed and their affairs administered pursuant to the laws of this State, and the laws of the United States, by the Governor as Commander in Chief, through the Department of Military Affairs, which is hereby established and which shall consist of the Adjutant General as its chief executive and such other officers, warrant officers and enlisted personnel and civilian employees as the laws of the State or the laws of the United States may direct or permit. The Department of Military Affairs shall be a department of the executive branch of government in a like manner as all other such departments.

(64 Del. Laws, c. 258, § 1.)

§ 122 Adjutant General; appointment; qualifications.

(a) The Adjutant General is appointed, confirmed, and holds office as provided in § 10 of Article III of the Delaware Constitution.

(b) To be eligible for appointment to the office of Adjutant General a person must have served as a commissioned officer of the Delaware National Guard or the armed forces of the United States.

(c) The Governor may authorize the position of Adjutant General to be held at the rank of Lieutenant General.

(20 Del. Laws, c. 392, § 7; 24 Del. Laws, c. 81; 25 Del. Laws, c. 80, §§ 1-3; 27 Del. Laws, c. 74, § 1; Code 1915, § 297; 32 Del. Laws, c. 22, § 1; 32 Del. Laws, c. 23, § 10; 35 Del. Laws, c. 31, § 1; Code 1935, §§ 260, 319, 373A; 47 Del. Laws, c. 329, § 2; 48 Del. Laws, c. 150, § 1; 20 Del. C. 1953, § 122; 50 Del. Laws, c. 407, § 1; 51 Del. Laws, c. 330; 52 Del. Laws, c. 261; 54 Del. Laws, c. 57, § 16; 55 Del. Laws, c. 404, § 13; 56 Del. Laws, c. 316, § 1; 64 Del. Laws, c. 258, § 1; 76 Del. Laws, c. 242, § 1; 84 Del. Laws, c. 455, § 2; 85 Del. Laws, c. 43, § 1; 84 Del. Laws, c. 278, § 1.)

§ 123 Adjutant General — Powers and duties.

The Adjutant General shall be responsible to the Commander in Chief for carrying out the policies of the Commander in Chief and shall issue orders in the Commander in Chief's name. To accomplish this end the Adjutant General shall have the following duties and the powers necessary to effectuate the same:

(1) Supervise all troops, arms and branches of the Delaware National Guard, Delaware State Defense Forces and militia, with such supervisory powers as are necessary, covering primarily all duties pertaining to their organization, armament, discipline, training, recruiting, inspection, pay, subsistence and supplies.

(2) Supervise the receipt, preservation, repair, distribution, issue and collection of all arms and military stores of this State.

(3) Maintain records of all officers and enlisted personnel of the Delaware National Guard, Delaware State Defense Forces, and Delaware militia if called to duty, and keep on file in the Adjutant General's office, or a place designated by the Adjutant General,

copies of all orders, reports and communications relevant thereto.

(4) Negotiate and enter contracts on behalf of the Department of Military Affairs under the Adjutant General's jurisdiction as necessary to effectuate the purposes of this chapter, including, retirement, disability and group health benefits in accordance with appropriations therefor and enter into agreements with the Secretary of Defense of the United States or other appropriate officials for withholding sums from the compensation of such civilian employees for contributions to such benefit programs.

(5) Have a seal of office, which shall be delivered to the Adjutant General's successor at the completion of the Adjutant General's term of office. Such seal shall be approved by the Commander in Chief and shall be affixed to official documents and papers as deemed appropriate by the Adjutant General.

(6) Assist deceased service personnel's families and former service personnel or their dependents in adjusting their claims with the government and arrange for proper military funerals for service personnel from Delaware who are killed in action, or during active duty or who die overseas and are brought back to the United States for burial.

(7) Perform such other and further duties as may be required by the Commander in Chief.

(8) Shall receive an annual salary as determined by the General Assembly in the annual appropriations act.

(9) Furnish the proper officers of the United States government such reports and other information as from time to time is deemed necessary.

(10) Promulgate rules and regulations for the governance and discipline of the Delaware National Guard.

(20 Del. Laws, c. 392, § 7; 24 Del. Laws, c. 81; 25 Del. Laws, c. 80, §§ 1-3; 27 Del. Laws, c. 74, § 1; Code 1915, § 297; 32 Del. Laws, c. 22, § 1; 32 Del. Laws, c. 23, § 10; 35 Del. Laws, c. 31, § 1; Code 1935, §§ 260, 319, 373A; 47 Del. Laws, c. 329, § 2; 48 Del. Laws, c. 150, § 1; 20 Del. C. 1953, § 122; 50 Del. Laws, c. 407, § 1; 51 Del. Laws, c. 330; 52 Del. Laws, c. 261; 54 Del. Laws, c. 57, § 16; 55 Del. Laws, c. 404, § 13; 56 Del. Laws, c. 316, § 1; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 106, § 4; 84 Del. Laws, c. 455, § 3; 85 Del. Laws, c. 43, § 1; 84 Del. Laws, c. 278, § 1.)

§ 124 Assistant Adjutants General — Rank; appointment; qualifications.

The Adjutant General will be assisted by an Assistant Adjutant General of the Army National Guard in the Department of Military Affairs and an Assistant Adjutant General of the Air National Guard in the Department of Military Affairs. They shall hold the rank of Brigadier General. Such individuals shall be appointed from the active or retired list of the Army National Guard and Air National Guard respectively by the Adjutant General and shall have served as commissioned officers of the Delaware National Guard or armed forces of the United States and shall serve at the pleasure of the Adjutant General.

(Code 1935, § 260(a); 47 Del. Laws, c. 329, § 2; 20 Del. C. 1953, § 123; 64 Del. Laws, c. 258, § 1.)

§ 125 Assistant Adjutants General — Duties in absence or disability of Adjutant General.

In case of absence or disability of the Adjutant General to perform the duties of the office of Adjutant General, the Commander in Chief shall designate 1 of the Assistant Adjutants General to serve as the Adjutant General.

(Code 1935, § 260(a); 47 Del. Laws, c. 329, § 2; 20 Del. C. 1953, § 123; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1.)

§ 126 Service Officers; appointment and duties [Repealed].

Code 1915, § 297; 40 Del. Laws, c. 73, § 1; Code 1935, § 260; 47 Del. Laws, c. 329, § 2; 20 Del. C. 1953, § 124; 64 Del. Laws, c. 258, § 1; repealed by 80 Del. Laws, c. 387, § 1, effective Aug. 10, 2016.

§ 127 Military staff of Governor.

The military staff of the Governor shall consist of the Adjutant General, the Assistant Adjutants General, and such personal aides-de-camp as the Governor may select. Commissioned officers of the Delaware National Guard, if detailed as aides-de-camp, shall be relieved of ordinary duties while actually on duty with the Governor but shall continue to be paid as if on ordinary duty.

(64 Del. Laws, c. 258, § 1.)

§ 128 Duties of Department of Military Affairs.

The Department of Military Affairs shall assist the Adjutant General in carrying out the duties of that office and shall also consult with the Adjutant General in carrying out the following duties:

(1) Make such changes in the military organization of the Delaware National Guard as are necessary from time to time to conform to the requirements of the laws of the United States and the directives of the National Guard Bureau.

(2) Fix the location of units and headquarters of the Delaware National Guard and shall, subject to the approval of the National Guard Bureau, transfer, attach, consolidate or inactivate any organization or unit, when in its judgment the efficiency of the Delaware National Guard presently existing will be increased thereby.

(3) Establish awards and decorations and approve the design therefor.

(64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1.)

§ 129 Commissioned and warrant officers; oath and term of appointment.

All officers known as commissioned officers and warrant officers, appointed under and by authority of this chapter shall, before entering upon the duties of their several and respective offices, take and subscribe the oath as prescribed by the National Defense Act for officers or warrant officers, as applicable, for officers of the National Guard and shall hold their appointments in conformity therewith.

(20 Del. Laws, c. 392, § 19; Code 1915, § 302; 32 Del. Laws, c. 22, § 1; Code 1935, § 265; 20 Del. C. 1953, § 128; 64 Del. Laws, c. 258, § 1.)

§ 130 Regulations as to appointment of officers and other matters.

The Governor of this State may issue such regulations governing the appointment of officers in the National Guard of this State and such other matters pertaining to the National Guard as may be necessary in order to conform to the requirements made by Congress for participation in federal appropriations for the National Guard.

(Code 1915, § 299; 32 Del. Laws, c. 22, § 1; Code 1935, § 262; 20 Del. C. 1953, § 127; 64 Del. Laws, c. 258, § 1.)

§ 131 Enlistment and oath.

Enlistment and oath of enlistment in the National Guard of this State shall be in conformity with the provisions of the National Defense Act and any amendments thereto.

(20 Del. Laws, c. 392, § 10; 24 Del. Laws, c. 62, § 1; Code 1915, § 300; 32 Del. Laws, c. 22, § 1; Code 1935, § 263; 20 Del. C. 1953, § 129; 64 Del. Laws, c. 258, § 1.)

§ 132 Death of veteran personnel; state flags to half-staff.

If any unit of the Delaware National Guard learns of the death of any its current or retired members, said unit may, on the day on which the deceased member is to be buried, cremated or otherwise interred or ceremoniously remembered following that member's death, lower the state flag to half-staff for the duration of the day.

(73 Del. Laws, c. 394, § 1; 70 Del. Laws, c. 186, § 1.)

§ 133 Retirement of officers and enlisted personnel.

Repealed by 73 Del. Laws, c. 263, § 1, effective May 17, 2002.

§ 134 Retirement of officers and enlisted personnel — Rights of retired officers and enlisted personnel.

Retired officers and enlisted personnel shall be borne on the roster of the Delaware National Guard as so retired and shall be entitled to wear the uniform of the highest grade attained by them on all occasions of ceremony. Retired officers may, at the discretion of the Commander in Chief, with their consent be temporarily placed on active duty.

(24 Del. Laws, c. 62, § 2; Code 1915, § 324; 32 Del. Laws, c. 22, § 1; Code 1935, § 298; 20 Del. C. 1953, § 132; 64 Del. Laws, c. 258, § 1.)

§ 135 Oaths and affirmations; who may administer; false swearing.

(a) General, field, commissioned and warrant officers may administer oaths and affirmations in all matters appertaining to or concerning the Delaware National Guard service, but in no case shall they charge any fee or compensation therefor.

(b) Whoever falsely swears or falsely affirms to any oath or affirmation administered pursuant to this section shall be deemed guilty of perjury in the second degree, a class E felony.

(20 Del. Laws, c. 392, § 55; Code 1915, § 322; 32 Del. Laws, c. 22, § 1; Code 1935, § 296; 20 Del. C. 1953, § 133; 64 Del. Laws, c. 258, § 1.)

§ 136 State armories and arsenals; use; rentals; payment of orders; application for federal funds.

(a) The Adjutant General shall determine the use of armories and arsenals by military units of the Delaware National Guard.

(b) The Adjutant General may enter into, on behalf of the State, leases and contracts for the use of any state-owned armory, arsenal or military reservation upon such terms and conditions and for such duration as the Adjutant General deems advisable; provided, such use or occupation of any such property shall not interfere with the operation of such property by the armed forces of this State.

(c) All rentals received for the use of any such property shall be forwarded to the Adjutant General and be used to pay for the maintenance, utilities and other expenses associated with such use of said armories.

(d) No order shall be paid by the State Treasurer unless approved by the Adjutant General, or by an officer or employee designated by the Adjutant General, or unless an itemized bill or statement showing in detail the items to be paid under such order shall be attached and the contents thereof certified to be correct.

(e) The Adjutant General shall have full authority to make application to the National Guard Bureau for federal funds to improve or maintain any armory, arsenal or military reservation of this State.

(26 Del. Laws, c. 41, § 3; 27 Del. Laws, c. 61, § 3; Code 1915, § 329; 32 Del. Laws, c. 22, § 1; Code 1935, § 304; 47 Del. Laws, c. 329, § 17; 20 Del. C. 1953, § 194; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1.)

Subchapter III

Property; Accountability, Misappropriation and Injury

§ 141 Property accountability.

(a) Any officer, enlisted member, employee or agent of the Delaware National Guard who receives state or federal property or funds for

military use shall be liable under the appropriate state and federal regulations for the proper safeguarding of said property or funds.

(b) No such person shall be discharged from responsibility for such property or funds until a proper accounting shall be made under appropriate regulations.

(c) The Adjutant General shall be empowered to enter suit against any person in the name of the state for the value of any such property as may have been damaged, lost, destroyed or not properly accounted for.

(20 Del. Laws, c. 392, § 23; Code 1915, § 303; 32 Del. Laws, c. 22, § 1; Code 1935, § 266; 20 Del. C. 1953, § 141; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 106, § 8.)

§ 142 Arms and property to be deposited on order of proper officer; penalty; notice; lost or damaged arms or equipment.

(a) All arms, equipment or other property furnished to organizations of the Delaware National Guard shall, when required by the Adjutant General or the commanding officer of any unit, be deposited in the armory of the unit.

(b) Any person to whom such property was issued, failing to deposit or return any article of such property unless properly accounted for within 10 days after said person shall have been notified by written notice from the commanding officer to return it to the armory, shall be assessed damages in an amount of the current value of the property thus illegally detained, which assessment shall become a judgment of the court and entered upon its records as such. The court is empowered to use its civil contempt power to enforce payment of this assessment.

(c) (1) Notice under this section shall be given either by personal delivery thereof to the person to be 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 Delaware National Guard.

(2) The giving of notice by mail is complete upon the expiration of 4 days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by the certificate of any officer or employee of the Delaware National Guard or 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.

(d) When any arms, equipment or other property furnished to organizations of the Delaware National Guard are lost or damaged by the act or neglect of any officer or enlisted person, deduction may be made to the amount of such loss or damage from any pay or allowance that may be or become due, under this chapter, to such officer or enlisted person.

(20 Del. Laws, c. 392, § 33; 22 Del. Laws, c. 284, § 1; Code 1915, § 307; 32 Del. Laws, c. 22, § 1; Code 1935, § 270; 20 Del. C. 1953, § 145; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 106, § 9.)

§ 143 Recovery of arms and property of disbanded company.

Upon disbandment of any company or organization which has received arms, equipment or any other property of the State or of the United States for military purposes, the commanding officer of such company or organization shall be responsible for the return of the same to the custody of a duly authorized officer of the State.

The Adjutant General shall take the necessary legal proceedings in the name of the State or direct that proper legal proceedings be taken, as provided for in § 142 of this title, unless the property is properly accounted for.

(20 Del. Laws, c. 392, § 35; Code 1915, § 309; 32 Del. Laws, c. 22, § 1; Code 1935, § 272; 20 Del. C. 1953, § 146; 64 Del. Laws, c. 258, § 1.)

§ 144 Enforcement; jurisdiction; appearance through designated officer.

(a) The Justice of the Peace Courts shall have jurisdiction to enforce this subchapter.

(b) The Delaware National Guard may appear in Justice of the Peace Court by and through any officer designated by the Adjutant General for the purposes of enforcing this subchapter.

(64 Del. Laws, c. 258, § 1.)

Subchapter IV

Courts-Martial and Sentences

§ 151 Kinds of courts-martial; procedures; jurisdiction; Military Judges; Judge Advocates.

(a) Courts-martial shall be of 3 kinds: general, special and summary. These courts shall be constituted like similar courts-martial of the Army and Air Force of the United States to the extent practicable.

(1) Convictions by general and special courts-martial will be recorded in accordance with § 8508 of Title 11 and the rules and regulations promulgated by the Delaware Justice Information System (DELJIS) Board of Directors.

(2) Any conviction by a summary court-martial or by nonjudicial punishment is not a criminal conviction and not reportable and shall not be transmitted pursuant to 8508 of Title 11.

(b) These courts-martial shall have the jurisdiction and powers as specified in regulations adopted and promulgated by the Adjutant General that shall conform as far as practicable to the Uniform Code of Military Justice ("UCMJ") (10 U.S.C. § 801 et seq.) and the

Manual for Courts-Martial of the United States so long as not inconsistent with the provisions of this subchapter.

(1) This subchapter applies to all members of the state military forces at all times even outside the State. Subject-matter jurisdiction under this subchapter is established if a nexus exists between an offense, either "military-only" or "military," and the state military force.

(2) The Punitive Articles (Part IV) of the Manual for Courts-Martial and Subchapter X of the UCMJ [10 U.S.C. § 877 et seq.], (collectively known as "Articles") constitute prosecutable offenses. Any offense prosecuted by a general or special court-martial shall constitute a misdemeanor offense. Any offense prosecuted by a summary court-martial or by nonjudicial punishment is not a criminal offense.

a. The term "military offense" means those offenses prescribed under Articles:
111 (Drunken or reckless operation of a vehicle, aircraft, or vessel) [10 U.S.C. § 911],
118 (Murder) [10 U.S.C. § 918],
119 (Manslaughter) [10 U.S.C. § 919],
120 (Rape and sexual assault generally) [10 U.S.C. § 920],
120a (Stalking) [10 U.S.C. § 920a],
120c (Other sexual misconduct) [10 U.S.C. § 920c],
121 (Larceny and wrongful appropriation) [10 U.S.C. § 921],
122 (Robbery) [10 U.S.C. § 922],
123 (Forgery) [10 U.S.C. § 923],
123a (Making, drawing, or uttering check, draft or order without sufficient funds) [10 U.S.C. § 923a],
124 (Maiming) [10 U.S.C. § 924],
126 (Arson) [10 U.S.C. § 926],
127 (Extortion) [10 U.S.C. § 927],
128 (Assault) [10 U.S.C. § 928],
129 (Burglary) [10 U.S.C. § 929],
130 (Housebreaking) [10 U.S.C. § 930], and
131 (Perjury) [10 U.S.C. § 931].

b. The term "military-only offense" means those offenses prescribed under Articles:
77 (Principals) [10 U.S.C. § 877],
78 (Accessory after the fact) [10 U.S.C. § 878],
80 (Attempts) [10 U.S.C. § 880],
81 (Conspiracy) [10 U.S.C. § 881],
82 (Solicitation) [10 U.S.C. § 882],
83 (Fraudulent enlistment, appointment, or separation) [10 U.S.C. § 883],
84 (Unlawful enlistment, appointment, or separation) [10 U.S.C. § 884],
85 (Desertion) [10 U.S.C. § 885],
86 (Absence without leave) [10 U.S.C. § 886],
87 (Missing movement) [10 U.S.C. § 887],
88 (Contempt toward officials) [10 U.S.C. § 888],
89 (Disrespect towards superior commissioned officer) [10 U.S.C. § 889],
90 (Assaulting or willfully disobeying superior commissioned officer) [10 U.S.C. § 890],
91 (Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer) [10 U.S.C. § 891],
92 (Failure to obey order or regulation) [10 U.S.C. § 892],
93 (Cruelty and maltreatment) [10 U.S.C. § 893],
94 (Mutiny or sedition) [10 U.S.C. § 894],
95 (Resistance, flight, breach of arrest, and escape) [10 U.S.C. § 895],
96 (Releasing prisoner without proper authority) [10 U.S.C. § 896],
97 (Unlawful detention) [10 U.S.C. § 897],
98 (Noncompliance with procedural rules) [10 U.S.C. § 898],
99 (Misbehavior before the enemy) [10 U.S.C. § 899],
100 (Subordinate compelling surrender) [10 U.S.C. § 900],
101 (Improper use of countersign) [10 U.S.C. § 901],
102 (Forcing a safeguard) [10 U.S.C. § 902],
103 (Captured or abandoned property) [10 U.S.C. § 903],
104 (Aiding the enemy) [10 U.S.C. § 904],
105 (Misconduct as prisoner) [10 U.S.C. § 905],
107 (False official statements) [10 U.S.C. § 907],

108 (Military property of United States - Loss, damage, destruction, or wrongful disposition) [10 U.S.C. § 908],
109 (Property other than military property of United States - Waste, spoilage, or destruction) [10 U.S.C. § 909],
110 (Improper hazarding of vessel) [10 U.S.C. § 910],
112 (Drunk on duty) [10 U.S.C. § 912],
112a. (Wrongful use, possession, etc., of controlled substances) [10 U.S.C. § 912a],
113 (Misbehavior of sentinel) [10 U.S.C. § 913],
114 (Dueling) [10 U.S.C. § 914],
115 (Malingering) [10 U.S.C. § 915],
116 (Riot or breach of peace) [10 U.S.C. § 916],
117 (Provoking speeches or gestures) [10 U.S.C. § 917],
132 (Frauds against the United States) [10 U.S.C. § 932],
133 (Conduct unbecoming an officer and a gentleman) [10 U.S.C. § 933],
134 (General article) [10 U.S.C. § 934], and
Any other offense listed under the Articles without a civilian equivalent.

c. The Articles and the implementing regulations adopted by the Adjutant General shall be of the same force and effect as if they had been set forth at length in this section.

(3) When an act or omission constitutes a violation of both this subchapter and another law of Delaware or local, municipal law or ordinance foreign or domestic, a court-martial may be initiated only after the Attorney General or other civilian authority has declined to prosecute or dismissed the charge, provided jeopardy has not attached.

(c) These courts shall use the forms and procedures as established for similar courts of the Army and Air Force of the United States, as adopted by regulation by the Adjutant General and which regulations shall conform as far as practicable to the UCMJ (10 U.S.C. § 801 et seq.) and the Manual for Courts-Martial of the United States.

(d) The Adjutant General may designate 1 or more current or retired officers of the Delaware National Guard who is/are/were qualified members of the Judge Advocate General Corps as "Military Judge" for state military justice purposes.

A retired officer serving as "Military Judge," while acting in such capacity, must receive a sum equal to the daily pay and allowance of the rank they held when they retired from the Delaware National Guard.

(e) The Delaware National Guard Judge Advocate General Corps shall have responsibility to prosecute military offenses and military-only offenses in a trial by courts-martial. Members of the Delaware National Guard Judge Advocate General Corps must be members in good standing of the bar of the highest court of a state and certified or designated as a judge advocate in the Judge Advocate General's Corps of the Army, Air Force, Navy, Marine Corps, or Coast Guard, or a reserve component of one of these.

(f) Any person convicted of a military offense or a military-only offense in a court-martial pursuant to this section may appeal a final decision of a general or special courts-martial to the Delaware Superior Court in accordance with the laws of Delaware. A decision of a general or special courts-martial becomes final on the date a sentence is acted upon as specified in §§ 152 and 155 of this title, or, when approval of the Governor is also required as specified in § 156 of this title, on the latter date that the Governor approves the sentence. In accordance with Rule 39(a) of the Rules of Criminal Procedure for the Superior Court of the State of Delaware, all appeals to the Delaware Superior Court shall be taken within 15 days from the date the general or special courts-martial decision becomes final. In addition to the time restriction in Rule 39(a) of the Rules of Criminal Procedure for the Superior Court of the State of Delaware, Rule 39(c) "On the record," and (h) "Dismissal" shall apply in any appeal of a general or special courts-martial. If, however, the Delaware Adjutant General was not the convening authority of a special court-martial, the defendant must first appeal the decision of a special court-martial to the Delaware Adjutant General within 15 days of the date the convening authority acts upon the sentence, and once the Delaware Adjutant General has rendered a final decision, may further appeal to the Delaware Superior Court in accordance with the laws of Delaware.

(Code 1915, § 310; 32 Del. Laws, c. 22, § 1; 33 Del. Laws, c. 46, § 1; Code 1935, § 273; 20 Del. C. 1953, § 151; 64 Del. Laws, c. 258, § 1; 68 Del. Laws, c. 108, § 1; 72 Del. Laws, c. 106, § 10; 81 Del. Laws, c. 40, § 1; 84 Del. Laws, c. 276, § 1.)

§ 152 General courts-martial.

(a) The Governor or Adjutant General may convene a general court-martial by appropriate order.

(b) A general court-martial may impose a sentence of:

(1) A fine of not more than the member's pay and allowances for 24 unit training assemblies;
(2) Forfeiture of the member's pay and allowances for up to 24 unit training assemblies;
(3) A reprimand;
(4) Dismissal, dishonorable discharge or a bad conduct discharge;
(5) Reduction of any noncommissioned officer or enlisted person to any rank;
(6) A sentence of confinement in accordance with the limitations set forth in § 155 of this title; or
(7) Any combination of these punishments.

(c) Any sentence imposed by a general court-martial shall not become effective until acted upon by the Adjutant General in accordance with the Manual for Courts-Martial of the United States.

(Code 1915, § 310A; 33 Del. Laws, c. 46, § 1; Code 1935, § 274; 20 Del. C. 1953, § 152; 64 Del. Laws, c. 258, § 1; 72 Del. Laws, c. 106, § 11; 81 Del. Laws, c. 40, § 1.)

§ 153 Special courts-martial.

(a) A commander of the rank of O-6 (Colonel), the commander of any other unit specifically designated by the Adjutant General, the Assistant Adjutant General for the Army National Guard, the Assistant Adjutant General for the Air National Guard and the Adjutant General may convene a special court-martial by appropriate order.

(b) A special court-martial may impose any sentence authorized for a general court-martial, including a bad-conduct discharge, except that fines and forfeiture are limited to 12 unit training assemblies.

(c) Any sentence imposed by a special court-martial shall not become effective until acted upon by the convening authority in accordance with the Manual for Courts-Martial of the United States.

(d) A special court-martial shall have jurisdiction to try any member of the Delaware National Guard.

(Code 1915, § 310B; 33 Del. Laws, c. 46, § 1; Code 1935, § 275; 20 Del. C. 1953, § 153; 64 Del. Laws, c. 258, § 1; 68 Del. Laws, c. 108, § 2; 72 Del. Laws, c. 106, § 12; 81 Del. Laws, c. 40, § 1.)

§ 154 Summary courts-martial.

(a) A commander of any unit of the Delaware National Guard may be appropriate order convene a summary court-martial consisting of 1 officer.

(b) A summary court-martial may impose a sentence of:

(1) A fine of not more than the member's pay and allowances for 4 unit training assemblies.

(2) Forfeiture of the member's pay and allowances for up to 4 unit training assemblies.

(3) Reduction of any noncommissioned officer or enlisted person to any rank within the promotional authority of the appointing authority; or

(4) Any combination of these punishments.

(c) Any sentence imposed by a summary court-martial shall not become effective until acted upon by the convening authority in accordance with the Manual for Courts-Martial of the United States.

(Code 1915, § 310C; 33 Del. Laws, c. 46, § 1; Code 1935, § 276; 20 Del. C. 1953, § 154; 64 Del. Laws, c. 258, § 1; 72 Del. Laws, c. 106, § 13; 81 Del. Laws, c. 40, § 1.)

§ 155 Penalties.

(a) When not in federal service under Title 10 of the United States Code, the punishment which a court-martial may direct for an offense shall not exceed such limits as prescribed by the Uniform Code of Military Justice (UCMJ) subject to the limitations in this section.

(b) For all offenses, the penalty shall be as provided in the UCMJ except that the maximum sentence of confinement shall not exceed 1 year.

(c) Any sentence to incarceration by a general or special court-martial shall not be executed until acted upon by the convening authority in accordance with the Manual for Courts-Martial of the United States.

(d) The Department of Correction shall receive and confine all military offenders committed to its custody by order of court-martial approved by the Adjutant General.

(Code 1915, § 310D; 33 Del. Laws, c. 46, § 1; Code 1935, § 277; 20 Del. C. 1953, § 155; 64 Del. Laws, c. 258, § 1; 72 Del. Laws, c. 106, § 14; 81 Del. Laws, c. 40, § 1.)

§ 156 Sentences which require Governor's approval.

When not in federal service under Title 10 of the United States Code, sentence of dismissal or dishonorable or bad conduct discharge from the service imposed by court-martial shall not be executed until approved by the Governor.

(Code 1915, § 310E; 33 Del. Laws, c. 46, § 1; Code 1935, § 278; 20 Del. C. 1953, § 156; 64 Del. Laws, c. 258, § 1; 81 Del. Laws, c. 40, § 1.)

§ 157 Process.

The President, Military Judge, or Summary Court Officer of any court-martial convened under this title may:

(1) Issue warrants, subpoenas or subpoenas duces tecum to compel appearance at a court-martial or to enforce the Court's judgments.

(2) Issue such other process as is necessary to exercise the Court's jurisdiction.

(3) Punish persons subject to the Delaware Code of Military Justice for contempt of court under the procedures of the Uniform Code of Military Justice; provided, however, that no punishment imposed may exceed that authorized for violation of § 1271 of Title 11.

Any warrant or subpoena under this section may be served or executed by the Sheriff, any constable, law-enforcement officer, military policeman or provost marshal designated for this purpose.

(Code 1915, § 310F; 33 Del. Laws, c. 46, § 1; Code 1935, § 279; 20 Del. C. 1953, § 157; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 106, § 15.)

§ 158 Disobedience of subpoenas.

(a) Any member of the Delaware National Guard who fails to obey a subpoena issued by a court-martial shall be punished by the court-martial under the terms of the Uniform Code of Military Justice as adopted by regulation of the Delaware National Guard.

(b) Any person not a member of the Delaware National Guard who wilfully fails to obey a subpoena issued by a court-martial shall be

guilty of criminal contempt of court under § 1271(3) of Title 11.

(Code 1915, § 310I; 33 Del. Laws, c. 46, § 1; Code 1935, § 282; 20 Del. C. 1953, § 158; 64 Del. Laws, c. 258, § 1; 72 Del. Laws, c. 106, § 16.)

§ 159 Payment of fines.

(a) Upon approval of the sentence of any court-martial to pay a fine by the court-martial convening authority, the fine so imposed shall be immediately due and payable to the State of Delaware General Fund, through the commander of the member's unit to be forwarded to the Adjutant General.

(b) Any fine or forfeiture imposed by sentence of court-martial or nonjudicial punishment collected by the Adjutant General shall be paid over to the Delaware National Guard Central Fund.

(Code 1915, § 310G; 33 Del. Laws, c. 46, § 1; 37 Del. Laws, c. 35, § 1; Code 1935, § 280; 20 Del. C. 1953, § 159; 64 Del. Laws, c. 258, § 1; 72 Del. Laws, c. 106, § 17; 81 Del. Laws, c. 40, § 1.)

§§ 160, 161 [Reserved.]

§ 162 Violation of duties by sheriffs, constables and wardens.

Whoever, being a sheriff, constable or prison warden neglects or refuses to:

(1) Execute any process, or

(2) Make proper return of all fines and penalties collected,

shall be fined $100 for each such offense for the use of this State.

(Code 1915, § 310K; 33 Del. Laws, c. 46, § 1; Code 1935, § 284; 20 Del. C. 1953, § 162; 64 Del. Laws, c. 258, § 1.)

§ 163 Nonjudicial punishment.

Any commanding officer of the Delaware National Guard, not in federal service under Title 10 of the United States Code, may, in addition to or in lieu of admonition or reprimand, impose nonjudicial punishment in a like manner and to the extent prescribed by Article 15 of the Uniform Code of Military Justice [10 U.S.C. § 815] and the Manual for Courts-Martial, United States, 2012, as amended, as adopted by regulation of the Delaware National Guard.

(64 Del. Laws, c. 258, § 1; 81 Del. Laws, c. 40, § 1.)

Subchapter V

Calling Out of National Guard

§ 171 Governor as Commander in Chief; call out of National Guard for state duty.

(a) When the Governor has determined that it is in the best interest of the State, the Governor by order may:

(1) Call out any unit or units, member or members of the Delaware National Guard to serve in a state duty status to respond to any emergency situation.

(2) Call out any member or members of the Delaware National Guard to serve on state duty status to plan for any impending emergency.

(3) Call out any unit or units, member or members of the Delaware National Guard to serve on state duty for an emergency or impending emergency to fulfill obligations under any interstate emergency agreements or compacts; and such troops may be employed within or outside of Delaware as required by the agreement or compact.

(4) Call out units or members of the Delaware National Guard for training or other nonemergency function as deemed appropriate subject to funding availability.

(5) Call out any member sentenced to incarceration by a general or special court-martial to state active duty with no pay for the duration of the confinement pursuant to § 155 of this title.

(b) The Governor shall serve as commander-in-chief of the Delaware National Guard when it is not in federal service.

(20 Del. Laws, c. 392, § 42; 22 Del. Laws, c. 284, § 1; 24 Del. Laws, c. 62, § 4; Code 1915, §§ 311, 325; 32 Del. Laws, c. 22, § 1; Code 1935, § 285; 47 Del. Laws, c. 329, § 6; 20 Del. C. 1953, § 171; 64 Del. Laws, c. 258, § 1; 72 Del. Laws, c. 106, § 20; 80 Del. Laws, c. 387, § 2.)

§ 172 Proclamation of state of insurrection.

Whenever any portion of the Delaware National Guard is employed in aid of the civil authority, the Governor, if in the Governor's judgment the maintenance of law and order will thereby be promoted, may by proclamation declare the county or city in which the troops are serving, or any specified part thereof, to be in a state of insurrection.

(24 Del. Laws, c. 62, § 4; Code 1915, § 325; 32 Del. Laws, c. 22, § 1; Code 1935, § 285; 47 Del. Laws, c. 329, § 6; 20 Del. C. 1953, § 172; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1.)

§ 173 Requisition for military force; neglect to respond to notice.

All requisitions for military force shall be made known to the forces whose services are required by the commanding officer thereof,

and, upon refusal of those notified to attend the summons and perform the duty required, they shall be liable to such punishment as a general court-martial may determine.

(20 Del. Laws, c. 392, § 43; Code 1915, § 312; 32 Del. Laws, c. 22, § 1; Code 1935, § 286; 47 Del. Laws, c. 329, § 7; 20 Del. C. 1953, § 173; 64 Del. Laws, c. 258, § 1.)

§ 174 Field maneuvers, target practice or review.

Repealed by 72 Del. Laws, c. 106, § 21, effective July 1, 1999.

§ 175 Exemption from arrest; right-of-way.

No person belonging to the military forces of this State shall be arrested on any civil process while going to, remaining at or returning from any place at which such person may be ordered to attend for military duty when the Delaware National Guard has been called out upon state duty.

Any portion of the Delaware National Guard parading or performing any duty according to law shall have the right-of-way in any street or highway through which they may pass. The carriage of the United States mails, the legitimate functions of the police and the progress and operation of fire engines and fire departments shall not be interfered with thereby.

(20 Del. Laws, c. 392, § 44; Code 1915, § 313; 32 Del. Laws, c. 22, § 1; Code 1935, § 287; 20 Del. C. 1953, § 175; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1.)

§ 176 Rules governing troops when called into service.

Whenever the troops are called into active federal duty, the officers and personnel shall be governed by the regulations of the United States Army and United States Air Force.

(20 Del. Laws, c. 392, § 46; Code 1915, § 315; 32 Del. Laws, c. 22, § 1; Code 1935, § 289; 20 Del. C. 1953, § 176; 64 Del. Laws, c. 258, § 1.)

§ 177 Bounds from which civilians are excluded; offenses of civilians; penalties; jurisdiction.

(a) After the Delaware National Guard has been called out pursuant to this subchapter, the commanding officer thereof may fix certain bounds within which no spectator may enter without leave.

(b) Whoever intrudes within the limits fixed under this section, when forbidden to do so, or whoever, after entering within such limits by permission, conducts oneself in a disorderly manner or whoever resists a sentry or guard acting under orders to prevent such entry or disorderly conduct shall be fined not less than $10 nor more than $100, and the costs of prosecution, and civil contempt processes may be used to obtain payment of same.

(c) Whoever violates this section may be arrested by the commanding officer or by the commanding officer's order.

(d) Justices of the peace shall have jurisdiction of offenses under this section.

(20 Del. Laws, c. 392, § 54; Code 1915, § 321; 32 Del. Laws, c. 22, § 1; Code 1935, § 295; 20 Del. C. 1953, § 177; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1.)

§ 178 Immunity from civil and criminal liability.

(a) Neither this State, nor the National Guard of the State nor, except in cases of wilful misconduct, gross negligence or bad faith, the officers, members, agents or representatives thereof, engaged in any state duty pursuant to this subchapter, shall be liable, either civilly or criminally, for the death of or injury to persons, or for damage to property, as a result of such activity.

(b) The National Guard of the State and the officers, members, agents and representatives thereof, engaged in any state duty pursuant to this subchapter or of Chapter 31 of this title, shall have the authority to enforce any and all laws of this State and any and all ordinances of any municipality wherein such service is performed and shall be considered as officers of this State and of such municipality.

(c) If the National Guard of this State or any officer, member, agent or representative thereof is prosecuted by civil or criminal action, whether State or federal, for an act committed or performed by such organization or person while engaged in any state duty, pursuant to this subchapter or of Chapter 31 of this title, all the expense of the defense of such action or actions, including, without limitation, attorney's fees, witnesses' fees for the defense, defendant's court costs and all costs for transcripts of records and abstracts thereof on appeal by the defense, shall be paid by the State; provided that the Attorney General of the State shall be first consulted in regard to, and approve of, the selection of the attorney for the defense; and provided, further, that the Attorney General of the State may, if the Attorney General of the State sees fit, assume the responsibility for the defense of such member and conduct the same personally or by any 1 of the Attorney General assistants. The expenses of such defense shall be paid by the State Treasurer from any moneys not otherwise appropriated, upon warrants therefor signed by the Adjutant General and countersigned by the Attorney General.

(d) If, as a result of criminal or civil action based all, or in part, on federal law, the National Guard of the State or any officer, member, agent or representative thereof is subject to liability which would not result if this section were applicable, such agency or person shall be completely indemnified and held harmless by the State.

(e) For purposes of this section, no officer, member, agent or representative of the National Guard of the State shall be held to have acted in bad faith, with gross negligence or with wilful misconduct if such person believed at the time of such act that such act was reasonably necessary to comply with this subchapter or Chapter 31 of this title, or any order, rule or regulation promulgated pursuant to such subchapter and chapter or protect such officer, member, agent or representative, other persons or property.

(60 Del. Laws, c. 400, § 1; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1.)

§ 179 Waiver of late fees for state-issued licenses.

(a) No National Guard member or reservist who is called to active duty outside of the State, pursuant to the provisions of this subchapter, shall be liable for the payment of any late fee for the renewal of a state-issued license if the state-issued license expired while the service member was deployed outside of the State, so long as the service member presents the appropriate National Guard credentials to the State agency responsible for issuing the license, and pays the license renewal fee, within 90 days of the service member's return to the State or termination of service.

(b) For purposes of this section only, "state-issued license" includes, but is not limited to, vehicle registrations and driver's licenses issued pursuant to Title 21, hunting, trapping and fishing licenses issued pursuant to Title 7, and professional licenses issued pursuant to Title 24.

(77 Del. Laws, c. 455, § 1.)

Subchapter VI

Service Pay, Disability Compensation and Company Appropriations

§ 181 Service pay and expenses during emergency service

(a) For every day of service while on State duty on account of an emergency or impending emergency, as listed in § 171 of this title, each enlisted member, officer or warrant officer of the Delaware National Guard shall receive a sum equal to twice the per diem, pay and allowances that military personnel of like grade and length of service in the United States military would be entitled to receive for a similar period of service. For state duty outside of emergency or impending emergency responses, including training or other nonemergency response authorized by the Adjutant General, members of the Delaware National Guard shall receive a sum equal to the per diem, pay, and allowances that military personnel of like grade and length of service in the United States military receive for a similar period of service, with the exception of radiological emergency preparedness (REP) events. For REP events, members of the Delaware National Guard shall receive a sum equal to allowances and twice the base pay.

(b) Service pay for such emergencies and nonemergencies and any expenses incidental to mobilization shall be paid by the State Treasurer from any moneys not otherwise appropriated, upon warrants therefor signed by the Adjutant General and countersigned by the Governor.

(20 Del. Laws, c. 392, § 42; 22 Del. Laws, c. 284, § 1; Code 1915, § 311; 32 Del. Laws, c. 22, § 1; Code 1935, § 285; 47 Del. Laws, c. 329, § 6; 20 Del. C. 1953, § 181; 56 Del. Laws, c. 415, § 1; 64 Del. Laws, c. 258, § 1; 80 Del. Laws, c. 387, § 3; 81 Del. Laws, c. 310, § 1.)

§ 182 Disability and death benefits for injury or death occurring in service of the State.

(a) As used in this section, the phrase "service of the State" includes duty pursuant to § 171 of this title as well as attendance at military school under proper orders, participating in armory drill, special ceremonies and field training unless otherwise designated by the United States government.

(b) If any officer or soldier belonging to any regiment, company, or detachment of the Delaware National Guard is wounded or disabled in the service of the State when called into such service, the member shall receive compensation from the State at the rate provided in Chapter 23 of Title 19 for the type of injuries sustained.

(c) If any officer or enlisted member of the Delaware National Guard is killed in the service of the State, a pension shall be awarded to the spouse or next of kin, as the case may be, in accordance with the provisions of § 2330 of Title 19.

(d) Such compensation or pension shall be based either upon civilian earning capacity or wages or upon military pay scale, whichever is greater.

(e) Any such compensation or pension shall be paid by the State Treasurer from any moneys not otherwise appropriated upon warrants therefor signed by the Adjutant General and countersigned by the Governor.

(20 Del. Laws, c. 392, § 45; Code 1915, § 314; 32 Del. Laws, c. 22, § 1; Code 1935, § 288; 47 Del. Laws, c. 329, § 8; 20 Del. C. 1953, § 182; 64 Del. Laws, c. 258, § 1.)

§ 183 Uniform and equipment allowances for officers [Repealed].

24 Del. Laws, c. 62, § 3; Code 1915, § 316; 32 Del. Laws, c. 22, § 1; Code 1935, § 290; 47 Del. Laws, c. 329, § 9; 20 Del. C. 1953, § 183; 64 Del. Laws, c. 258, § 1; 68 Del. Laws, c. 110, § 1; repealed by 80 Del. Laws, c. 387, § 3, effective Aug. 10, 2016.

§ 184 Unit fund grant.

The Delaware National Guard shall receive an appropriation annually for the unit funds of said Guard. The funds received shall be allocated to each unit fund on a proportional basis based upon the unit's authorized strength. The funds shall be expended with the approval of the Adjutant General to enhance the morale, welfare and recreation of assigned personnel.

(20 Del. Laws, c. 392, § 47; 24 Del. Laws, c. 62, § 3; Code 1915, § 316; 32 Del. Laws, c. 22, § 1; Code 1935, § 290; 47 Del. Laws, c. 329, § 9; 20 Del. C. 1953, § 184; 64 Del. Laws, c. 258, § 1; 73 Del. Laws, c. 197, § 1.)

§ 185 Exemption from state merit system.

Personnel employed by the State to support the operations and maintenance of the National Guard shall be exempt from the state merit system and shall be paid in accordance with like positions as Department of Defense employees. Such employees shall be governed in a like manner in accordance with the rules and regulations which pertain to Department of Defense employees except for: retirement benefits, health benefits, severance packages, and unused sick leave; all of which shall be administered in the same manner as state merit system employees. For all state positions in the National Guard, the Adjutant General or designee will determine whether the position will be classified to be governed in a like manner to either a Department of Defense employee position established under Title 5 of the United States Code or a Department of Defense position established under Title 32 of the United States Code.

(64 Del. Laws, c. 258, § 1; 80 Del. Laws, c. 387, § 3; 81 Del. Laws, c. 310, § 1.)

§ 186 Compensation for unused sick leave [Repealed].

64 Del. Laws, c. 184, § 1; 64 Del. Laws, c. 258, § 1; repealed by 80 Del. Laws, c. 387, § 3, effective Aug. 10, 2016.

§ 187 Service Members' Life Insurance Reimbursement Fund.

(a) The "Service Members' Life Insurance Reimbursement Fund" is created in the state treasury. The fund shall consist of legislative appropriations to the fund; gifts, grants, donations and bequests to the fund; and income from investment of the fund. Expenditures from the fund shall be made in accordance with rules promulgated by the Secretary of Finance and with the approval of the Adjutant General of the Delaware National Guard or the Adjutant General's authorized representative.

(b) The fund shall be administered by the Delaware National Guard, and money in the fund is appropriated to the Delaware National Guard for the purpose of reimbursing eligible members of the Delaware National Guard for premiums paid for benefits under the service members' group life insurance program pursuant to 38 U.S.C. § 1965 et seq., as amended, and not otherwise reimbursed by the federal government.

(c) The Delaware National Guard shall adopt rules necessary to determine eligibility for reimbursement from the service members' life insurance reimbursement fund and to implement a reimbursement program. Only members of the Delaware National Guard serving on active duty for longer than 30 days as a result of a federal mobilization or as a result of a state mobilization ordered by the Governor shall be deemed eligible.

(d) Nothing in this section is intended to alter, amend or change the eligibility or applicability of the service members' group life insurance program pursuant to 38 U.S.C. § 1965 et seq., as amended, or any rights, responsibilities or benefits thereunder.

(75 Del. Laws, c. 43, § 1.)

§ 188. State-sponsored life insurance.

All members of the Delaware National Guard will be entitled to receive an annual briefing on the state-sponsored life insurance benefit program.

(80 Del. Laws, c. 387, § 3.)

Part I
Military
Chapter 3
STATE DEFENSE FORCES

§ 301 Establishment and composition.

(a) The Governor may organize such military forces within this State in addition to the Delaware National Guard as the Governor deems necessary for the defense of this State. Such forces shall be distinct from the Delaware National Guard and shall be known as the Delaware State Defense Forces. Such military forces shall be uniformed and comprised of officers and enlisted personnel who shall be citizens of this State who shall volunteer for such service.

(b) The Delaware State Defense Forces shall not be called into active state service unless the Delaware National Guard or a part thereof has been called into active federal service.

(c) The Governor may organize a command staff for the Delaware State Defense Forces which staff shall develop plans for mobilization of said force.

(d) The command staff of the Delaware State Defense Forces may maintain lists of volunteers for service in such forces and develop an organizational structure for such forces when called to active service.

(e) Nothing contained herein shall prohibit the Delaware State Defense Forces from meeting on a voluntary basis at no cost to the State when not in active service.

(43 Del. Laws, c. 81, § 1; 20 Del. C. 1953, § 301; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1.)

§ 302 Rules and regulations prescribed by Governor.

(a) The Governor may prescribe rules and regulations for the administration, organization, equipment, training, discipline and maintenance of the Delaware State Defense Forces.

(b) The rules and regulations adopted pursuant hereto should conform as far as possible with the rules and regulations applicable to the Delaware National Guard.

(43 Del. Laws, c. 81, § 2; 20 Del. C. 1953, § 302; 64 Del. Laws, c. 258, § 1.)

§ 303 Pay and allowances.

(a) The Delaware State Defense Forces shall, when called into active state service, be compensated as provided for by the executive order calling forth the forces.

(b) The Delaware State Defense Forces, when called into active state service, shall in no event be compensated in a manner exceeding the compensation paid members of like rank and length of service of the United States Army for such service.

(c) The command staff may be compensated at a rate set by the Governor for their expenses when meeting to develop mobilization plans, but shall not be compensated in excess of the base compensation paid an active duty member of like rank and length of service of the United States Army for a similar period of service.

(d) No funds may be paid to any member of the Delaware State Defense Forces unless specifically appropriated for such purpose.

(43 Del. Laws, c. 81, § 3; 20 Del. C. 1953, § 304; 64 Del. Laws, c. 258, § 1.)

§ 304 Arms and equipment.

The Governor may enter such agreements as are necessary to procure arms and other equipment for use by the Delaware State Defense Forces.

(43 Del. Laws, c. 81, § 4; 20 Del. C. 1953, § 305; 64 Del. Laws, c. 258, § 1.)

§ 305 Use of State Defense Forces outside of Delaware.

(a) The Delaware State Defense Forces shall not be required to serve outside the boundaries of the State except:

(1) Upon the request of the governor of another state, the Governor of this State may, in the Governor of this State's discretion, order any portion or all of such forces to assist the military or police forces of such other state who are actually engaged in defending such other state.

(2) Any organization, unit or detachment of the Delaware State Defense Forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces beyond the borders of this State into another state until they are apprehended or captured by such organization, unit or detachment or until the military or police forces of the other state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons; provided, that such other state shall have given authority by law for such pursuit by such forces of this State.

(b) Any such person who is apprehended or captured in such other state by an organization, unit or detachment of the forces of this State shall without unnecessary delay be surrendered to the military or police forces of the state in which such person is taken or to the United States, but such surrender shall not constitute a waiver by this State of its right to extradite or prosecute such person for any crime

committed in this State.

(43 Del. Laws, c. 81, § 5; 20 Del. C. 1953, § 306; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1.)

§ 306 Permission to military forces of other states to pursue and arrest persons in Delaware.

(a) Any military forces, or organization, unit or detachment thereof, of another state who are in fresh pursuit of insurrectionists, saboteurs, enemies or any enemy forces may continue such pursuit into this State until the military or police forces of this State or the forces of the United States have had reasonable opportunity to take up pursuit or to apprehend or capture such persons.

(b) Such military forces, or organization, unit or detachment thereof, may arrest or capture such persons within this State while in fresh pursuit.

(c) Any such person who is captured or arrested by the military forces of such other state while in this State shall without unnecessary delay be surrendered to the military or police forces of this State to be dealt with according to law.

(d) This section shall not be construed so as to make unlawful any arrest in this State which would otherwise be lawful and nothing contained in this section shall be deemed to repeal any of the provisions of the Uniform Law on Fresh Pursuit, as contained in Title 11 [§ 1934 et seq. of Title 11].

(43 Del. Laws, c. 81, § 6; 20 Del. C. 1953, § 307; 64 Del. Laws, c. 258, § 1.)

§ 307 Federal service.

Nothing in this chapter shall be construed as authorizing the Delaware State Defense Forces or any part thereof to be called, ordered or in any manner drafted, as such, into military service of the United States; but no person shall by reason of such person’s enlistment or commission in any such forces be exempted from military service under any law of the United States.

(43 Del. Laws, c. 81, § 7; 20 Del. C. 1953, § 308; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1.)

§ 308 Freedom from arrest and exemption from jury duty.

(a) No officer or enlisted member of the Delaware State Defense Forces shall be arrested on any warrant, except for treason or felony, while going to, remaining at or returning from a place where ordered to attend for military duty.

(b) Every officer and enlisted member of the Delaware State Defenses Forces shall, during active state service, be exempt from service upon any posse comitatus and from jury duty.

(43 Del. Laws, c. 81, § 12; 20 Del. C. 1953, § 314; 64 Del. Laws, c. 186, § 5; 64 Del. Laws, c. 258, § 1.)

Part I
Military
Chapter 5
WAR RECORDS

§ 501 Agreements or contracts to gather and preserve.

(a) The Adjutant General of this State shall make such agreements or contracts as are appropriate to preserve all war records, colors, standards, and battle flags as are or shall become the property of the State.

(b) The Adjutant General shall make such agreements as are appropriate with the Division of Historical and Cultural Affairs to gather, preserve and display the war records and relics of this State.

(c) The Adjutant General shall do everything possible to gather and complete the war records of this State and to preserve the memory of the heroic deeds of the military personnel of this State.

(32 Del. Laws, c. 23, § 1; Code 1935, § 310; 20 Del. C. 1953, § 501; 51 Del. Laws, c. 134, § 4; 64 Del. Laws, c. 258, § 1.)

Part I
Military
Chapter 7
MEDALS, DECORATIONS AND HONORS

§ 701 Conspicuous Service Cross.

(a) The Adjutant General, on behalf of the Governor, may present, in the name of the State, a Conspicuous Service Cross to any person serving in the National Guard of the State who shall have distinguished oneself in any capacity as provided in this section.

(b) The Conspicuous Service Cross shall be a bronze Maltese Cross, 1 inch long, with the coat of arms of the State in miniature in the center thereof and the words "For Conspicuous Service" inscribed on the arms of the cross. The reverse shall be plain. The cross shall be suspended by a ribbon 1 3/8 inches in width and 1 3/4 inches in length of maroon with a 1/2 inch band of beige in the center.

(c) The Conspicuous Service Cross may be awarded for heroism, meritorious service and outstanding achievement.

(1) A recommendation based on heroism must clearly characterize valor, bravery or outstanding courage. The act may be a single event or a closely related series of actions performed over a short period of time.

(2) A recommendation based on meritorious service recognizes praiseworthy execution of duties over a period of time. Service differs from achievement in that service concerns a period of time versus an act and is usually based on a permanent change of assignment, a completed period of service, or a retirement. The service must clearly distinguish the member from others of comparable grade and time of service.

(3) A recommendation based on outstanding achievement recognizes a single, specific act or accomplishment separate and distinct from regularly assigned duties which impacts the greater good of the State and its inhabitants. An outstanding achievement award covers a short period of time with definite beginning and ending dates.

(d) This medal shall be awarded upon the recommendation of a board of 3 officers and 2 enlisted members as appointed by the Adjutant General.

(e) Only 1 medal may be awarded to any 1 person. For each additional award, a gold star 3/16 of an inch in diameter shall be given to the one who has earned the medal, which shall be affixed to the ribbon of the medal.

(35 Del. Laws, c. 35, § 1; 37 Del. Laws, c. 36, §§ 1, 2; Code 1935, § 306; 44 Del. Laws, c. 60; 20 Del. C. 1953, § 701; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 263, § 2; 84 Del. Laws, c. 42, § 1.)

§ 702 Delaware National Guard Medal.

(a) The State Headquarters, on behalf of the Adjutant General, may present, in the name of the State, the Delaware National Guard Medal to any person serving in the National Guard of the State who has been called to federal mobilization by the President or voluntarily served for a continuous period of 30 or more days in an area designated as a combat zone by the Department of Defense.

(b) The Delaware National Guard Medal shall be a bronze diamond, 1 3/8 inches in width and 1 1/4 inches in length. On the obverse is the coat of arms of the State in miniature in the center. The reverse shall be plain. The medal shall be suspended by a ribbon 1 3/8 inches in width and 1 3/8 inches in length of vertically divided equal portions of blue and gold.

(c) Only 1 medal may be awarded to any 1 person. For each additional award, a gold star 3/16 of an inch in diameter shall be given to the one who has earned the medal, which shall be affixed to the ribbon of the medal. The numeral affixed will designate the total number of times the medal has been awarded to the person.

(73 Del. Laws, c. 263, § 2; 80 Del. Laws, c. 387, § 4.)

§ 703 Delaware Distinguished Service Medal.

(a) The Adjutant General may present, in the name of the State, the Delaware Distinguished Service Medal to any person, military or civilian, who has distinguished oneself in any capacity as provided in this section.

(b) The Delaware Distinguished Service Medal shall be a medal of bronze, 1 1/4 inches in diameter. On the obverse is the First Regiment flag with the outline of the State overstamped on it. The words "The Delaware Distinguished Service Medal" are inscribed around the face of the medal. The reverse is plain. The medal shall be suspended by a ribbon 1 3/8 inches in width and 1 3/4 inches in length of gold with 4 bands of blue — 2 1/16-inch outer bands and 2 1/8-inch inner bands.

(c) The Delaware Distinguished Service Medal may be awarded for meritorious service and outstanding achievement.

(1) A recommendation based on meritorious service recognizes praiseworthy execution of duties over a period of time. Service differs from achievement in that service concerns a period of time versus an act and is usually based on a permanent change of assignment, a completed period of service, or a retirement. The service must clearly distinguish the member from others of comparable grade and time of service.

(2) A recommendation based on outstanding achievement recognizes a single, specific act or accomplishment separate and distinct from regularly assigned duties which impacts the greater good of the Delaware National Guard. An outstanding achievement award covers a short period of time with definite beginning and ending dates.

(d) This medal shall be awarded upon the recommendation of a board of 3 officers and 2 enlisted members as appointed by the Adjutant General.

(e) Only 1 medal may be awarded to any 1 person. For each additional award, a numeral 3/16 of an inch in diameter shall be given to the one who has earned the medal, which shall be affixed to the ribbon of the medal. The numeral affixed will designate the total number of times the medal has been awarded to the person.

(64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 263, § 2; 84 Del. Laws, c. 42, § 1.)

§ 704 Medal for Military Merit.

(a) The Adjutant General may present, in the name of the State, the Medal for Military Merit to any person serving in the National Guard of the State who has distinguished oneself in any capacity as provided in this section.

(b) The Medal for Military Merit shall be a medal of bronze, 1 1/4 inches in diameter. On the obverse is the coat of arms of the State around which is inscribed "For Military Merit." The reverse is plain. The medal shall be suspended by a ribbon 1 3/8 inches in width and 1 3/4 inches in length of beige with a 1/2-inch band of maroon in the center.

(c) The Medal for Military Merit may be awarded for meritorious service and outstanding achievement.

(1) A recommendation based on meritorious service recognizes praiseworthy execution of duties over a period of time. Service differs from achievement in that service concerns a period of time versus an act and is usually based on a permanent change of assignment, a completed period of service, or a retirement. The service must clearly distinguish the member from others of comparable grade and time of service. In addition, the medal will be awarded to members for every 10 years of satisfactory service. Federal military service shall count in the computation of time. Board action is not required.

(2) A recommendation based on outstanding achievement recognizes a single, specific act or accomplishment separate and distinct from regularly assigned duties which brings credit to the recipient as an individual. An outstanding achievement award covers a short period of time with definite beginning and ending dates. To recognize proficiency in military studies, the medal will be awarded to members who complete a course of military studies consisting of at least 80 hours of instruction and who are designated as "honor" or "distinguished" graduates. Board action is not required.

(d) This medal shall be awarded upon the recommendation of a board of 3 officers and 2 enlisted members as appointed by the Adjutant General.

(e) Only 1 medal may be awarded to any 1 person. For each additional award, a numeral 3/16 of an inch in diameter shall be given to the one who has earned the medal, which shall be affixed to the ribbon of the medal. The numeral affixed will designate the total number of times the medal has been awarded to the person.

(35 Del. Laws, c. 35, § 2; 37 Del. Laws, c. 36, § 3; Code 1935, § 307; 20 Del. C. 1953, § 702; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 263, § 2; 84 Del. Laws, c. 42, § 1.)

§ 705 Medal for Service in Aid of Civil Authority.

(a) The state headquarters, on behalf of the Adjutant General, may present, in the name of the State, the Medal for Service in Aid of Civil Authority to any person serving in the National Guard of the State who has been called upon by the Governor to assist the civil authorities in the preservation of law and order.

(b) The Medal for Service in Aid of Civil Authority shall be a bronze medal 1 1/4 inches in diameter. On the obverse is a mailed fist grasping a Roman sword, the sword vertical, point up; upon the point of the sword the scales of justice. The words "For Service in Aid of Civil Authority" in circular form inscribed thereon. The medal shall be suspended by a ribbon 1 3/8 inches in width and 1 3/4 inches in length in blue with a band of gold 1/4 inch wide through the center.

(c) Only 1 medal may be awarded to any 1 person. For each additional award, a numeral 3/16 of an inch in diameter shall be given to the one who has earned the medal, which shall be affixed to the ribbon of the medal. The numeral affixed will designate the total number of times the medal has been awarded to the person.

(35 Del. Laws, c. 35, § 3; Code 1935, § 308; 20 Del. C. 1953, § 703; 64 Del. Laws, c. 258, § 1; 73 Del. Laws, c. 263, § 2.)

§ 706 Minor awards and ribbons.

The Adjutant General may establish such minor awards and ribbons as deemed necessary for appropriate recognition.

(64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 263, § 2.)

§ 707 Honors for retired members of the Delaware National Guard.

(a) Time and age retirement requirements as contained in federal law will apply to all Delaware National Guard members.

(b) (1) All members, who shall have served actively 25 years or more in the Delaware National Guard and received an honorable discharge, may upon their own written request at or after retirement be placed upon the retired list at the next higher grade, not to exceed the maximum allowable grade in the appropriate officer or enlisted category.

(2) The Adjutant General shall appoint a selection panel and shall promulgate regulations to manage qualifications and selection for those who make a request after discharge under paragraph (b)(1) of this section.

(c) All military members and civilian employees who shall have served actively 25 years or more in the Delaware National Guard may upon their retirement be issued a "State Seal" in recognition of long and faithful service.

(73 Del. Laws, c. 263, § 2; 80 Del. Laws, c. 387, § 5.)

Part I
Military
Chapter 9
MISCELLANEOUS MATTERS RELATING TO MILITARY ORGANIZATIONS

§§ 901-903 Burial of indigent service members; procedure and conditions for burial payments; military funerals for service members brought from overseas.

Repealed by 76 Del. Laws, c. 269, § 1, effective June 30, 2008.

§ 904 Unlawful use of insignia of veterans' organizations; penalties.

Whoever, not being a member of the Grand Army of the Republic, the Union Veteran Legion, the United Spanish War Veterans, the Veterans of Foreign Wars, the American Legion, the American Legion Auxiliary, Sons of the American Legion, 40 et 8, 8 et 40, or any other service or ex-service unit, auxiliary or organization wears, uses, exhibits or displays any badge, button or other insignia of any of such organizations, with intent to make it appear that the person is a member of any of such organizations or entitled to any of the benefits or advantages resulting from membership therein, shall, for each such offense, be fined not more than $200, or shall be imprisoned not more than 10 days or both.

(18 Del. Laws, c. 683, § 1; 19 Del. Laws, c. 274, §§ 1, 2; Code 1915, § 3475; 33 Del. Laws, c. 215, § 1; Code 1935, § 3943; 41 Del. Laws, c. 193, § 1; 20 Del. C. 1953, § 904; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1.)

§ 905 Leaves of absence for members of reserve on temporary active duty.

(a) If any employer fails to comply with any provisions of federal or state law relating to employment rights of reservists or National Guard members, the employee may elect to bring an action at law for damages for such noncompliance or such other relief as is appropriate in the Superior Court of Delaware.

(b) Any National Guard member who is called to state active duty shall be entitled to the same rights, privileges, and protections with respect to such member's employment as such member would have had if called for military training under federal law protecting reservists and National Guard members.

(20 Del. C. 1953, § 905; 50 Del. Laws, c. 413, § 1; 64 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1.)

Part I
Military
Chapter 10
VETERANS WITH PARAPLEGIA

§ 1001 Pension benefits.

(a) Each veteran with paraplegia eligible for benefits hereunder shall receive a pension from the State of $3,000 per year payable in equal monthly installments at the end of each month in which such veteran is eligible.

(b) In order to be eligible for the benefits listed in subsection (a) of this section a veteran must file evidence with the Pension Board of Trustees that:

(1) The veteran is paraplegic and fully disabled to the extent that the veteran has no voluntary control over either leg; and

(2) The veteran is listed on the rolls of the United States Veterans Administration as totally disabled for the cause listed in paragraph (b)(1) of this section above; and

(3) The disability is a direct result of service in the armed forces of the United States while the United States was officially at war or during a period when the United States was engaged in hostilities with another nation as a member of the United Nations; and

(4) The veteran is a bona fide resident of the State.

(c) If, at any time the veteran ceases to be totally disabled as listed in paragraphs (b)(1) and (2) of this section, such veteran shall immediately notify the Pension Board of Trustees of the veteran's change in status and shall cease to be eligible for benefits hereunder.

(20 Del. C. 1953, § 1001; 51 Del. Laws, c. 75, § 1; 57 Del. Laws, c. 38; 57 Del. Laws, c. 741, § 42; 67 Del. Laws, c. 304, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 111, § 1; 72 Del. Laws, c. 154, § 1; 78 Del. Laws, c. 179, § 269.)

Part I
Military
Chapter 12
DELAWARE VETERANS MEMORIAL CEMETERY

§ 1201 Established.

There is hereby created and established a Delaware Veterans Memorial Cemetery.

(64 Del. Laws, c. 46, § 1.)

§ 1202 Supervision by Department of Veterans Affairs; powers and duties [For application of this section, see 85 Del. Laws, c. 137, § 12].

(a) The operation and maintenance of the Delaware Veterans Memorial Cemetery shall be under the supervision of the Department of Veterans Affairs which shall have the following powers and duties:

(1) Select an appropriate site for the Cemetery, pursuant to § 1203 of this title;

(2) Acquire, by transfer of title from another state agency, or by purchase, grant, devise or contract, title to such real property as shall be suitable and necessary for the establishment of the Cemetery;

(3) Apply for, receive, accept and expend any money, materials or other aid granted or otherwise provided by local, state or federal governments or by any source, public or private, in accordance with the terms thereof, for the establishment, operation or maintenance of the Cemetery;

(4) Appoint and employ such persons as shall be needed for the proper operation and maintenance of the Cemetery;

(5) Establish criteria for eligibility for burial in the Cemetery, and set fees for the burial of family members, pursuant to § 1204 of this title;

(6) Promulgate rules, following public hearing, governing the administration and operation of the Cemetery;

(7) Prepare an annual report on the operation of the Cemetery which shall be presented to the Governor, the Secretary of the Department of Veterans Affairs, and to the General Assembly; and

(8) Perform all other powers and functions necessary or appropriate to carry out the purposes and policies of this chapter.

(b) A plaque or memorial in the Delaware Veterans Memorial Cemetery may not be removed or relocated for any purpose without the approval of the Co-chairs of the Joint Legislative Committee on Capital Improvement.

(64 Del. Laws, c. 46, § 1; 67 Del. Laws, c. 43, §§ 1, 2; 85 Del. Laws, c. 137, § 3.)

§ 1203 Selection of site.

The site of the Cemetery shall be determined by the Department with the approval of the Delaware Veterans Affairs Committee or its successor. The site shall be convenient to all veterans of the State and shall meet the necessary standards and guidelines established by the United States Administrator of Veterans Affairs for the location of state-owned veterans cemeteries. In selecting the site, preference shall be given to land which is owned by the State. Land for the site may be acquired by purchase only in the event suitable state-owned land is not available.

(64 Del. Laws, c. 46, § 1.)

§ 1204 Eligibility for burial.

(a) Eligibility for interment in the Delaware Veterans Memorial Cemetery is established by the U.S. Department of Veterans Affairs, National Cemetery Administration (NCA Directive 3210) with the following exceptions:

(1) The Veterans Commission of Delaware may impose a residency requirement for interment, except that any person who, for at least 20 years, was a member of the Delaware National Guard or a reserve unit located within Delaware shall not be subject to a residency requirement.

(2) Any person who retired honorably as a member of the National Guard or Reserve forces of the United States shall be eligible.

(3) Any person who served as a Merchant Marine for a minimum period of 2 years between December 7, 1941, and August 15, 1945, shall be eligible.

(b) There shall be no fee charged for any plot and the interment provided to any eligible veteran or member of the armed forces of the United States. The Commission may establish reasonable fees for burial of members of the immediate family of a veteran or armed forces member.

(c) Burial in the Delaware Veterans Memorial Cemetery shall be without regard to race, creed, color, sex, national origin, or any other basis protected under Chapter 45 of Title 6.

(d) [Repealed.]

(64 Del. Laws, c. 46, § 1; 67 Del. Laws, c. 43, § 3; 69 Del. Laws, c. 145, § 3; 69 Del. Laws, c. 415, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 62, §§ 1, 2; 80 Del. Laws, c. 232, § 1; 85 Del. Laws, c. 144, § 10.)

Part II
Civil Defense
Chapter 31
EMERGENCY MANAGEMENT
Subchapter I
General Provisions

§ 3101 Declaration of policy and purpose.

Because of the existing possibility of the occurrence of emergencies or disasters, the purpose of this chapter is to:

(1) Ensure that this State will be adequately prepared to respond and recover from such emergencies or disasters;

(2) Provide for the common defense and to protect the public peace, health and safety;

(3) Protect the lives and property of the people of this State and reduce their vulnerability to harm in emergency and disaster situations;

(4) Authorize and provide for coordination of activities relating to emergency management;

(5) Confer upon the Governor, state agencies and authorized representatives of this State the broad emergency powers provided in this chapter;

(6) Provide for the rendering of mutual aid among the political subdivisions of this State and with other states and with the federal government with respect to emergency management.

(48 Del. Laws, c. 189, § 2; 20 Del. C. 1953, § 3101; 57 Del. Laws, c. 670, § 25A; 58 Del. Laws, c. 558, § 3; 69 Del. Laws, c. 78, § 3; 71 Del. Laws, c. 207, § 1.)

§ 3102 Definitions.

As used in this chapter:

(1) “COVID-19 order” means any modification to the Declaration of a State of Emergency, or other order issued by the Governor pursuant to the authority granted by this chapter, relating to the COVID-19 State of Emergency.

(2) “COVID-19 State of Emergency” means the state of emergency declared effective as of Friday, March 13, 2020, at 8:00 a.m. Eastern Standard Time by the Governor, pursuant to the Declaration of a State of Emergency, and any subsequent state of emergency for the State of Delaware, or any portion thereof, relating to coronavirus disease 2019, also known as COVID-19.

(3) “Disaster” means a catastrophic condition caused by a man-made event (including, but not limited to, industrial, nuclear or transportation accident, explosion, conflagration, power failure, act of domestic terrorism, natural resource shortage or other condition resulting from man-made causes, such as hazardous materials spills and other injurious environmental contamination), natural event (including, but not limited to, any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, landslide, mud slide, snowstorm, drought, fire or explosion) or war-caused event (following an attack upon the United States caused by use of bombs, missiles, shellfire or nuclear, radiological, chemical or biological means, or other weapons, or overt paramilitary actions, or other conditions such as sabotage) which results in substantial damage to property or the environment, and/or hardship, suffering, injury or possible loss of life.

(4) “Emergency” means any situation which requires efforts and capabilities to save lives or to protect property, public health and safety, or to lessen or avert the threat of a disaster in Delaware.

(5) “Emergency management” means the mitigation, preparedness, response and recovery functions necessary to save lives and to protect property, public health and safety or to lessen or avert the threat of a disaster in any part of the State, other than functions for which military forces or other federal agencies are primarily responsible. These functions include, without limitation, firefighting services, police services, medical and health services, rescue, engineering, warning services, communications, radiological response, chemical response or other technological response, evacuation of persons from hazardous areas, emergency welfare services, emergency transportation, protection, temporary restoration of public utility services, national security, and other functions related to infrastructure, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions. In so defining emergency management, full recognition shall be given to Public Law 93-288, as amended, “The Robert T. Stafford Disaster Relief and Emergency Assistance Act” [42 U.S.C. § 5121 et seq.]; Public Law 100-408, as amended, “The Price-Anderson Act” [42 U.S.C. § 2210]; 81 P.L. 875, § 4, as amended.

(6) “Essential personnel” means those personnel who are necessary to maintain the core functions of a government body or entity, and to maintain the health and safety of the people in Delaware by providing services provided by a “public utility” as defined in § 102 of Title 26, health-care services, emergency broadcasting services, and food and fuel deliveries during a state of emergency, regardless of whether they are employed by a public or private entity.

(7) “First informer” means a broadcast engineer or on-air employee of a radio or television station licensed by the Federal

Communications Commission who is engaged in the process of broadcasting, or maintenance, operation, or repair of broadcast station equipment, transmitters, receivers, repeaters, or generators.

(8) "First responder" means a federal, state, or local law-enforcement officer, firefighter, emergency medical services personnel member, hazardous materials response team member, 911 dispatcher, emergency manager, or other individual who is responsible for the protection and preservation of life or property and who is called on to respond to emergencies.

(9) "Interim housing" means housing that disaster survivors may occupy in the time between leaving an emergency shelter and returning to their long-term, permanent homes.

(10) "Law-enforcement officer" includes an individual designated as a law-enforcement officer in § 222 of Title 11, § 8584 of Title 11, or § 6001F of Title 29, as well as a federal law-enforcement officer as defined by 18 U.S.C. § 115(c)(1).

(11) "Long-term housing" also referred to as "permanent housing", is the final housing phase, when disaster survivors move back into their repaired homes or attain another form of resilient long-term housing.

(12) "Long-term recovery" means the process required to reestablish steady-state operations after a disaster by addressing the sustained needs of individuals, families, and the community. Long-term recovery activities may include rebuilding homes and public infrastructure; providing financial assistance for households, businesses, and local governments; restoring natural and cultural resources; implementing economic and workforce development programs; redesigning of local codes and ordinances to mitigate damage from future events; and implementing community development initiatives.

(13) "Mitigation" means any action before or after a response event taken to reduce or eliminate the long-term risk to human life and/or property from natural hazards or any cost-effective measure which is intended to reduce the potential for damage to a facility from a disaster event.

(14) "Political subdivision" means any town, city or county within the State.

(15) "Qualified medical personnel" means medical personnel who voluntarily provide their services without compensation through participation in a state-recognized group of providers organized for the sole purpose of assisting in emergency or disaster relief operations and activities in connection with any emergency or disaster pursuant to this chapter, such as, but not limited to, a Medical Reserve Corps.

(16) "Recovery" means the restoration, strengthening and revitalization of infrastructure, housing, and economy, as well as the health, social, cultural, historic, and environmental fabric of communities affected by an incident, generally after response operations conclude. State and local governments may organize around key functional areas of assistance to facilitate problem solving; improve access to resources; and foster ongoing communication among public agencies, non-governmental partners, and other interested parties. Recovery could be further broken down into "short-term recovery" and "long-term recovery" phases depending on the scale and scope of disaster.

(17) "Recovery Advisory Council" or "RAC" is a group of key stakeholders, led by the Director of the Delaware Emergency Management Agency ("DEMA"), who convene to oversee the distribution of Delaware Disaster Recovery Funds. The RAC ensures a method of checks and balances, equity, and impartiality. Its duties include permitting fund activation; eliminating redundancies and risk of benefit duplications; and administering an appeals process.

(18) "Response" means any action taken to reduce or eliminate the immediate or short-term risk to human life and/or property from any hazard.

(19) "Sheltering" means providing a safe, sanitary, secure place for disaster survivors to stay before, during, or immediately after a disaster.

(20) "Short-term recovery" means any action or effort that enables the transition between response and long-term recovery actions. Short-term recovery activities focus on stabilizing a post-disaster situation, ensuring the continued safety of survivors, and facilitating the start of long-term restoration and reconstruction. Activities may include debris removal; interim housing assistance; emergency repairs; establishing reliable sources of food, water, and medical care; and the restoration of critical services such as electricity, transportation, and communication networks.

(21) "State of emergency" means an emergency proclaimed pursuant to an emergency order by the Governor. All emergency orders issued under this chapter shall indicate the nature of the emergency or disaster, the area or areas threatened, and the conditions which have brought it about and may limit the order to a geographic area or specific resources. Such an emergency order may be issued in writing subsequent to its effect so long as a written log recording the dates and times of such order is maintained by DEMA. Emergency orders shall be filed with the Secretary of State.

(22) "State of Emergency Declaration" means the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat issued by the Governor on March 12, 2020.

Notwithstanding the substitution of the phrase "emergency management" for the phrase "civil defense" by 58 Del. Laws, c. 558, § 4, the powers of DEMA shall not in any way be restricted by reason of its new designation, and the term "civil defense" may be used interchangeably with the term "emergency management" wherever it may appear in the Delaware Code.

(48 Del. Laws, c. 189, §§ 3, 8; 20 Del. C. 1953, § 3102; 50 Del. Laws, c. 138, § 1; 56 Del. Laws, c. 118, § 1; 58 Del. Laws, c. 558, § 4; 64 Del. Laws, c. 123, § 3; 69 Del. Laws, c. 78, § 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 207, § 1; 76 Del. Laws, c. 180, § 1; 82 Del. Laws, c. 255, § 1; 84 Del. Laws, c. 233, § 44; 85 Del. Laws, c. 25, § 1; 85 Del. Laws, c. 357, § 1; 85 Del. Laws, c. 446, § 1.)

Subchapter II

Delaware Emergency Management Agency

§ 3105 Creation.

To assure the prompt, proper and effective discharge of basic state responsibilities relating to emergency management, there is hereby formally created the Delaware Emergency Management Agency of the Department of Safety and Homeland Security (hereinafter also referred to as "DEMA").

(48 Del. Laws, c. 189, § 4; 20 Del. C. 1953, § 3103; 57 Del. Laws, c. 670, §§ 25B-25D; 58 Del. Laws, c. 558, § 5; 69 Del. Laws, c. 78, § 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 207, § 1; 74 Del. Laws, c. 110, § 138.)

§ 3106 Organization.

The Delaware Emergency Management Agency of the Department of Safety and Homeland Security, within the executive branch of the state government, shall consist of and be organized substantially as follows:

(1) *Director and Deputy Principal Assistant.* — The Director and the Deputy Principal Assistant ("Deputy") shall be appointed by the Secretary of Public Safety with the written approval of the Governor. The Director and the Deputy shall be exempt from the merit system as set forth in Chapter 59 of Title 29. The Director, as head of the agency, shall supervise, on a full-time basis, all fiscal, planning, administrative, operational and other functions of DEMA as assigned by law or the Secretary. The Director and Deputy shall not hold any other state office and may be removed from office by the Secretary, with or without cause, with the written approval of the Governor. The Director, subject to the direction and control of the Governor, shall be the executive head of DEMA and shall be responsible to the Secretary of Public Safety for carrying out the program for emergency management of this State. During an emergency or disaster, the Governor may delegate such powers as the Governor may see fit to the Secretary of Public Safety or the Director to coordinate the activities of the State that serve to prevent or alleviate the ill effects of an imminent or actual emergency or disaster and maintain liaison with emergency support agencies and organizations of other states and of the federal government and shall have such additional authority, duties and responsibilities authorized by this chapter.

(2) *Staff.* — The Director, with the approval of the Secretary of Public Safety, may employ such personnel, within limitations of appropriations for that purpose, as may be deemed necessary to carry out the purposes of this chapter.

(3) *Facilities and equipment.* — The Director and other personnel of DEMA shall be provided with appropriate office space in a facility and area identified with low vulnerability to natural and technological hazards, furniture, equipment, supplies, stationery, and services in the same manner as provided for personnel of other state agencies.

(48 Del. Laws, c. 189, § 4; 20 Del. C. 1953, § 3103; 57 Del. Laws, c. 670, §§ 25B-25D; 58 Del. Laws, c. 558, § 5; 69 Del. Laws, c. 78, § 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 207, § 1; 74 Del. Laws, c. 110, § 138.)

§ 3107 Powers and duties.

DEMA is authorized and directed to:

(1) Prepare and maintain a comprehensive plan and program for the emergency management of the State, such plan to be integrated into and coordinated with the emergency management plans of the federal government and of other states and political subdivisions of this State to the fullest possible extent;

(2) Establish, equip and staff a State Emergency Operations Center;

(3) Carry out all obligations and duties associated with state emergency or disaster response and recovery plans and execute all duties and responsibilities to secure the maximum state and federal emergency management assistance and emergency or disaster recovery assistance;

(4) Apply for, accept, and expend federal, public or private funds, grants, gifts or other forms of financial assistance in order to defray the costs of DEMA directly associated with implementing and maintaining emergency management capabilities, including, but not limited to, expenses connected with retaining personnel and with acquiring and maintaining equipment, supplies and other material to carry out DEMA's obligations and responsibilities under the plan. All grants or payments of money by the federal government, or by any other public or private source, pursuant to any contract, agreement or otherwise, to the Department of Safety and Homeland Security for emergency management by DEMA shall be appropriated to DEMA for the designated purpose for which the money was paid and received, and no other. All such money shall be payable to the State Treasurer. The Treasurer shall credit the deposit to the individual appropriation accounts for the designated use;

(5) Enter into and perform contracts or agreements with any public or private source; procure by contract or agent such consulting, research, technical and other services as are necessary for DEMA to carry out its responsibilities under the plan; and accept and expend funds paid by private or public sources in consideration for the performance of obligations under such contracts or agreements;

(6) Provide technical advice and assistance to state agencies, political subdivisions and other organizations in the preparation of emergency management plans or components thereof and to periodically review such plans and suggest or require revisions;

(7) Establish and implement or assist state agencies, political subdivisions or organizations in the development of emergency management training and of public information programs in advance of actual emergencies or disasters to ensure adequately trained personnel and an informed public in times of need;

(8) Supply appropriate state and local agencies, officials and the general public with precautionary notices, watches and warnings

relating to actual or potential emergencies or disasters and provide a flow of official information and instructions to the general public before, during and after an emergency or disaster;

(9) Provide direction and control of state emergency or disaster operations;

(10) Determine the need for, maintain information regarding, and procure materials, supplies, equipment, facilities and services necessary for emergency management;

(11) Make or request copies of studies, surveys or reports of the industries, resources and facilities within this State as are necessary to carry out the purposes of this chapter;

(12) Prepare, for issuance by the Governor, orders, proclamations and regulations as necessary or appropriate in responding to emergencies or disasters, and maintain a memorialized log thereof;

(13) Cooperate with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for emergency management;

(14) Administer grant programs for eligible applicants for emergency management;

(15) Accept and coordinate assistance provided by federal agencies in major disasters in accordance with the provisions of the Federal Disaster Relief Act of 1974 (Public Law 93-288, 42 U.S.C. § 5121 et seq.), or any amendment or reenactment thereof;

(16) Respond to emergencies or disasters relating to atomic energy operations or radioactive objects or materials;

(17) Provide, from its own stockpiles or other sources, emergency or disaster operational equipment, materials and supplies required and available for essential supplementation of those owned, acquired and used by state, county and local departments and agencies for emergency and disaster operations; and

(18) For the period during which a state of emergency is declared by the Governor, to incur or authorize other state agencies or local governments to incur obligations to purchase or to purchase immediately such materials and supplies as may be necessary to protect the health and safety of persons and property and provide emergency or disaster assistance to victims of a disaster. Such obligations and purchases shall be exempt from bidding provisions required by Chapter 69 of Title 29.

(48 Del. Laws, c. 189, § 4; 20 Del. C. 1953, § 3103; 57 Del. Laws, c. 670, §§ 25B-25D; 58 Del. Laws, c. 558, § 5; 69 Del. Laws, c. 78, § 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 207, § 1; 74 Del. Laws, c. 110, § 138.)

§ 3107A The State Emergency Management Fund.

The State Emergency Management Fund is established to provide DEMA with funds to manage natural and manmade disasters when federal funds are not available or when matching funds are required to receive federal funds. The Fund may be used to make purchases of life-saving or life-sustaining equipment; pay for costs associated with the activation of the State Emergency Operations Center; pay for Delaware National Guard costs when deployment is authorized by the Governor; and reimburse state and local employees for travel costs associated with a deployment under the Emergency Management Assistance Compact for authorized missions that will be fully reimbursed by the requesting states. As the requesting states provide reimbursement, funds will be deposited back into the Fund.

(72 Del. Laws, c. 324, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 84, § 275.)

§ 3108 Radiological Emergency Management Program.

(a) In addition to the powers and duties of DEMA set forth in § 3107 of this title, DEMA shall develop, establish and maintain a Radiological Emergency Management Program in accordance with relevant regulations and guidelines promulgated by federal agencies. The purpose of the program is to comply with applicable federal regulations and to implement all necessary and appropriate protective or remedial measures on behalf of the State with respect to a radiological incident, or threatened radiological incident, resulting from the operation of commercial nuclear generating facilities, acts of terrorism, or transport of nuclear by-products. DEMA shall serve as the single point of contact for interaction between the affected facilities and other state agencies and departments, counties, municipalities and the federal government.

(b) All grants or payments of money by the federal government, or by any other public or private source, pursuant to any contract, agreement or otherwise, to the Department of Safety and Homeland Security for radiological emergency management shall be appropriated to DEMA for the designated purpose, and no other, for which the money was paid and received. All such money shall be payable to the State Treasurer. The Treasurer shall credit the deposit to a special fund to be known and designated as the "Delaware Radiological Emergency Management Program Account," and any money received for the use of DEMA in connection with its duties under the Delaware Radiological Emergency Management Program shall be paid out of the special account by the State Treasurer upon warrants executed by the Secretary of the Department of Safety and Homeland Security for the designated use, without any further authority from the General Assembly.

(c) On behalf of DEMA, the Secretary of the Department of Safety and Homeland Security shall cause to be prepared, and shall submit to the Director of the Office of Management and Budget and the Joint Finance Committee, in accordance with Chapters 63 and 65 of Title 29, a detailed budgetary plan which:

(1) Depicts all anticipated expenses for the ensuing fiscal year associated with the duties of the State, political subdivisions and other organizations in the Delaware Radiological Emergency Management Program or under any contract or agreement in connection therewith;

(2) Provides an accurate statement of all funds, grants, gifts or other forms of financial assistance to be paid or furnished to DEMA for the ensuing fiscal year by the federal government or any other public or private source; and

(3) Describes the designated use of any funds, grants, gifts or other forms of financial assistance received by the State as well as any other relevant restrictions regarding the expenditure of such moneys.

(63 Del. Laws, c. 254, § 1; 69 Del. Laws, c. 78, § 3; 71 Del. Laws, c. 207, § 1; 74 Del. Laws, c. 110, § 138; 75 Del. Laws, c. 88, § 21(11).)

§ 3109 Emergency alerts.

(a) As part of the comprehensive plan and program for emergency management under § 3107 of this title, DEMA shall develop, establish, and maintain an emergency alert plan and system in accordance with relevant regulations and guidelines promulgated by federal agencies.

(b) The emergency alert plan must be designed to rapidly disseminate useful information in a predetermined manner to all of the following:

(1) Radio and television stations broadcasting within this State.

(2) Wireless devices through the Wireless Emergency Alerts or subsequent systems operated by federal agencies to provide authenticated emergency and life-saving information to the public.

(c) The emergency alert plan must be activated in accordance with policies established by the Department of Safety and Homeland Security.

(d) Emergency alerts must broadcast alerts in Spanish, in addition to English, when possible.

(83 Del. Laws, c. 315, § 1.)

Subchapter III

The Governor and Emergency Management

§ 3115 General authority of the Governor.

(a) The Governor shall be responsible for addressing the dangers to life, health, environment, property or public peace within the State presented by emergencies or disasters, and to this end shall have general direction and control of DEMA and shall be responsible for carrying out this chapter. In the event of an emergency or disaster beyond local control, the Governor may assume direct operational control over all or any part of the emergency management functions within the State.

(b) In performing the duties of the Governor under this chapter, the Governor may issue, amend and rescind all necessary executive orders, emergency orders, proclamations and regulations, which shall have the force and effect of law.

(c) In addition to the powers conferred upon the Governor by this chapter, a state of emergency may be proclaimed by emergency order of the Governor upon a finding that an emergency or disaster has occurred or that such occurrence or threat of that occurrence is imminent. The state of emergency shall continue until the Governor finds that the threat or danger has passed or the emergency or disaster has been dealt with to the extent that conditions necessitating a state of emergency no longer exist and terminates the state of emergency by subsequent order. No state of emergency can continue for more than 30 days without being renewed by the Governor. All orders issued under this chapter shall indicate the nature of the emergency or disaster, the geographical area or areas threatened, and the conditions which have brought the emergency or disaster about or which make possible termination of the state of emergency. An order terminating a state of emergency shall describe the reasons for termination, and shall be disseminated as promptly as is practicable by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the emergency or disaster prevent or impede, shall be promptly logged with DEMA. Emergency action ordered by the Governor in accordance with the Governor's constitutional and statutory authority shall not be invalidated because of any failure to comply with the technical requirements for the logging or filing of emergency orders.

(48 Del. Laws, c. 189, § 6; 20 Del. C. 1953, § 3105; 50 Del. Laws, c. 398, § 1; 53 Del. Laws, c. 391; 57 Del. Laws, c. 670, § 25F; 58 Del. Laws, c. 533; 58 Del. Laws, c. 558, § 6; 63 Del. Laws, c. 254, § 1; 69 Del. Laws, c. 78, § 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 207, § 1; 73 Del. Laws, c. 355, § 4.)

§ 3116 Powers.

(a) In addition to any other powers conferred upon the Governor by law, the Governor may:

(1) Delegate to the Secretary of the Department of Safety and Homeland Security, the Director of DEMA, or such other person any authority vested under this chapter and provide for the subdelegation of any such authority;

(2) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with the emergency or disaster;

(3) Utilize all available resources of the state government as reasonably necessary to cope with the emergency or disaster;

(4) Transfer the personnel, functions, and/or responsibilities of state agencies or units for the purpose of performing or facilitating emergency or disaster services;

(5) Request voluntary restrictions or conservation of water use by public or private users of water in the State. Mandatory restrictions may be imposed by the Governor by emergency order after declaration of a state of emergency. Unless the Governor issues an

emergency order finding that it is essential that mandatory conservation measures be implemented without delay, before any mandatory water conservation measure shall be enforceable without a state of emergency, the Governor shall hold a public hearing on the issue of said mandatory measure. If conservation measures are ordered without a state of emergency, a hearing shall be held within 60 days upon 7 days' notice. Notice of the hearing shall be published at least 7 days before the hearing in no less than 2 Delaware newspapers of general circulation. A hearing officer, who shall be appointed by the Governor, shall preside over any hearings required by this subsection, and shall make a written report and recommendation about the evidence presented at the hearing to the Governor;

(6) Request federal assistance as deemed necessary;

(7) On behalf of this State, enter into reciprocal aid agreements or compacts with other states and the federal government, either on a statewide basis or local political subdivision basis or with a neighboring state or province or a foreign country, as deemed necessary;

(8) Cooperate with the President, heads of armed forces and federal agencies regarding emergency management issues, particularly in matters pertaining to national security;

(9) Take such action and give such directions to state and local law-enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with this chapter;

(10) Employ such measures and make such recommendations to state or local health agencies, authorities or boards as may be reasonably necessary for the purpose of securing compliance with this chapter or with the findings or recommendations of such health entities by reason of conditions arising from emergencies or disasters;

(11) With or without emergency orders, require the Delaware National Guard to provide services which may protect life and property from any effects from an actual or threatened emergency or disaster; and

(12) With or without emergency orders, issue a Level 1 Driving Warning addressing the use or operation of motor vehicles on Delaware roads, including highways, express highways, roadways, and private roads as defined in § 101 of Title 21. A "Level 1 Driving Warning" means:

a. Any person operating a motor vehicle shall exercise extra caution in the operation of their motor vehicle.

b. Motorists are encouraged not to operate a motor vehicle on the State's roadways unless there is a significant safety, health, or business reason to do so.

(b) During a state of emergency, the Governor may:

(1) Subject to any applicable requirements for compensation, utilize any private, public or quasi-public property if necessary to cope with the emergency or disaster;

(2) Assign and make available for duty the employees, property or equipment of the subdivision relating to firefighting, engineering, rescue, health, medical and related services, police, similar items or services for emergency purposes within or outside of the physical limits;

(3) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State if this action is necessary for the preservation of life;

(4) Prescribe routes, modes of transportation, and destinations throughout the State in connection with evacuation;

(5) Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(6) Suspend or limit the sale, dispensing or transportation of alcoholic beverages, firearms, explosives, combustibles and hazardous materials;

(7) Notwithstanding any other provision of law, through the use of state agencies or instrumentalities thereof, clear or remove from publicly or privately owned land or water debris and wreckage which may threaten public health or safety, the environment, or public or private property;

(8) Establish curfews;

(9) Take appropriate measures as described in the Energy Emergency Contingency Plan in the event of an energy crisis such as an actual or impending acute shortage in useable energy resources, whether resulting from natural disasters, disruptions in fuel supplies, national defense circumstances, international trade obstructions, or other causes;

(10) Request federal emergency or disaster declarations;

(11) Upon a declaration of a major disaster or during an emergency, designate in a FEMA/State Agreement the Governor's Authorized Representative ("GAR"), who shall administer federal disaster assistance programs on behalf of the State and local governments and other grant or loan recipients, and a State Coordinating Officer ("SCO"), who shall coordinate state and local assistance efforts with those of the federal government;

(12) Restrict the use or operation of motor vehicles on Delaware roads, including highways, express highways, roadways, and private roads as defined in § 101 of Title 21. The levels of restriction of the use or operation of motor vehicles during a state of emergency are as follows:

a. *Level 3 Driving Ban:*

A "Level 3 Driving Ban" means that no person shall operate a motor vehicle on Delaware roadways when a Level 3 Driving Ban has been activated, except for those persons designated as first responders, first informers, and essential personnel, including a "public utility" as defined in § 102 of Title 26 and operators of snow removal equipment employed or contracted by a public or

private entity, pursuant to this chapter and the plans set forth thereunder, and by executive order of the Governor. All businesses, professional offices, organizations, entities, etc. shall be encouraged to take appropriate protective actions to protect their citizens, customers, and employees by termination of operations or shelter in place. An employer of a public or private entity shall not terminate, reprimand, discipline, or in any way commit any adverse employment action against an employee who, as a result of the activation of a Level 3 Driving Ban, fails or refuses to report to work during the pendency of the driving ban. Any person or entity in violation of an activated Level 3 Driving Ban under this subsection shall be penalized pursuant to § 3125 of this title.

b. *Level 2 Driving Restriction:*

A "Level 2 Driving Restriction" means that no person may operate a motor vehicle on Delaware roadways when a Level 2 Driving Restriction has been activated, except for persons designated as essential personnel including operators of snow removal equipment employed or contracted by a public or private entity. A waiver from a Level 2 Driving Restriction may be granted when a significant safety, health or business necessity is shown for issuing such a waiver. An employer or entity which has not been granted a waiver may not terminate, reprimand, discipline, or in any way commit any adverse employment action against an employee who, as a result of the activation of a Level 2 Driving Restriction, fails or refuses to report to work during the pendency of the driving restriction. Any person or entity who violates an activated level 2 driving restriction under this subsection shall be in violation of § 4176D of Title 21.

c. [Repealed.]

(13) Issue separate levels of driving restrictions throughout this State based on the severity of conditions in any given area within this State.

(14) Take such other actions as the Governor reasonably believes necessary to help maintain life, health, property, or public peace.

(c) During an emergency or disaster:

(1) Nothing contained in this section shall be construed as granting the power to suspend or limit the right of law abiding citizens to keep and bear arms for defense of self, family, home and State as guaranteed by article I, § 20 of the Delaware Constitution; and

(2) Nothing contained in this section shall prevent law-abiding citizens, during such emergency or disaster, from taking reasonable steps to safeguard their arms from destruction, looting or theft, including but not limited to their removal of such items from areas of danger to locations of relative safety.

(d) The Secretary of the Department of Safety and Homeland Security shall promulgate rules and regulations necessary to carry out the provisions of paragraph (b)(12) of this section.

(48 Del. Laws, c. 189, § 6; 20 Del. C. 1953, § 3105; 50 Del. Laws, c. 398, § 1; 53 Del. Laws, c. 391; 57 Del. Laws, c. 670, § 25F; 58 Del. Laws, c. 533; 58 Del. Laws, c. 558, § 6; 63 Del. Laws, c. 254, § 1; 69 Del. Laws, c. 78, § 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 207, § 1; 73 Del. Laws, c. 339, § 1; 76 Del. Laws, c. 69, § 1; 77 Del. Laws, c. 461, § 1; 81 Del. Laws, c. 84, § 1; 85 Del. Laws, c. 25, § 2; 85 Del. Laws, c. 548, § 18.)

§ 3117 Activation of emergency or disaster response.

The response and recovery aspects of the state emergency or disaster plans shall be initiated by an emergency order or memorialized in the DEMA log of such proclamation of a state of emergency by the Governor, or at the discretion of the DEMA Director in consultation with the Secretary of the Department of Safety and Homeland Security.

(20 Del. C. 1953, § 3125; 56 Del. Laws, c. 118, § 2; 63 Del. Laws, c. 340, §§ 1, 2; 67 Del. Laws, c. 104, §§ 1, 2; 71 Del. Laws, c. 207, § 1; 74 Del. Laws, c. 110, § 138.)

Subchapter IV

Miscellaneous Provisions

§ 3121 Orders, rules and regulations.

(a) Other state agencies designated or appointed by the Governor may make, amend and rescind orders, rules and regulations necessary for emergency management purposes and for supplementing the carrying out of this chapter, but not inconsistent with any orders, rules or regulations promulgated by the Governor or by any state agency exercising a power delegated by the Governor.

(b) All orders, rules and regulations promulgated by the Governor or other agency authorized by this chapter to make orders, rules and regulations shall have the full force and effect of law when issued by the Governor or any state agency or when logged and memorialized by the DEMA director in accordance with this chapter. All existing laws, ordinances, rules and regulations inconsistent with this chapter shall be suspended during the period of time of the emergency or disaster and to the extent that such conflict exists.

(c) In order to attain uniformity so far as practicable throughout the nation in measures taken to aid emergency management, all action taken under this chapter and all orders, rules and regulations made pursuant thereto shall be taken or made with due consideration to the orders, rules, regulations, actions, recommendations and requests of federal authorities relevant thereto and, to the extent permitted by law or practical, shall be consistent with such orders, rules, regulations, actions, recommendations and requests.

(48 Del. Laws, c. 189, § 14; 20 Del. C. 1953, § 3113; 63 Del. Laws, c. 254, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 207, § 1.)

§ 3122 Enforcement.

The law-enforcement authorities of this State and of the political subdivisions of this State shall enforce the orders, rules and regulations issued pursuant to this chapter.

(48 Del. Laws, c. 189, § 15; 20 Del. C. 1953, § 3114; 63 Del. Laws, c. 254, § 1; 71 Del. Laws, c. 207, § 1; 75 Del. Laws, c. 354, § 1; 77 Del. Laws, c. 245, § 1.)

§ 3122A Delaware State Police Ready Reserve.

Repealed by 77 Del. Laws, c. 245, § 2, effective April 27, 2010.

§ 3123 Authority to accept services, gifts, grants and loans.

Whenever the federal government, an agency or any person shall offer to this State, or through this State to any political subdivision of this State, services, equipment, supplies, materials or funds by way of gift, grant or loan for purposes of emergency management, this State, acting through the Governor, or such political subdivision, acting with the consent of the Governor and through such political subdivision's executive officer or governing body, may authorize any officer of this State or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials or funds on behalf of this State or such political subdivision, subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(48 Del. Laws, c. 189, § 17; 20 Del. C. 1953, § 3116; 63 Del. Laws, c. 254, § 1; 71 Del. Laws, c. 207, § 1.)

§ 3124 Political activity.

No emergency management organization established under the authority of this chapter shall participate in any form of political activity, nor shall it be employed directly or indirectly for political purposes.

(48 Del. Laws, c. 189, § 18; 20 Del. C. 1953, § 3117; 63 Del. Laws, c. 254, § 1; 71 Del. Laws, c. 207, § 1.)

§ 3125 Penalties.

Except where specified penalties are prescribed in this chapter, whoever violates this chapter or an emergency order issued pursuant to this chapter may be fined not less than $50 nor more than $500 or imprisoned up to 6 months for each violation.

(48 Del. Laws, c. 189, § 20; 20 Del. C. 1953, § 3119; 63 Del. Laws, c. 254, § 1; 71 Del. Laws, c. 207, § 1.)

§ 3126 Laws suspended during emergencies or disasters.

In the case of a declaration of a state of emergency by the Governor, state agencies may implement their emergency or disaster assignments without regard to procedures required by other laws (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and expenditures of public funds.

(20 Del. C. 1953, § 3126; 56 Del. Laws, c. 118, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 207, § 1.)

§ 3127 Conflict with other laws.

(a) Whenever the restrictions of any other statute, local ordinance or regulation are consistent with but more restrictive than the restrictions imposed pursuant to this chapter, such statute, local ordinance or regulation shall govern.

(b) During a state of emergency, whenever the restrictions imposed pursuant to this chapter are inconsistent and in conflict with those required by any other statute, local ordinance or regulation, the provisions of the emergency order imposed pursuant to this chapter shall govern.

(c) Nothing contained in this chapter shall be construed to infringe in any way upon the powers of the fire officers-in-charge as defined in § 6701A of Title 16, or any successor statute.

(20 Del. C. 1953, § 3127; 56 Del. Laws, c. 118, § 2; 71 Del. Laws, c. 207, § 1.)

§ 3128 Destruction of property, looting or injury of persons during state of emergency; penalty; liability for conduct of another.

(a) During a state of emergency, whoever maliciously destroys or damages any real or personal property or maliciously injuries another shall be guilty of a felony.

(b) Whoever violates this section shall be guilty of a Class C felony.

(c) Any person over 16 years old who violates this section shall be prosecuted as an adult.

(d) A person is guilty of an offense under this section committed by another person when:

(1) Acting with the state of mind that is sufficient for commission of the offense, such 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 that 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.

(e) In any prosecution for an offense under this section in which the criminal liability of the accused is based upon the conduct of another person pursuant to this section, 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.

(20 Del. C. 1953, § 3129; 56 Del. Laws, c. 118, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 207, § 1.)

§ 3129 Immunity from civil liability.

(a) Neither the State, nor any county in the State, nor any municipal corporation of the State, nor any other political subdivision of the State, nor any agency of any of them, nor the agents, employees or representatives of any of them, nor any qualified medical personnel engaged in emergency or disaster relief operations and activities in connection with any emergency or disaster pursuant to this chapter, nor any person, firm, corporation or other entity performing work and/or furnishing material pursuant to a contract (oral or written) with the State or with any county in the State, or with any municipal corporation of the State, or with any other political subdivision of the State or with any agency of any of them, entered into as a result of the declaration by the Governor of an emergency order or entered into as a part of efforts to comply with this chapter, shall be liable for the death of or any injury to persons, or damage to property, as a result of such relief operations and activities and/or the performance of or attempts to perform such contract, unless such death, injury or damage was intentional on the part of, or was caused by the wilful or wanton disregard of the rights of others by the State, or by the county, or by the municipal corporation, or by the other political subdivision, as the case may be, or by any agency of any of them, or by the agents, employees or representatives of any of them or by the qualified medical personnel or by such person, firm, corporation or other entity engaged in such emergency or disaster relief operations and activities and/or the performance and attempted performance of such contract, as the case may be. These provisions shall not affect the right of any person to receive statutory benefits to which that person would otherwise be entitled in the absence of this section or under the Workers' Compensation Act (Chapter 23 of Title 19) or under any pension law, or the right of any such person to receive any benefits or compensation under any act of Congress.

(b) No act or omission of qualified medical personnel during such relief operations and activities shall affect an insured physician's liability coverage in any way.

(c) Qualified medical personnel may petition a court of competent jurisdiction for a court-appointed attorney to represent the medical provider's interests in any action brought based on the medical provider's acts or omissions during the emergency or disaster relief operations and activities. 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 medical provider. The court may first appoint an attorney from the Department of Justice. If the court determines that the Department is unable to represent the medical provider, the court may appoint an attorney licensed in this State. A court-appointed attorney shall represent the medical provider in all proceedings from the date of appointment until a final determination of the matter has been reached, unless the attorney is earlier released by the medical provider or by the court. This section shall also apply to all federal courts within this State.

(d) Qualified medical personnel under this chapter shall be indemnified by the State against any expenses (including attorneys' fees and disbursements), judgments, fines and costs, actually and reasonably incurred in defending against the action, suit or proceeding giving rise thereto.

(59 Del. Laws, c. 506, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 207, § 1; 76 Del. Laws, c. 180, §§ 2, 3.)

§ 3130 Construction of chapter.

This chapter is intended to protect the health, property, environment and safety of the people of Delaware and shall be liberally construed to validate any emergency or disaster action undertaken by the State in good faith for that purpose. Without limiting the general intent of this section, any emergency order shall be interpreted as to provide the State with the maximum opportunity to obtain federal emergency or disaster relief assistance for the State.

(48 Del. Laws, c. 189, § 21; 20 Del. C. 1953, § 3121; 63 Del. Laws, c. 254, § 1; 71 Del. Laws, c. 207, § 1.)

Subchapter V

Public Health Emergencies

§ 3131 Findings.

The State finds as follows:

(1) Government must do more to protect the health, safety and general well-being of the general public.

(2) New and emerging dangers, including emergent and resurgent infectious diseases and incidents of civilian mass casualties, pose serious and immediate threats.

(3) A renewed focus on the prevention, detection, management and containment of public health emergencies is called for.

(4) Emergency health threats, including those caused by bioterrorism and epidemics, require the exercise of extraordinary government

functions.

(5) Delaware must have the ability to respond, rapidly and effectively, to potential or actual public health emergencies.

(6) The exercise of emergency health powers must promote the common good.

(7) Emergency health powers must be grounded in a thorough scientific understanding of public health threats and disease transmission.

(8) The rights of people to liberty, bodily integrity and privacy must be respected to the fullest extent possible consistent with the overriding importance of the public's health and security.

(9) Guided by principles of justice, it is the duty of this State to act with fairness and tolerance towards individuals and groups.

(10) This subchapter is necessary to protect the health and safety of the citizens of this State.

(73 Del. Laws, c. 355, § 13.)

§ 3132 Definitions [For application of this section, see 85 Del. Laws, c. 253, § 23].

For purposes of this subchapter:

(1) "Bioterrorism" is the intentional use of any microorganism, virus, infectious substance or biological product that may be engineered as a result of biotechnology or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance or biological product to cause death, disease or other biological malfunction in a human, an animal, a plant or another living organism in order to influence the conduct of government or to intimidate or coerce a civilian population.

(2) "Chain of custody" means the methodology of tracking specimens for the purpose of maintaining control and accountability from initial collection to final disposition of the specimens and providing for accountability at each stage of collecting, handling, testing, storing and transporting the specimens and reporting test results.

(3) "Contagious disease" means an infectious disease that can be transmitted from person to person, animal to person, or insect to person.

(4) "Council" means the Public Health Emergency Planning Council.

(5) "Health care provider" means any person or entity who provides health care services, including, but not limited to, hospitals, medical clinics and offices, special care facilities, medical laboratories, physicians, pharmacists, dentists, physician associates, nurse practitioners, registered and other nurses, paramedics, emergency medical or laboratory technicians, and ambulance and emergency medical workers.

(6) "Infectious disease" is a disease caused by a living organism or other pathogen, including a fungus, bacillus, parasite, protozoan or virus. An infectious disease may or may not be transmissible from person to person, animal to person, or insect to person.

(7) "Infectious waste" means:

a. "Biological waste," which includes blood and blood products, excretions, exudates, secretions, suctioning and other body fluids, and waste materials saturated with blood or body fluids;

b. "Cultures and stocks," which includes etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals and serums, and discarded live and attenuated vaccines;

c. "Pathological waste," which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures, and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals, but does not include teeth or formaldehyde or other preservative agents; and

d. "Sharps," which includes needles, IV tubing with needles attached, scalpel blades, lancets, breakable glass tubes, and syringes that have been removed from their original sterile containers.

(8) "Isolation" is the physical separation and confinement of an individual or group of individuals who are infected or reasonably believed to be infected with a contagious or possibly contagious disease from nonisolated individuals to prevent or limit the transmission of the disease to nonisolated individuals.

(9) "Mental health support personnel" includes, but is not limited to, psychiatrists, psychologists, social workers and volunteer crisis counseling groups.

(10) "Protected health information" means any information, whether oral, written, electronic, visual, pictorial, physical or any other form, that relates to an individual's past, present or future physical or mental health status, condition, treatment, service, products purchased, or provision of care and that reveals the identity of the individual whose health care is the subject of the information, or about which there is a reasonable basis to believe such information could be utilized (either alone or with other information that is or should reasonably be known to be available to predictable recipients of such information) to reveal the identity of that individual.

(11) "Public health authority" means the Secretary of Health and Social Services or such person as the Secretary may designate with the Governor's consent.

(12) A "public health emergency" is an occurrence or imminent threat of an illness or health condition that:

a. Is believed to be caused by any of the following:

1. Bioterrorism;

2. The appearance of a novel or previously controlled or eradicated infectious agent or biological toxin; or

3. A chemical attack or accidental release;

and

b. Poses a high probability of any of the following harms:

1. A large number of deaths in the affected population;

2. A large number of serious or long-term disabilities in the affected population; or

3. Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

(13) "Public safety authority" means the Director of the Delaware Emergency Management Agency or such other person as the Governor may designate.

(14) "Quarantine" is the physical separation and confinement of an individual or group of individuals who are or may have been exposed to a contagious or possibly contagious disease and who do not show signs or symptoms of a contagious disease from nonquarantined individuals to prevent or limit the transmission of the disease to nonquarantined individuals.

(15) "Specimens" includes, but is not limited to, blood, sputum, urine, stool, other bodily fluids, wastes, tissues and cultures necessary to perform required tests.

(16) "Tests" includes, but is not limited to, any diagnostic or investigative analyses necessary to prevent the spread of disease or protect the public's health, safety and welfare.

(73 Del. Laws, c. 355, § 13; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 213, § 1; 85 Del. Laws, c. 170, § 1; 85 Del. Laws, c. 253, § 16.)

§ 3133 Control of health-care supplies.

(a) The public health authority may purchase and distribute antitoxins, serums, vaccines, immunizing agents, antibiotics and other pharmaceutical agents or medical supplies that it deems advisable in the interest of preparing for or controlling a public health emergency without any additional legislative authorization.

(b) Definitions for the purpose of this section only:

(1) "Delivers" means to hand out prepackaged and labeled medications to end users at the direction of the Public Health Authority.

(2) [Repealed.]

(3) "Unlicensed person" means an individual who is not a licensed health-care professional and has successfully completed in-service training, approved by the Board of Pharmacy, on the State or Federal Stockpile.

(c) Any licensed health-care professional or unlicensed person who, at the direction of the Public Health Authority, prior to, during or after an impending, probable or actual public health threat or a declared public health emergency or state of emergency, delivers, or assists in the delivery of medical supplies or prescription or nonprescription medications to individuals, other than by injection, and provided that the medication is in the original container and properly labeled, shall be exempt from the licensing statutes and regulations for health-care professionals and shall be considered a public employee under §§ 4001 and 4002 of Title 10. The Division of Public Health shall position a licensed health-care professional on-site to supervise the delivery process to individuals if a licensed health-care professional is available.

(d) Each individual will complete a prescreening assessment on an annual basis that will screen for contraindications to the medications in the State or Federal Stockpile. The assessment will be developed by the Division of Public Health and approved by the Board of Pharmacy.

(73 Del. Laws, c. 355, § 13; 76 Del. Laws, c. 168, § 1; 80 Del. Laws, c. 390, § 1.)

§ 3134 Destruction of property.

To the extent practicable and consistent with the protection of public health, prior to the destruction of any property under this subchapter, the public safety authority or public health authority shall institute appropriate civil proceedings against the property to be destroyed in accordance with the existing laws and rules of the Superior Court or any such rules that may be developed by the Superior Court for use during a state of emergency. Any property acquired by the public safety authority or public health authority through such proceedings shall, after entry of the decree, be disposed of by destruction as the Court may direct.

(73 Del. Laws, c. 355, § 13.)

§ 3135 Medical examination and testing during public health emergency.

During a state of emergency, the following rules shall apply:

(1) Medical examinations or tests may be performed by any qualified person authorized to do so by the public safety authority.

(2) Medical examinations or tests must not be such as are reasonably likely to lead to serious injury to the affected individual.

(3) The public safety authority may isolate or quarantine, subject to § 3136 of this title, any person whose refusal of medical examination or testing results in uncertainty regarding whether the person has been exposed to or is infected with a contagious or possibly contagious disease or otherwise poses a danger to public health.

(73 Del. Laws, c. 355, § 13; 70 Del. Laws, c. 186, § 1.)

§ 3136 Isolation and quarantine during public health emergency.

The following isolation and quarantine procedures shall be in effect during a state of emergency:

(1) *General authority.* — The public safety authority may exercise, for such period as the state of emergency exists, the following emergency powers over persons:

a. To establish and maintain places of isolation and quarantine;

b. To isolate and quarantine individuals subject to the procedures enumerated in this section; and

c. To require isolation or quarantine of any person by the least restrictive means necessary to protect the public health, subject to the other provisions of this section. All reasonable means shall be taken to prevent the transmission of infection among the isolated or quarantined individuals.

(2) *Standard for quarantine or isolation.* — a. Persons shall be isolated or quarantined if it is determined by clear and convincing evidence that the person to be isolated or quarantined poses a significant risk of transmitting a disease to others with serious consequences. A person's refusal to accept medical examination, vaccination or treatment pursuant to §§ 3135 and 3137 of this title shall constitute prima facie evidence that said person should be quarantined or isolated.

b. Isolation or quarantine of any person shall be terminated when such person no longer poses a significant risk of transmitting a disease to others with serious consequences.

(3) *Character of isolation and quarantine area.* — a. To the extent possible, the premises in which persons are isolated or quarantined shall be maintained in safe and hygienic manners designed to minimize the likelihood of further transmission of infection or other harm to persons subject to isolation or quarantine. Adequate food, clothing, medication and other necessities and competent medical care shall be provided.

b. Isolated individuals must be confined separately from quarantined individuals.

c. The health status of isolated and quarantined individuals must be monitored regularly to determine if their status should change. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a contagious or possibly contagious disease, the individual must promptly be moved to isolation.

(4) *Control of quarantine and isolation area.* — a. A person subject to isolation or quarantine shall obey the public safety authority's rules and orders, shall not go beyond the isolation or quarantine premises, and shall not put oneself in contact with any person not subject to isolation or quarantine other than a physician or other health care provider, public health authority, or person authorized to enter isolation or quarantine premises by the public safety authority. Any person entering isolation or quarantine premises may be isolated or quarantined.

b. No person, other than a person authorized by the public safety authority, shall enter isolation or quarantine premises. If by reason of an unauthorized entry into an isolation or quarantine premises, the person poses a danger to public health, that person may be subject to isolation or quarantine pursuant to the provisions of this section.

(5) *Procedures for isolation and quarantine.* — The following procedures shall protect the due process rights of individuals:

a. The public safety authority shall petition the Superior Court for an order authorizing the isolation or quarantine of an individual or groups of individuals.

b. A petition pursuant to paragraph (5)a. of this section shall specify the following:

1. The identity of the individual or group of individuals subject to isolation or quarantine;

2. The premises subject to isolation or quarantine;

3. The date and time at which the public safety authority request isolation or quarantine to commence;

4. The suspected contagious disease, if known;

5. A statement of compliance with the conditions and principles for isolation and quarantine; and

6. A statement of the basis upon which isolation or quarantine is justified.

7. A statement of what effort, if any, has been made to give notice of the hearing to the individual or group of individuals to be isolated or quarantined, or the reason supporting the claim that notice should not be required.

c. *Ex parte orders.* — Before isolating or quarantining a person, the public safety authority shall obtain a written order, which may be an ex parte order, from the Superior Court authorizing such action. An order, which may be an ex parte order, shall be requested as part of a petition filed in compliance with paragraphs (5)a. and b. of this section. The Court shall grant an order, which may be an ex parte order, upon finding by clear and convincing evidence that isolation or quarantine is warranted pursuant to the provisions of this subchapter. A copy of the authorizing order shall be given to the person ordered to be isolated or quarantined, along with notification that the person has a right to a hearing under paragraph (5)e. of this section.

d. *Temporary quarantine or isolation pending filing of a petition.* — Notwithstanding the preceding paragraphs, the public safety authority may isolate or quarantine a person without first obtaining a written order, which may be an ex parte order, from the Court if a physician determines that any delay in the isolation or quarantine of the person would pose an immediate and severe danger to the public health. Following such isolation or quarantine, the public health authority shall file a petition pursuant to paragraphs (5)a. through c. of this section within 24 hours. In addition, if the public safety authority exercises its powers under this paragraph (5), it must provide a written directive to the individuals or groups under temporary quarantine or isolation indicating the identities of the individuals or groups subject to the directive, the premises subject to isolation or quarantine, the date and time that the directive commences, the suspected contagious disease (if known), and a copy of § 3138 of this title.

e. *Speedy hearing.* — The Court shall grant a hearing within 72 hours of the filing of a petition when an individual has been isolated or quarantined pursuant to paragraph (5)c. or d. of this section.

f. *Consolidation of claims.* — The Court may order consolidation of individual claims into a group of claims where:

1. The number of individuals involved or to be affected is so large as to render individual participation impractical;
2. There are questions of law or fact common to the individual claims or rights to be determined;
3. The group claims or rights to be determined are typical of the affected individuals' claims or rights; and
4. The entire group will be adequately represented in the consolidation, giving due regard to the rights of affected individuals.

(6) *Relief for isolated and quarantined persons.* — a. On or after 10 days following a hearing as is provided for in paragraph (5)e. of this section, a person isolated or quarantined pursuant to the provisions of this section may request in writing a Court hearing to contest the person's continued isolation or quarantine. The hearing shall be held within 72 hours of receipt of such request, excluding Saturdays, Sundays and legal holidays. A request for a hearing shall not alter the order of isolation or quarantine. At the hearing, the public health authority must show by clear and convincing evidence that continuation of the isolation or quarantine is warranted because the person poses a significant risk of transmitting a disease to others with serious consequences.

b. A person isolated or quarantined pursuant to the provisions of this section may request a hearing in the Superior Court for remedies regarding the person's treatment and the terms and conditions of such quarantine or isolation. Upon receiving a request for either type of hearing described in this paragraph, the Court shall fix a date for a hearing. The hearing shall take place within 10 days of the receipt of the request by the Court. The request for a hearing shall not alter the order of isolation or quarantine.

c. If upon a hearing, the Court finds that the isolation or quarantine of the individual is not warranted under the provisions of this section, then the person shall be immediately released from isolation or quarantine. If the Court finds that the isolation or quarantine of the individual is not in compliance with the provisions of paragraph (3) of this section, the Court may then fashion remedies appropriate to the circumstances of the state of public health emergency and in keeping with the provisions of this section.

d. No person shall be permanently terminated from employment by a Delaware employer as a result of being isolated or quarantined pursuant to this section. However, this paragraph shall not apply to a person who has been quarantined as a result of refusing to comply with an examination, treatment or vaccination program, nor shall it apply to a person whose conduct caused the state of emergency that necessitated the isolation or quarantine.

(7) *Additional due process protections.* — a. A record of proceedings before the Court shall be made and retained for at least 3 years.

b. The petitioner shall have the right to be represented by counsel or other lawful representative, and the State shall provide counsel to indigent persons against whom proceedings are initiated pursuant to this subchapter.

c. The manner in which the request for a hearing is filed and acted upon will be in accordance with the existing laws and rules of the Superior Court or any such rules that are developed by the Court for use during a state of emergency, provided that hearings should be held by any means that will allow all necessary persons to participate in the event that a public health emergency makes personal appearances impractical.

(73 Del. Laws, c. 355, § 13; 70 Del. Laws, c. 186, § 1; 85 Del. Laws, c. 170, § 1; 84 Del. Laws, c. 42, § 1.)

§ 3137 Vaccination and treatment during public health emergency.

During a state of emergency, the public health authority may exercise, for such period as the state of emergency exists, the following emergency powers:

(1) To direct vaccination of persons as protection against infectious disease and to prevent the spread of contagious or possibly contagious disease.

a. Vaccination may be performed by any qualified person authorized to do so by the public health authority.

b. A vaccine to be administered must not be such as is reasonably likely to lead to serious harm to the affected individual.

c. To prevent the spread of contagious or possibly contagious disease, the public health authority may isolate or quarantine, subject to § 3136 of this title, persons who are unable or unwilling for reasons of health, religion or conscience to undergo vaccination pursuant to this section.

(2) To direct treatment of persons exposed to or infected with disease.

a. Treatment may be administered by any qualified person authorized to do so by the public health authority.

b. Treatment must not be such as is reasonably likely to lead to serious harm to the affected individual.

c. To prevent the spread of contagious or possibly contagious disease, the public health authority may isolate or quarantine, subject to § 3136 of this title, persons who are unable or unwilling for reasons of health, religion or conscience to undergo treatment pursuant to this section.

(73 Del. Laws, c. 355, § 13; 85 Del. Laws, c. 170, § 1.)

§ 3138 Collection of laboratory specimens; performance of tests during public health emergency.

During a state of emergency, the public health authority may, for such period as the state of emergency exists, collect specimens and perform tests on any person or animal, living or deceased, and acquire any previously collected specimens or test results that are reasonable and necessary for emergency response.

(1) All specimens shall be clearly marked.

(2) Specimen collection, handling, storage and transport to the testing site shall be performed in a manner that will reasonably preclude specimen contamination or adulteration and provide for the safe collection, storage, handling and transport of such specimen.

(3) Any person authorized to collect specimens or perform tests shall use chain of custody procedures to ensure proper record

keeping, handling, labeling and identification of specimens to be tested. This requirement applies to all specimens, including specimens collected using on-site testing kits.

(4) Recognizing that during a state of public health emergency, any specimen collected or test performed may be evidence in a criminal investigation, any business, facility or agency authorized to collect specimens or perform tests shall provide such support as is reasonable and necessary to aid in a relevant criminal investigation.

(5) To prevent the spread of contagious or possibly contagious disease, the public health authority may isolate or quarantine, subject to § 3136 of this title, persons who are unable or unwilling for reasons of health, religion or conscience to undergo specimen collection or testing pursuant to this section.

(73 Del. Laws, c. 355, § 13.)

§ 3139 Confidentiality of medical information.

Protected health information gathered during an emergency shall be subject to subchapter II of Chapter 12 of Title 16.

(73 Del. Laws, c. 355, § 13.)

§ 3140 Licensing an appointment of health personnel during public health emergency.

During a state of emergency, the public health authority may exercise, for such period as the state of emergency exists, the following emergency powers regarding licensing of health personnel:

(1) To require in-state health care providers to assist in the performance of vaccination, treatment, examination or testing of any individual;

(2) To appoint and prescribe the duties of such out-of-state emergency health care providers as may be reasonable and necessary for emergency response.

a. The appointment of out-of-state emergency health care providers pursuant to this section may be for a limited or unlimited time, but shall not exceed the termination of the state of emergency. The public health authority may terminate the out-of-state appointments at any time or for any reason provided that any such termination will not jeopardize the health, safety and welfare of the people of this State.

b. The public health authority may waive any or all licensing requirements, permits or fees required by the state Code and applicable orders, rules or regulations for health care providers from other jurisdictions to practice in this State so long as health care providers from other jurisdictions possess the licensing, permit or fee requirement for health care providers in their jurisdictions.

c. Any out-of-state emergency health care provider appointed pursuant to this section shall be considered a public employee under §§ 4001-4002 of Title 10;

(3) To authorize the medical examiner to appoint and prescribe the duties of such emergency assistant medical examiners as may be required for the proper performance of the duties of the office.

a. The appointment of emergency assistant medical examiners pursuant to this section may be for a limited or unlimited time, but shall not exceed the termination of the state of emergency.

b. The medical examiner may waive any or all licensing requirements, permits or fees required by the state Code and applicable orders, rules or regulations for the performance of these duties so long as the appointed emergency assistant medical examiner is competent to properly perform the duties of the office. In addition, if from another jurisdiction, the appointed emergency assistant medical examiner must possess the licensing, permit or fee requirement for medical examiners or assistant medical examiners in that jurisdiction.

c. Any emergency assistant medical examiner appointed pursuant to this section shall be considered a public employee under §§ 4001-4002 of Title 10.

(73 Del. Laws, c. 355, § 13; 70 Del. Laws, c. 186, § 1.)

§ 3141 Public Health Emergency Planning Council.

(a) The Public Health Emergency Planning Council is established.

(b) The Council consists of the following voting members, or a designee appointed by a member serving by virtue of position:

(1) The Governor.

(2) The Speaker of the House of Representatives.

(3) The President Pro Tempore of the Senate.

(4) The Secretary of the Department of Health and Social Services.

(5) The Secretary of the Department of Safety and Homeland Security.

(6) The Secretary of the Department of Natural Resources and Environmental Control.

(7) The Secretary of the Department of Agriculture.

(8) The Adjutant General of the Delaware National Guard.

(9) The Chief Justice of the Delaware Supreme Court.

(10) The Director of the Delaware Emergency Management Agency.

(11) The Governor’s Homeland Security Advisor.

(12) A representative of the Delaware medical community, to be appointed by the Governor, for a term of 2 years.

(13) The Attorney General.

(14) [Repealed].

(15) The Minority Leader of the Senate.

(16) The Minority Leader of the House.

(17) A physician who is board certified in infectious disease and licensed to practice in this State, to be appointed by the Governor, for a term of 2 years.

(18) A representative from a major Delaware hospital system, to be appointed by the Governor from a slate of nominees to be provided by the Delaware Healthcare Association, for a term of 2 years.

(19) The Director of the Office of Management and Budget.

(c) The Secretary of the Department of Health and Social Services or the Secretary's designee shall serve as the Chair of the Council. The Governor shall also appoint representatives of affected constituencies, including the medical community, local health departments and governments, local police, fire and emergency medical service agencies, community health centers, and volunteer organizations as ex officio members of the Council.

(d) The number of members who must be present at a Council meeting to have a quorum and conduct official business is the majority of voting members. Counting for quorum does not include voting member positions that are vacant.

(e) An individual appointed to fill a vacancy on the Council holds office for the remainder of the term of the former member.

(f) The Council must meet at least 1 time per year.

(g) (1) The Council must meet within 15 days of the initiation of a state of emergency due to a public health emergency for the purposes of discussing and evaluating, in an advisory capacity to the Governor, the response to the public health emergency.

(2) The Council must meet at least every 30 days thereafter until the termination of the state of emergency due to a public health emergency.

(73 Del. Laws, c. 355, § 13; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 213, § 2; 85 Del. Laws, c. 170, § 1.)

§ 3142 Public health emergency plan.

(a) The Council must review the Public Health Emergency Operations Coordination Plan (Plan) for responding to a public health emergency that includes provisions for the following:

(1) A means of notifying and communicating with the population during a state of public health emergency in compliance with this subchapter, including a plan that ensures that 90% of the population is covered by a health alert network;

(2) Centralized coordination of resources, manpower and services, including coordination of responses by state, local, and federal agencies;

(3) The location, procurement, storage, transportation, maintenance and distribution of essential materials, including medical supplies, drugs, vaccines, food, shelter and beds, including a plan (with identified personnel to be trained) to receive and distribute critical stockpile items and manage a mass distribution of vaccine and/or antibiotics on a 24 hours a day, 7 days a week basis;

(4) The continued, effective operation of the judicial system including, if deemed necessary, the identification and training of personnel to serve as emergency judges regarding matters of isolation and quarantine as described in this subchapter;

(5) The method of evacuating populations and housing and feeding the evacuated populations;

(6) The identification and training of health care providers to diagnose and treat persons with infectious diseases, including a review of statutes, regulations and ordinances that provide for credentialing, licensure and delegation of authority for executing emergency public health measures;

(7) Guidelines for the vaccination of persons in compliance with the provisions of this subchapter;

(8) Guidelines for the treatment of persons who have been exposed to or who are infected with diseases or health conditions caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or biological toxins that pose a substantial risk of a significant number of fatalities or incidents of permanent or long-term disability. The guidelines should cover, but not be limited to, the following diseases: anthrax, botulism, smallpox, plague, tularemia and viral hemorrhagic fevers;

(9) Guidelines for the safe disposal of human remains, in compliance with the provisions of this subchapter;

(10) Guidelines for the safe disposal of infectious waste, in compliance with the provisions of this subchapter;

(11) Guidelines for the safe and effective management of persons isolated, quarantined, vaccinated or treated during a state of public health emergency;

(12) Tracking the source and outcomes of infected persons, including a plan to receive and evaluate urgent disease reports from all parts of the State on a 24 hour a day, 7 days a week basis;

(13) Ensuring that each county and city within the State identifies the following:

a. Sites where persons can be isolated or quarantined, with such sites complying with the provisions of this subchapter regarding the least restrictive means for isolation and quarantine and the requirements for the safety, health and maintenance of personal dignity of those isolated or quarantined;

b. Sites where medical supplies, food and other essentials can be distributed to the population;

c. Sites where emergency workers can be housed and fed;

d. Routes and means of transportation of people and materials;

(14) Coordination with other states and the federal government;

(15) Taking into account cultural norms, values and traditions that may be relevant;

(16) Distribution of this plan and guidelines to those who will be responsible for implementing the plan;

(17) Development of a plan to improve working relationships and communications between Level A (clinical) and Level B/C laboratories (i.e., Laboratory Response Network laboratories) as well as other public health officials;

(18) Development of a plan for communication systems that provide for a 24 hour a day, 7 day a week flow of critical health information between hospital emergency departments, state and local health officials, and law enforcement;

(19) Development of a plan to enhance risk communication and information dissemination to educate the public regarding exposure risks and effective public response;

(20) Locating and procuring all funds, if any, that are available to the State from every federal agency to assist the State in its preparation for a public health emergency; and

(21) Other measures necessary to carry out the purposes of this subchapter.

(b) The Council shall review the Plan every 2 years.

(c) The Plan shall serve as a statewide plan and a regional plan with respect to federal bioterrorism requirements.

(d) Persons responsible for implementing the Plan must receive appropriate and timely training, and the Plan must be tested on a regular basis.

(e) The Council shall establish a hospital biopreparedness planning subcommittee, that must include representation from DEMA, the Department of Health and Social Services, the medical community and local emergency medical services.

(f) [Repealed.]

(73 Del. Laws, c. 355, § 13; 84 Del. Laws, c. 213, § 3; 85 Del. Laws, c. 170, § 1.)

§ 3143 Rules and regulations.

The public health authority and the Department of Safety and Homeland Security are authorized to promulgate and implement such rules and regulations as are reasonable and necessary to implement and effectuate the provisions of this subchapter. The public health authority and the public safety authority shall have the power to enforce the provisions of this subchapter through the imposition of fines and penalties, the issuance of orders, and such other remedies as are provided by law, but nothing in this subchapter shall be construed to limit specific enforcement powers enumerated in this subchapter. However, rules and regulations promulgated and implemented under this subchapter and enforcement of the provisions of this subchapter must be in accord with the due process rights guaranteed by the 1897 Constitution of the State, as amended, and the Constitution of the United States of America.

(73 Del. Laws, c. 355, § 13; 74 Del. Laws, c. 110, § 138.)

§ 3144 Liability.

(a) During a state of emergency, any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons, shall be considered, together with that person's successors in interest, if any, a public employee under §§ 4001-4002 of Title 10.

(b) During a state of emergency, any private person, firm or corporation or employee or agent of such person, firm or corporation who renders assistance or advice at the request of the State or its political subdivisions under the provisions of this subchapter shall be considered a public employee under §§ 4001-4002 of Title 10.

(c) The immunities provided in this section shall not apply to any private person, firm or corporation or employee or agent of such person, firm or corporation whose act or omission caused, in whole or in part, the emergency and who would otherwise be liable therefor.

(73 Del. Laws, c. 355, § 13.)

§ 3145 Compensation.

(a) The State shall pay just compensation to the owner of any private facilities or materials that are lawfully taken or appropriated by the public safety authority or public health authority for their temporary or permanent use under this subchapter during a public health emergency. State compensation shall not be provided for facilities or materials that are closed, evacuated, decontaminated or destroyed when there is reasonable cause to be believed that they may endanger the public health. Except as otherwise indicated in this subchapter, "just compensation" shall be used in the same manner that it is used in Chapter 61 of Title 10.

(b) Any action against the State with regard to the payment of compensation shall be brought in the Superior Court of the State in the county in which the property is alleged to have been taken or appropriated in accordance with existing Superior Court rules or any such rules that may be developed by the Court for use during a state of emergency.

(c) The amount of compensation shall be calculated in the same manner as compensation due for taking of property pursuant to nonemergency eminent domain procedures, except that the amount of compensation calculated for confiscated supplies or materials shall not exceed the costs incurred to produce the items.

(73 Del. Laws, c. 355, § 13.)

§ 3146 Saving clause.

This subchapter does not explicitly preempt other state laws or regulations that preserve to a greater degree the powers of the Governor or public health authority, provided such laws or regulations are consistent and do not otherwise restrict or interfere with the operation or enforcement of the provisions of this subchapter. The powers assigned to the Governor, public safety authority and public health authority by this subchapter supplement and do not derogate the Governor's powers under subchapters III and IV of this chapter.

(73 Del. Laws, c. 355, § 13.)

§ 3147 Conflicting laws.

(a) This act does not restrict any person from complying with federal law or regulations.

(b) In the event of a conflict between this act and other state or local laws or regulations concerning public health powers, the provisions of this act apply.

(73 Del. Laws, c. 355, § 13.)

§§ 3148-3150 [Reserved].

Subchapter VI

Continuation of Certain Orders Issued During the COVID-19 State of Emergency

§ 3155 Marriage licenses.

The provisions of Paragraph B.1. of the Twelfth Modification of the State of Emergency Declaration, dated April 23, 2020, shall continue in full force and effect until June 30, 2021.

(82 Del. Laws, c. 254, § 1.)

§ 3156 Notarization [Repealed].

82 Del. Laws, c. 255, § 2; 83 Del. Laws, c. 66, § 1; 83 Del. Laws, c. 425, § 12; repealed by 83 Del. Laws, c. 425, § 13, effective Aug. 1, 2023.

Subchapter VII

Disaster Recovery

§ 3160 Declaration of purpose.

The General Assembly hereby declares that it serves a purpose and is of benefit to this State and therefore any affected political subdivisions, to establish a post-disaster recovery fund that supports a coordinated approach to meeting the additional hardships imposed by disasters on Delaware residents and community needs through short-term and long-term recovery processes.

(85 Del. Laws, c. 446, § 2.)

§ 3161 Delaware Disaster Recovery Fund.

(a) The Delaware Disaster Recovery Fund ("Fund") is hereby established to provide disaster recovery assistance to Delaware residents and local governments affected by disasters.

(b) *Fund objectives*. —

The Fund provides means for program creation within the following areas:

(1) Short-term recovery needs, including funding for food, supplies, and replacements for items such as medication costs and durable medical equipment and supplies.

(2) Provision of interim housing assistance for individuals and families transitioning from emergency shelters but unable to return to their permanent homes. Assistance may include temporary rental subsidies, relocation support, access to modular housing solutions, and emergency repair funding.

(3) Support for the repair, restoration, reconstruction, or replacement of occupied damaged or destroyed homes. All housing supported under this paragraph (b)(3) must incorporate accessibility features and reasonable modifications necessary to ensure safe and functional use by individuals with disabilities, consistent with applicable state and federal law.

(4) Assistance in addressing gaps in insurance coverage, to include deductible coverage assistance.

(5) Prioritization of health and safety issues to ensure housing remains habitable for impacted residents.

(6) Support for long-term recovery initiatives that go beyond immediate repairs, focusing on rebuilding stronger, more resilient communities that are better prepared for future disasters. This support may include upgrades to infrastructure, hazard mitigation efforts, and resilience planning.

(c) *Programmatic components*. —

(1) The Fund may consist of any appropriations, grants, gifts, contributions, or revenues received by the Fund from any source, public

or private.

(2) The Fund shall be divided into at least 2 components:

a. *Delaware Emergency Management Agency (DEMA) Recovery and Resilience Program*. —

Previously existing as Executive Order #44, the Delaware Resilience Fund, this program will receive funding to focus on recovery initiatives, including interim housing not covered by insurance or other programs; equipment needed to assist community in recovery, such as pumps, rental equipment, dumpsters, or tarps, or emergency debris removal.

b. *Delaware State Housing Authority Recovery Program*. —

This program will receive funding to address housing recovery needs, including the repair, reconstruction, or restoration of the affected area's housing stock.

(3) The programmatic components of the Fund may eventually be reorganized to include additional lead agencies as assigned by DEMA with concurrence from the RAC.

(d) *Fund administration*. —

(1) The fund will be administered in accordance with the guidelines established by the RAC to ensure alignment with the Fund's overarching objectives.

(2) Program managers shall establish application periods for Fund assistance, ensuring alignment with disaster recovery timelines and public need.

(3) *Governance and oversight*. —

a. A designated Advisory Council, hereafter known as the Recovery Advisory Council, or RAC, is established to maintain oversight of the Fund.

b. The fund will be activated by the Director of DEMA with the concurrence of the RAC.

c. The RAC will administer an appeals process, eliminate redundancies, promote transparency, facilitate coordination, and offer strategic guidance.

d. The RAC will convene to inaugurate bylaws within 90 days of establishment of the Fund.

(4) *Program monitoring and reporting*. —

a. Program managers must submit a report to the General Assembly within 90 days of the Fund's activation detailing fund expenditures, application processing, and program outcomes.

1. Program managers must submit a second report within 180 days after the Fund's activation.

2. Program managers must submit an annual report at the close of every fiscal year regardless of Fund activation. Reports must include data, to the extent practicable, on assistance provided to individuals with disabilities.

b. Each program manager shall establish performance metrics to assess the effectiveness of funded programs and identify areas for improvement.

c. Program managers will promote transparency and accountability in fund administration.

(5) *Compliance and accountability*. —

a. Agencies administering the Fund must ensure compliance with state regulations. All programs, application processes, and appeals procedures must be accessible and provide reasonable accommodations in accordance with the Americans with Disabilities Act [42 U.S.C. § 12101 et seq.] and § 504 of the Rehabilitation Act of 1973 [29 U.S.C. § 794].

b. The RAC shall develop an appeals process for applicants denied assistance under the Fund and provide final adjudication within a predetermined number of days as set in the bylaws.

(e) *Mitigation and preparedness projects*. —

(1) The RAC shall establish prescribed impetuses for allowing fund expenditures on mitigation or preparedness projects, including any of the following:

a. A dollar amount threshold beyond which funds may be spent on mitigation or preparedness projects.

b. A minimum time period of at least 1 year, beyond which, if funds are not expended for the purposes outlined in subsection (b) of this section, funds may be spent on mitigation or preparedness projects.

(2) Funding may be appropriated for any of the following activities, with guidance from the RAC:

a. Disaster risk reduction, hazard mitigation projects, and community resilience initiatives.

b. A "match" or "cost share" for costs associated with federal or private mitigation or preparedness grant dollars for state, county, or municipal initiatives that align with the intent of the Fund, provided that any match or cost share from the Fund supplements but does not replace other existing resources available to the requesting jurisdiction.

(3) The fund may not be wholly depleted via mitigation or preparedness efforts. When considering preparedness and mitigation project allocations, the RAC shall determine a minimum reserve which must remain in the Fund to facilitate prioritization of recovery activities.

(4) The money in the Fund does not revert to the General Fund.

(85 Del. Laws, c. 446, § 2.)

§ 3162 Establishment of a Recovery Advisory Council.

(a) The RAC will convene biannually, upon activation request, and when post-disaster assistance requests exceed the available balance

of the Fund. The RAC may convene additionally in accordance with its bylaws.

(b) The RAC will consist of the following voting members:

(1) The Director of the Delaware Emergency Management Agency or the Director's designee.

(2) The Director of the Delaware State Housing Authority or the Director's designee.

(3) The State Hazard Mitigation Officer (SHMO).

(4) The Director of the Sussex County Emergency Management Agency or the Director's designee.

(5) The Director of the Kent County Emergency Management Agency or the Director's designee.

(6) The Director of the New Castle County Emergency Management Agency or the Director's designee.

(7) The Delaware Department of Health and Social Services (DHSS) Disaster Coordinator or the Coordinator's designee.

(8) The Secretary of the Delaware Department of Natural Resources and Environmental Control, or the Secretary's designee.

(9) The Governor shall appoint 1 member from the Delaware League of Local Government (DLLG). The Governor may consider potential nominees from a list that the Executive Director of the DLLG provides.

(10) The Governor shall appoint 1 member from the Delaware Community Foundation (DCF). The Governor may consider potential nominees from a list that the Chairperson of the DCF provides.

(c) In addition to voting members, the RAC will include the following non-voting members:

(1) A member of local government from an affected or impacted community, to be identified and appointed by the Governor.

(2) A member with expertise in disability services, independent living, or access and functional needs, to be identified and appointed by the Governor.

(3) Any additional cabinet secretary or subject matter expert, to be identified and appointed by the Governor.

(4) The Insurance Commissioner, or the Insurance Commissioner's designee.

(d) A quorum of the RAC is a majority of its members.

(e) Official action by the RAC, including making recommendations, requires the approval of a majority.

(85 Del. Laws, c. 446, § 2.)

§ 3163 Request to activate the Fund.

(a) There are standardized impetuses for requesting assistance from the Fund for all programs that operate beneath it, which may include :

(1) A disaster occurs and affects an amount of housing, residents, or property predetermined within Delaware Emergency Management Agency (DEMA) or Delaware State Housing Authority (DSHA) programmatic guidelines.

(2) The damage exceeds the capacity of the affected locality and assistance is requested from its corresponding county.

(3) The support required for recovery exceeds the capacity of the corresponding county and the county submits a request to Fund program managers.

(4) The Governor declares a state of emergency or requests fund activation.

(b) The DEMA Director or designee from the impacted county or counties may request activation of the Fund according to corresponding programmatic guidelines.

(c) The DEMA or DSHA Director or designees may request activation of the Fund according to corresponding programmatic guidelines.

(85 Del. Laws, c. 446, § 2.)

Part II
Civil Defense
Chapter 32
INTRASTATE MUTUAL AID COMPACT

§ 3201 Preamble.

The purpose of this chapter is to create a system of intrastate mutual aid between participating political subdivisions and fire, rescue and emergency medical service provider organizations in the State of Delaware (hereinafter referred to as "system"). Each participant of this system recognizes that emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential for the protection of lives and property and for best use of available assets both public and private. The system shall provide for mutual assistance among the participating political subdivisions and fire, rescue and emergency medical service provider organizations in the prevention of, response to, and recovery from, any disaster that results in a formal state of emergency in a participating political subdivision, subject to that participating political subdivisions criteria for declaration. If the State of Delaware declares a state of emergency that covers the jurisdictional territory of a political subdivision for purposes of this chapter, a state of emergency has been declared by that political subdivision for purposes of this chapter. The system shall provide for mutual cooperation among the participating political subdivisions and fire, rescue and emergency medical service provider organizations in conducting disaster-related exercises, testing or other training activities outside actual declared emergency periods. This chapter provides no immunity, rights or privileges for any individual responding to a state of emergency that is not requested and/or authorized to respond by a participating political subdivision or fire, rescue, or emergency medical service provider organization. Participating political subdivision and fire, rescue, and emergency service provider organizations will be ensured, to the fullest extent possible, eligibility for state and federal disaster funding.

(75 Del. Laws, c. 182, § 1.)

§ 3202 Delaware Mutual Aid Committee.

(a) A committee shall be created known as the Delaware Intrastate Mutual Aid Committee. It shall be the committee's responsibility to hold, at a minimum, annual meetings to review the progress and status of statewide mutual aid, assist in developing methods to track and evaluate activation of the system and to examine issues facing participating political subdivisions and fire, rescue, and emergency medical service provider organizations regarding the implementation of this chapter. The Director of the Delaware Emergency Management Agency shall chair the committee. The committee may prepare an annual report on the condition and effectiveness of mutual aid in the State of Delaware, make recommendations for correcting any deficiencies, and submit that report to the Delaware General Assembly. Members of the committee shall serve a 2-year term and shall be appointed by the Governor of the State of Delaware.

(b) The membership of the committee shall consist of:

(1) The President of the Delaware Volunteer Firefighter's Association, or designee;
(2) The President of the Delaware State Fire Chief's Association, or designee;
(3) A representative from each of the county emergency management agencies;
(4) A representative from the League of Local Governments;
(5) A representative from the Delaware State Police Chief's Council;
(6) A representative from the city of Wilmington emergency management agency;
(7) The Director of the Delaware Emergency Management Agency;
(8) A representative from a municipality with a population less than 50,000 from each county;
(9) The Superintendent from the Delaware State Police; or designee.
(10) A representative from the Delaware National Guard;
(11) The Director of the Delaware State Fire School or designee; and
(12) Other representatives as deemed necessary by the Director of the Delaware Emergency Management Agency.

(75 Del. Laws, c. 182, § 1; 77 Del. Laws, c. 378, § 1.)

§ 3203 Statewide Mutual Aid System.

All political subdivisions and fire, rescue, and emergency medical service provider organizations within the State of Delaware are, upon enactment of this chapter automatically a part of the statewide mutual aid system. A political subdivision or fire, rescue or emergency medical service provider organization within the State of Delaware may elect not to participate or to later withdraw from the system upon enacting an appropriate resolution by its governing body declaring that it elects not to participate in the statewide mutual aid system; and providing a copy of the resolution to the Director of the Delaware Emergency Management Agency. This chapter does not preclude participating political subdivisions and fire, rescue and emergency medical service provider organizations from entering into supplementary agreements with another political subdivision or fire, rescue, or emergency medical service provider organizations and does not affect any other agreement to which a political subdivision or fire, rescue or emergency medical service provider organization may currently be a party to, or decide to be a part to.

(75 Del. Laws, c. 182, § 1.)

§ 3204 Definitions.

(a) “Emergency responder” is a law-enforcement officer, firefighter, emergency management responder, hazardous materials responder, or emergency medical services responder.

(b) “Fire, rescue or emergency medical service provider organization” is any fire, rescue or emergency medical service provider organization recognized by the State Fire Prevention Commission.

(c) “Locally-declared emergency” is an emergency as declared by a political subdivision.

(d) “Political subdivision” is any town, city or county within the State of Delaware.

(e) “Support responder” is any municipal, county, or state employee, who is not an emergency responder, with special skills, qualifications, training, knowledge and experience in the public or private sectors that would be beneficial to a participating political subdivision in response to a locally declared emergency as defined in any applicable law or ordinance or authorized drill or exercises; and who is requested and/or authorized to respond. Under this definition, a support responder may or may not be required to possess a license, certificate, permit or other official recognition for their expertise in a particular field or area of knowledge.

(75 Del. Laws, c. 182, § 1.)

§ 3205 Participating political subdivisions responsibilities.

It shall be the responsibility of each participating political subdivision with jurisdiction over and responsibility for emergency management within that certain subdivision to do the following:

(1) Identify potential hazards that could affect the participant using an identification system common to all participating jurisdictions.

(2) Conduct joint planning, intelligence sharing and threat assessment development with contiguous participating political subdivisions, and conduct joint training at least biennially.

(3) Identify and inventory the current services, equipment, supplies, personnel and other resources related to planning, prevention, mitigation, response and recovery activities of the participating political subdivision.

(4) Adopt and put into practice the standardized incident management system approved by the Director of the Delaware Emergency Management Agency.

(75 Del. Laws, c. 182, § 1.)

§ 3206 Implementation.

A participating political subdivision may request assistance of other participating political subdivisions or fire, rescue or emergency medical service provider organizations in preventing, mitigating, responding to and recovering from disasters that result in locally-declared emergencies or in concert with authorized drills or exercises as allowed under this chapter. Requests for assistance shall be made through the chief executive officer of a participating political subdivision or the chief executive officer’s designee. Requests may either be verbal or in writing and are not required to go directly to the Director of the Delaware Emergency Management Agency but in all cases will be reported to the Director as soon as is practical. Verbal requests will be followed up with a written request as soon as is practical but in no event later than 15 days.

(75 Del. Laws, c. 182, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3207 Limitations.

A participating political subdivision or fire, rescue or emergency medical service provider organization’s obligation to provide assistance in the prevention of, response to and recovery from a locally-declared emergency or in authorized drills or exercises is subject to the following conditions:

(1) A participating political subdivision requesting assistance must have either declared a state of emergency or authorized drills and exercises.

(2) A responding participating political subdivision or fire, rescue or emergency medical service provider organization may withhold resources to the extent necessary to provide reasonable protection and services for its own jurisdiction.

(3) Emergency response and support response personnel of a responding participating political subdivision or fire, rescue or emergency medical service provider organization shall continue under the command and control of their responding subdivision or organization to include medical protocols, standard operating procedures and other protocols, but shall be under the operational control of the appropriate officials within the incident management system of the participating political subdivision receiving the assistance.

(4) Assets and equipment of a responding participating political subdivision or fire, rescue or emergency medical service provider organization shall continue under the control of their responding subdivision or organization, but shall be under the operational control of the appropriate officials within the incident management system of the participating political subdivision receiving the assistance.

(75 Del. Laws, c. 182, § 1.)

§ 3208 License, certificate and permit portability.

If a person or entity holds a license, certificate or other permit issued by a participating political subdivision or for the State of Delaware evidencing qualification in a professional, mechanical or other skill and the assistance of that person or entity is requested by a participating political subdivision, the person or entity shall be deemed to be licensed, certified or permitted in the political subdivision

requesting assistance for the duration of the declared emergency or authorized drills or exercises and subject to any limitations and conditions the chief executive of the participating political subdivision receiving the assistance may prescribe by executive order or otherwise.

(75 Del. Laws, c. 182, § 1.)

§ 3209 Reimbursement, disputes regarding reimbursement.

Any requesting political subdivision shall reimburse the participating political subdivision or fire, rescue or emergency medical service provider organization rendering aid under this system. A participating political subdivision or fire, rescue or emergency medical service provider organization providing assistance may determine to donate assets of any kind to a receiving participating political subdivision. Such requests for reimbursement shall be in accordance with procedures developed by the Delaware Intrastate Mutual Aid Committee.

Should a dispute arise between parties to the system regarding reimbursement, involved parties will make every effort to resolve the dispute within 30 days of written notice of the dispute by the party asserting noncompliance. In the event that the dispute is not resolved within 90 days of the notice of the claim, either party may request the dispute be solved through arbitration. Any arbitration under this provision shall be conducted under the commercial arbitration rules of the American Arbitration Association.

(75 Del. Laws, c. 182, § 1.)

§ 3210 Development of guidelines and procedures.

The Delaware Intrastate Mutual Aid Committee shall develop comprehensive guidelines and procedures that address, including but not limited to, the following: projected or anticipated costs, checklists for requesting and providing assistance, record keeping for all participating political subdivisions, reimbursement procedures and other necessary implementation elements along with the necessary forms for requests and other records documenting deployment and return of assets.

(75 Del. Laws, c. 182, § 1.)

§ 3211 Workers' compensation.

Personnel of a participating political subdivision or fire, rescue or emergency medical service organization responding to or rendering assistance for a request who sustain injury or death in the course of, and arising out of, their employment are entitled to all applicable benefits normally available to personnel while performing their duties for their employer. Responders shall receive any additional state and federal benefits that may be available to them for line of duty deaths. This subsection shall not limit the remedies or causes of action normally available to such individuals while performing their duties for their employer.

(75 Del. Laws, c. 182, § 1.)

§ 3212 Immunity.

All activities performed under this chapter are deemed hereby to be governmental functions. For the purposes of liability, all employees or personnel of a political subdivision or fire, rescue, or emergency medical service organization responding under the operational control of the requesting political subdivision are deemed to be employees of the requesting political subdivision. Neither the participating political subdivisions, or fire, rescue or emergency medical service provider organizations nor their employees or personnel shall be liable for the death of or injury to person, or for damage to property when providing assistance during a locally-declared emergency pursuant to this chapter unless such death, injury or damage was intentional or caused by the wilful or wanton disregard of the rights of others, or by gross negligence.

(75 Del. Laws, c. 182, § 1.)

§ 3213 Severability.

Should a court of competent jurisdiction rule any portion, section or subsection of this chapter invalid or nullified, that fact shall not affect or invalidate any other portion, section or subsection; and all remaining portions, sections or subsections shall remain in full force and effect.

(75 Del. Laws, c. 182, § 1.)

Part II
Civil Defense
Chapter 33
INTERSTATE CIVIL DEFENSE AND DISASTER COMPACT

§ 3301 Ratification and text.

The General Assembly of this State ratifies a compact on behalf of the State with any other state legally joining therein in the form substantially as follows:

INTERSTATE CIVIL DEFENSE AND DISASTER COMPACT

The contracting states solemnly agree:

Article I. The purpose of this compact is to provide mutual aid among the states in meeting any emergency or disaster from enemy attack or other cause (natural or otherwise) including sabotage and subversive acts and direct attacks by bombs, shellfire and atomic, radiological, chemical, bacteriological means and other weapons. The prompt, full and effective utilization of the resources of the respective states, including such resources as may be available from the United States government or any other source, are essential to the safety, care and welfare of the people thereof in the event of enemy action or other emergency, and any other resources, including personnel, equipment or supplies, shall be incorporated into a plan or plans of mutual aid to be developed among the civil defense agencies or similar bodies of the states that are parties hereto. The directors of civil defense of all party states shall constitute a committee to formulate plans and take all necessary steps for the implementation of this compact.

Article II. It shall be the duty of each party state to formulate civil defense plans and programs for application within such state. There shall be frequent consultation between the representatives of the states and with the United States government and the free exchange of information and plans, including inventories of any materials and equipment available for civil defense. In carrying out such civil defense plans and programs the party states shall so far as possible provide and follow uniform standards, practices and rules and regulations including:

(a) Insignia, arm bands and any other distinctive articles to designate and distinguish the different civil defense services;

(b) Blackouts and practice blackouts, air raid drills, mobilization of civil defense forces and other tests and exercises;

(c) Warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith;

(d) The effective screening or extinguishing of all lights and lighting devices and appliances;

(e) Shutting off water mains, gas mains, electric power connections and the suspension of all other utility services;

(f) All materials or equipment used or to be used for civil defense purposes in order to assure that such materials and equipment will be easily and freely interchangeable when used in or by any other party state; and

(g) The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, prior, during and subsequent to drills or attacks.

Article III. Any party state requested to render mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall extend to the civil defense forces of any other party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, privileges and immunities as if they were performing their duties in the state in which normally employed or rendering services. Civil defense forces will continue under the command and control of their regular leaders but the organizational units will come under the operational control of the civil defense authorities of the state receiving assistance.

Article IV. Whenever any person holds a license, certificate or other permit issued by any state evidencing the meeting of qualifications for professional, mechanical or other skills, such person may render aid involving such skill in any party state to meet an emergency or disaster and such state shall give due recognition to such license, certificate or other permit as if issued in the state in which aid is rendered.

Article V. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith.

Article VI. Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that appropriate among other states party hereto, this instrument contains elements of a broad base common to all states and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or states. Such supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, equipment and supplies.

Article VII. Each party state shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that state and the representatives of deceased members of such forces in case such members sustain injuries or are killed while

rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

Article VIII. Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment answering a request for aid and for the cost incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense or other cost or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further that any two or more party states may enter into supplementary agreements establishing a different allocation of costs as among those states. The United States government may relieve the party state receiving aid from any liability and reimburse the party state supplying civil defense forces for the compensation paid to, and the transportation, subsistence and maintenance expenses of, such forces during the time of the rendition of such aid or assistance outside the state and may also pay fair and reasonable compensation for the use or utilization of the supplies, materials, equipment or facilities so utilized or consumed.

Article IX. Plans for the orderly evacuation and reception of the civilian population as the result of an emergency or disaster shall be worked out from time to time between representatives of the party states and the various local civil defense areas thereof. Such plans shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies and all other relevant factors. Such plans shall provide that the party state receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care and like items. Such expenditures shall be reimbursed by the party state of which the evacuees are residents or by the United States government under plans approved by it. After the termination of the emergency or disaster, the party state of which the evacuees are resident shall assume the responsibility for the ultimate support or repatriation of such evacuees.

Article X. This compact shall be available to any state, territory or possession of the United States and the District of Columbia. The term “state” may also include any neighboring foreign country or province or state thereof.

Article XI. The committee established pursuant to Article I of this compact may request the civil defense agency of the United States government to act as an informational and coordinating body under this compact, and representatives of such agency of the United States government may attend meetings of such committee.

Article XII. This compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying and shall be subject to approval by Congress unless prior congressional approval has been given. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the civil defense agency and other appropriate agencies of the United States government.

Article XIII. This compact shall continue in force and remain binding on each party state until the legislature or the governor of such party state takes action to withdraw therefrom. Such action shall not be effective until 30 days after notice thereof has been sent by the governor of the party state desiring to withdraw to the governors of all other party states.

Article XIV. This compact shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

(48 Del. Laws, c. 281, § 1; 20 Del. C. 1953, § 3301.)

§ 3302 Construction of chapter.

Nothing contained in this chapter shall be construed as a limitation of powers granted in any other law to enter into interstate compacts or other agreements relating to civil defense in an emergency or impairing in any respect the force and effect thereof.

(48 Del. Laws, c. 281, § 3; 20 Del. C. 1953, § 3302.)

Part II
Civil Defense
Chapter 34
EMERGENCY MANAGEMENT ASSISTANCE COMPACT

§ 3401 Ratification and text.

The General Assembly of this State ratifies the following compact made and entered into by and between participating member states legally joining therein in the form substantially as follows:

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

ARTICLE I PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating member states which enacted this compact (hereinafter the "Party States"). For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia and all U.S. territorial possessions.

The purpose of this compact is to provide for mutual assistance between the Party States entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state(s), whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resource shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of giving and receiving of aid by Party States or subdivisions of Party States during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II GENERAL IMPLEMENTATION

Each Party State entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each Party State further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the Party States, including any resources on hand or available from the Federal Government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a Party State, shall be the underlying principle on which all articles of this compact shall be understood. On behalf of the governor of each Party State participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III PARTY STATE RESPONSIBILITIES

(a) It shall be the responsibility of each Party State to formulate procedural plans and programs for interstate cooperation in the performance of responsibilities listed in this article. In formulating such plans, and in carrying them out, the Party State, insofar as practical shall:

(i) Review individual state hazard analyses and, to the extent reasonably possible, determine all those potential emergencies the Party State might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, civil emergency aspects of resource shortages, community disorders, insurgency, or enemy attack.

(ii) Review Party States' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

(iii) Develop interstate procedures to fill identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

(iv) Assist in warning communities adjacent to or crossing the state boundaries.

(v) Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services and resources, both human and material.

(vi) Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

(vii) Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

(b) The authorized representative of a Party State may request assistance of another Party State by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within 30 days of the verbal

request. Requests shall provide the following information:

(i) A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

(ii) The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

(iii) The specific place and time for staging of the assisting party's response and a point of contact at that location.

(c) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the Party States with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to the emergency capabilities.

ARTICLE IV LIMITATIONS

Any Party State requested to render mutual aid or conduct exercises in training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protections for such state.

Each Party State shall afford to the emergency forces of any Party State, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the Party State that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state(s), whichever is longer.

ARTICLE V LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any Party State evidencing the meeting of qualifications of professional, mechanical, or other skill, and when such assistance is requested by the receiving Party State, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI LIABILITY

Officers or employees of a Party State rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no Party State or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include wilful misconduct, gross negligence, or recklessness.

ARTICLE VII SUPPLEMENTARY AGREEMENTS

In as much as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states.

Supplementary agreements may comprehend, but shall not be limited to, provision for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII COMPENSATION

Each Party State shall provide for the payment of compensation and death benefits to injured members of the emergency forces of the state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX REIMBURSEMENT

Any Party State rendering aid in another state pursuant to this compact shall be reimbursed by the Party State receiving such aid for any loss or damage or expense incurred in the operation of any equipment and the provisions of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding Party State may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving Party State without charge or cost; and provided further, that any two or more Party States may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the Party State and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuation might occur. Such plans shall be

put into effect by request of the state from which evacuees might come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the proving of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the Party State receiving evacuees and the Party State from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the Party State from which the evacuees come. After the termination of the emergency or disaster, the Party State from which the evacuees come shall assume the responsibility for the ultimate support or repatriation or such evacuees.

ARTICLE XI IMPLEMENTATION

A. This compact shall become operative immediately upon its enactment into law by any two (2) states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

B. Any Party State may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of such withdrawal of the governors of all other Party States. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the Party States and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

ARTICLE XII VALIDITY

This Act shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

ARTICLE XIII ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.

(70 Del. Laws, c. 413, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3402 Construction of chapter.

Nothing contained in this chapter shall be construed as a limitation of powers granted in any other law to enter into interstate compacts or other agreements relating to civil defense in an emergency or impairing in any respect the force and effect thereof.

(70 Del. Laws, c. 413, § 1.)

§ 3403 Future compacts, governing law.

To the extent that a prospective Party State has adopted an Emergency Management Assistance Compact in conformity with the language of this chapter, the provisions of this chapter shall supersede and override the provisions of Chapter 33 of this title.

(70 Del. Laws, c. 413, § 1.)

Part II
Civil Defense
Chapter 35
Registration of Communists

§§ 3501-3503 Definitions; registration with State Police; time; oath; details; offenses and penalties; enforcement by Attorney General and other officers [Repealed].

Repealed by 71 Del. Laws, c. 207, § 1, effective July 17, 1997.