Legislative Council,
General Assembly
State of Delaware

Title 23

Navigation and Waters

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Chapter 1
PILOTS

Subchapter I

Board of Pilot Commissioners

§ 100 Objectives.

The primary objective of the Board of Pilot Commissioners, to which all other objectives and purposes are secondary, is to protect the general public (especially those persons who are direct recipients of services regulated by this chapter) from unsafe practices. The secondary objectives of the Board are to maintain minimum standards of pilot competency, and to maintain certain standards in the delivery of services to the public.

(64 Del. Laws, c. 195, § 1.)

§ 101 Appointment; qualifications; term; vacancies; meetings; officers; oath of office; quorum.

(a) The Board of Pilot Commissioners for the State shall consist of 7 members, residents of the State, appointed by the Governor, for a term of 5 years, composed as follows: 3 state-licensed pilots and 4 other members, at least 2 of whom shall be public members and at least 1 of whom shall be a shipping industry representative. No public member shall be a former pilot, related to a pilot by blood or affinity, nor ever have been employed by any pilot association or individual pilot. No shipping industry representative shall be a former pilot. The Board shall consist of the members presently serving unexpired terms on the Board as it existed prior to January 1, 1993, together with those members necessary to bring the total number of members up to 7. Upon the expiration of the terms of office of those presently serving, the Governor shall appoint new members until such time as the Board is composed of members meeting the requirements of this subsection. No member shall serve more than 2 complete consecutive terms.

(b) Any vacancy in the Board occurring for any cause other than expiration of term shall be filled by the Governor for the remainder of the term.

(c) The Board shall meet at least once in each quarter of each year and at the call of the President as may be required.

(d) The Board shall elect from among its members a President, Vice-President and Secretary-Treasurer who shall hold office for a term of 2 years. No officer may serve more than 2 successive terms in such office. Before entering upon duties, each member shall be duly sworn to perform faithfully and impartially the duties of the office.

(e) Four members of the Board shall be a quorum.

(16 Del. Laws, c. 449, §§ 1, 16; Code 1915, §§ 953, 969; Code 1935, §§ 1065, 1081; 23 Del. C. 1953, § 101; 58 Del. Laws, c. 53, § 1; 64 Del. Laws, c. 195, § 2; 69 Del. Laws, c. 20, §§ 1, 2; 70 Del. Laws, c. 186, § 1.)

§ 102 Powers and duties.

The Board of Pilot Commissioners shall have authority to:

(1) Formulate rules and regulations, with appropriate notice to those affected, where such notice can reasonably be given;

(2) Designate the application form to be used by all applicants, and to process all applications;

(3) Designate or prepare a written examination to be taken by persons applying for licensure;

(4) Provide for the administration of all examinations, including notice and information to applicants, proctoring and grading;

(5) Grant licenses as a pilot in the Delaware River and Bay and its tributaries to all persons who meet the qualifications for licensure;

(6) Receive complaints from pilots and from the public concerning the professional conduct of pilots, or concerning practices of the profession; to evaluate such complaints; and to take such action within its powers as the Board deems appropriate;

(7) Issue subpoenas and compel the attendance of witnesses and the production of records;

(8) Administer oaths to witnesses;

(9) Determine whether or not a pilot shall be the subject of a disciplinary hearing, and if so, to conduct such hearing in accordance with this chapter and the Administrative Procedures Act [Chapter 101 of Title 29];

(10) Where it has been determined after a disciplinary hearing, that penalties or sanctions should be imposed, to designate the appropriate sanction or penalty and, after time for appeal has lapsed, impose said sanction or penalty;

(11) Maintain complete records relating to meeting minutes, applications, examinations, the administration of the apprenticeship program, rosters, changes and additions to rules and regulations, complaints, hearings, and other such matters as the Board shall determine;

(12) Create and administer an apprenticeship program which designates minimum educational and experience requirements;

(13) Grant an inactive license to:

a. A pilot with health problems documented to the Board’s satisfaction; or

b. A pilot on terminal leave, i.e., a pilot on approved time-off prior to and in contemplation of retirement.

If a pilot seeks to return to active status after being granted an inactive license pursuant to paragraph (13)a. or b. of this section, the Board shall first impose as a condition of return to active status that the pilot undertake a number of refresher trips, to be determined by

the Board.

(16 Del. Laws, c. 449, §§ 1, 16; 17 Del. Laws, c. 555, § 1; Code 1915, §§ 953, 969; Code 1935, §§ 1065, 1081; 23 Del. C. 1953, § 102; 64 Del. Laws, c. 195, § 3; 65 Del. Laws, c. 229, § 1; 69 Del. Laws, c. 20, §§ 3, 4.)

§ 103 Register.

The Department of State may appoint a register, who shall enter, in a book to be provided for that purpose, all applications to and all other proceedings of the Board and shall countersign all warrants for pilots granted by the Board.

(16 Del. Laws, c. 449, § 16; Code 1915, § 969; Code 1935, § 1081; 23 Del. C. 1953, § 103; 57 Del. Laws, c. 740, § 11; 75 Del. Laws, c. 88, § 17(1).)

§ 104 Complaint and hearing procedures.

(a) Complaints pertaining to the subject matter of this chapter shall be filed and processed in accordance with § 8735 of Title 29.

(b) The Board shall conduct hearings in accordance with Chapter 101 of Title 29.

(16 Del. Laws, c. 449, § 1; Code 1915, § 953; Code 1935, § 1065; 23 Del. C. 1953, § 104; 64 Del. Laws, c. 195, § 4; 69 Del. Laws, c. 20, § 5.)

§ 105 Appeals from Board's decisions.

Where the pilot is in disagreement with the action of the Board, the pilot may appeal the Board's decision to the Superior Court within 30 days of service, or of the postmarked date of the copy of the decision mailed to the pilot. Upon such appeal the Court shall hear the evidence de novo, and the filing of an appeal shall act as a stay of the Board's decision, pending final determination of the pilot's appeal.

(16 Del. Laws, c. 449, § 17; Code 1915, § 970; Code 1935, § 1082; 45 Del. Laws, c. 103, § 1; 23 Del. C. 1953, § 105; 62 Del. Laws, c. 105, § 1; 64 Del. Laws, c. 195, § 5; 70 Del. Laws, c. 186, § 1.)

§ 106 Expenses of Board; renewal license fee.

To provide a fund for the payment of necessary expenses of the Board in the performance of its duties, each pilot licensed by this chapter shall, upon every renewal of the pilot's license, pay to the Division of Professional Regulation a renewal fee, not to exceed $250, to be determined by the Secretary of State.

(64 Del. Laws, c. 195, § 6; 64 Del. Laws, c. 360, § 1; 69 Del. Laws, c. 20, § 6; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 17(1).)

Subchapter II

Licenses

§ 111 License requirements; examinations; fee.

Any person desiring to engage in the occupation of a pilot in the Bay and Delaware River shall apply in person to the Board of Pilot Commissioners for a license to entitle that person to follow that occupation. At least 4 members of the Board shall examine every person applying for a license as to fitness in all respects to perform the duties of a pilot and shall grant licenses to all such as they deem qualified according to their respective abilities. Each applicant under this section shall pay to the Division of Professional Regulation a fee, not to exceed $250, to be determined by the Secretary of State.

(16 Del. Laws, c. 449, § 2; Code 1915, § 954; Code 1935, § 1066; 45 Del. Laws, c. 102, § 1; 23 Del. C. 1953, § 111; 62 Del. Laws, c. 105, § 2; 64 Del. Laws, c. 360, § 2; 69 Del. Laws, c. 20, § 7; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 17(1).)

§ 112 Classes of licenses.

Six classes of licenses shall be granted:

(1) First class, to persons capable of piloting ships or vessels of any practical draft of water.

(2) Second class, to persons capable of piloting ships or vessels drawing 45 feet of water or under.

(3) Third class, to persons capable of piloting ships or vessels drawing 40 feet of water or under.

(4) Fourth class, to persons capable of piloting ships or vessels drawing 35 feet of water or under.

(5) Fifth class, to persons capable of piloting ships or vessels drawing 32 feet of water or under.

(6) Sixth class, to persons capable of piloting ships or vessels drawing 29 feet of water or under.

(16 Del. Laws, c. 449, § 2; 26 Del. Laws, c. 181, § 1; Code 1915, § 954; Code 1935, § 1066; 45 Del. Laws, c. 102, § 1; 23 Del. C. 1953, § 112; 50 Del. Laws, c. 90, § 1; 57 Del. Laws, c. 158, § 1; 64 Del. Laws, c. 360, §§ 3-5; 69 Del. Laws, c. 20, § 8; 72 Del. Laws, c. 87, § 1; 73 Del. Laws, c. 13, § 1; 85 Del. Laws, c. 537, § 1.)

§ 113 Qualifications for licenses; limitation on numbers of pilots; maximum age of licensees; neglect of duties.

(a) No license of the first, second, third, fourth, fifth or sixth class shall be granted to any person unless that person has heretofore held or does now hold such license under the laws of this State or shall have served an apprenticeship as specified herein and by the Board, nor shall any license be granted until the person applying shall have arrived at the age of 21 years, nor shall any license be granted to any person until the number of pilots licensed under the laws of this State, excluding those pilots holding inactive licenses issued per § 102(13)

of this title, shall have been reduced to less than 42, and thereafter such number shall not be exceeded. The whole number of licensed pilots, excluding those pilots holding inactive licenses issued per § 102(13) of this title, shall not exceed 42 at any 1 time.

(b) No person shall be entitled to a license of the first class until that person has served for at least 1 year in each of the lower classes.

(c) Any license issued under this chapter shall become void when the licensee reaches the age of 70 years, and shall not be renewed.

(d) Except as allowed by the Board or its rules, no pilot shall be entitled to a renewal of a license if the person fails to pilot at least 52 vessels over the route during the 1 year term of the license.

(e) Any pilot who fails to exercise the pilot's profession for any consecutive 90-day period is forbidden from piloting vessels. Such pilot may resume piloting vessels only upon certification to the Board that the pilot has made such refresher trips over the route as shall be deemed necessary by the Board to assure that the pilot is fully familiar with conditions along the route. Refresher trips shall be made in the company of a first class pilot.

(f) The provisions of subsections (a) and (b) of this section shall not apply to any person who holds a valid first or second class state license as of April 8, 1993.

(16 Del. Laws, c. 449, § 3; 17 Del. Laws, c. 145, § 3; 17 Del. Laws, c. 554, § 1; 18 Del. Laws, c. 619, § 1; 21 Del. Laws, c. 271, § 1; 26 Del. Laws, c. 181, § 2; Code 1915, § 955; Code 1935, § 1067; 23 Del. C. 1953, § 113; 57 Del. Laws, c. 158, § 2; 58 Del. Laws, c. 511, § 48; 61 Del. Laws, c. 151, § 1; 62 Del. Laws, c. 105, § 3; 64 Del. Laws, c. 360, § 13; 69 Del. Laws, c. 20, § 9; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 87, § 2.)

§ 114 Apprenticeship program.

(a) According to the needs and dictates of commerce and the interests of public safety, the Board shall from time to time solicit applications for and make appointments of apprentice pilots. No person shall be appointed to be an apprentice who does not hold either a baccalaureate degree from either a recognized and duly certified college or university, or from a maritime academy operated by the United States or a state, or a United States Coast Guard issued license to serve as third-mate on all oceans or master in near coastal waters aboard vessels of no less than 1600 tons, or a higher class of license. The number of apprentices at any 1 time shall be under the control and within the discretion of the Board of Pilot Commissioners. Apprenticeship openings, as they occur, shall be advertised for a period of not less than 1 week in a daily paper of general circulation.

(b) No person shall be appointed to be an apprentice who has committed any acts which are grounds for disciplinary action under this chapter except that the Board may waive such disqualification after a hearing that may include a review of documentation demonstrating that the person meets the criteria for a waiver if it finds:

(1) More than 5 years has elapsed since the date of the felony conviction:

(2) The person is not incarcerated, on work release, probation, parole or serving any part of a suspended sentence;

(3) The person is in substantial compliance with all court orders relating to fines, restitution and community service;

(4) The person is capable of practicing river piloting in a competent and profession manner;

(5) The granting of a waiver will not endanger the public health, safety or welfare; and

(6) The person has not been has not been convicted of a felony sexual offense.

(c) No person shall be entitled to a license in any class without first having completed the apprenticeship program enacted by regulation of the Board. The period of apprenticeship shall be 4 years, excepting those apprentices who, at the time of appointment, held the above-described third-mate's or master's license, whose apprenticeship need be no longer than 3 years. Apprentices must make a total of at least 500 trips over the route during their apprenticeship in vessels with first or second class pilots.

(d) This section shall apply to all apprentices appointed after May 4, 1993.

(16 Del. Laws, c. 449, § 3; 18 Del. Laws, c. 554, § 1; 21 Del. Laws, c. 271, § 1; 26 Del. Laws, c. 181, § 2; Code 1915, § 955; Code 1935, § 1067; 23 Del. C. 1953, § 114; 57 Del. Laws, c. 158, § 3; 62 Del. Laws, c. 105, § 4; 64 Del. Laws, c. 195, § 7; 65 Del. Laws, c. 229, § 2; 69 Del. Laws, c. 20, § 10; 81 Del. Laws, c. 304, § 1.)

§ 115 Term of license; renewal.

Each license shall be renewed annually, in such a manner as is determined by the Division of Professional Regulation, and upon payment of the appropriate fee determined by the Secretary of State, and submission of a renewal form provided by the Division of Professional Regulation.

(16 Del. Laws, c. 449, § 2; Code 1915, § 954; Code 1935, § 1066; 45 Del. Laws, c. 102, § 1; 23 Del. C. 1953, § 115; 62 Del. Laws, c. 105, §§ 5, 6; 64 Del. Laws, c. 360, § 6; 69 Del. Laws, c. 20, § 11; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 17(1); 75 Del. Laws, c. 400, § 1.)

§ 116 [Reserved].

§ 117 Piloting without license; penalty.

(a) Whoever exercises the profession of pilot in the Bay or River Delaware, the navigable tributaries thereof, including the C & D Canal, or upon any other waters designated as pilotage waters by the Board, without a current license granted under this chapter or under the laws of Pennsylvania shall be liable for a civil penalty equal to twice the amount of pilotage, as determined in accordance with this chapter, for each such vessel piloted. Such penalty shall be payable to the State.

(b) Any person who provides pilotage to a vessel in distress shall not be deemed to have violated this section if the person turns the

vessel over to a duly licensed pilot who subsequently offers pilot services.

(c) No tugboat shall undertake to tow any vessel obligated by this chapter to employ a pilot unless such vessel has a pilot on board who is licensed under this chapter or by the Commonwealth of Pennsylvania. The master or person in charge of a tugboat which violates this section shall be deemed to be piloting without a license and shall be liable for the civil penalty described in subsection (a) of this section.

(d) Any master, owner, charterer, operator, consignee, manager or agent of a vessel required under this chapter to take a pilot, who hires or allows a person to act as a pilot in violation of subsection (a) of this section while knowing that the person does not hold a valid license issued under this chapter or by the Commonwealth of Pennsylvania, shall be jointly and severally liable for the civil penalty described in subsection (a) of this section.

(e) The State Attorney General on behalf of the Board may bring an action in the courts of this State or any other court of competent jurisdiction to enforce this section.

(16 Del. Laws, c. 449, §§ 2, 15; Code 1915, §§ 954, 968; Code 1935, §§ 1066, 1080; 45 Del. Laws, c. 102, § 1; 23 Del. C. 1953, § 117; 69 Del. Laws, c. 20, § 13; 70 Del. Laws, c. 186, § 1.)

§ 118 Grounds for discipline.

(a) Pilots regulated under this chapter shall be subject to disciplinary action if after a hearing the Board finds:

(1) Illegal, incompetent or negligent conduct in the performance of piloting;

(2) Excessive use or abuse of drugs (including alcohol, narcotics or chemicals);

(3) Failure to file a marine casualty report;

(4) Failure to obey rule of the nautical road;

(5) Violation of a lawful provision of this chapter, or any lawful regulation established thereunder;

(6) A license to practice as a river pilot has been subjected to discipline in any jurisdiction; or

(7) Conviction of a crime substantially related to the practice of river piloting.

(b) A pilot shall be subject to nondisciplinary remedial action if, after a hearing, the Board finds that there is a danger to health, safety or welfare of the public due to:

(1) Physical illness or loss of motor skill, including but not limited to deterioration through the aging process;

(2) Temporary emotional disorder or mental illness, including alcohol and/or drug abuse; or

(3) Permanent emotional disorder or mental illness.

(c) If a pilot's physical or mental capacity to practice safely is at issue in a nondisciplinary remedial proceeding, the Board may order a pilot to submit to a reasonable physical or mental examination. Failure to comply with a lawful order to submit to a physical or mental examination shall render the pilot liable to temporary suspension or revocation of license in accordance with § 120 of this title.

(d) Where a pilot fails to comply with the Board's request that the pilot submit to an examination or attend a hearing the Board may petition the Superior Court to order such examination or attendance, and the said Court or any judge assigned thereto shall have jurisdiction to issue each order.

(e) Subject to subchapter IV of Chapter 101 of Title 29, no license shall be restricted, suspended or revoked by the Board, and no pilot's right to practice shall be limited by the Board, until such pilot has been given notice, and an opportunity to be heard in accordance with the Administrative Procedures Act.

(16 Del. Laws, c. 449, § 13; Code 1915, § 966; Code 1935, § 1078; 23 Del. C. 1953, § 118; 65 Del. Laws, c. 229, § 3; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 304, § 2.)

§ 119 Fees.

Within the limits provided, the amount to be charged for each fee imposed under this chapter and to be collected by the Board, shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board.

(64 Del. Laws, c. 360, § 12.)

§ 120 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that 1 of the conditions or violations set forth in § 118 of this title applies to a pilot regulated by this chapter:

(1) Issue a letter of reprimand;

(2) Censure a pilot;

(3) Place a pilot on probationary status, and require the pilot to:

a. Report regularly to the Board upon the matters which are the basis of the probation;

b. Limit all practice and professional activities to those areas prescribed by the Board;

c. Continue or renew professional education until the required degree of skill has been attained in those areas which are the basis of the probation; and/or

d. Attend an alcohol and/or drug treatment program approved by the Board;

(4) Levy a fine not to exceed $1,000;

(5) Suspend any pilot's license; or

(6) Revoke a pilot's license.

(b) The Board may withdraw or reduce conditions of probation when it finds that the deficiencies which required such action have been remedied.

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person's license, pending a hearing, upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Board chair or the Board chair's designee. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. The Board shall schedule the hearing on an expedited basis, provided that the Board receives the request within 5 calendar days from the date on which the person received notification of the decision to temporarily suspend the person's license.

(d) Where a license has been suspended due to a disability of the licensee, the Board may reinstate such license if, after a hearing, the Board is satisfied that the licensee is able to practice with reasonable skill and safety.

(e) As a condition to reinstatement of a suspended license, or removal from probationary status, the Board may impose such disciplinary or corrective measures as are authorized under this chapter.

(65 Del. Laws, c. 229, § 4; 69 Del. Laws, c. 20, § 14; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 213, § 1.)

Subchapter III

Vessels and Pilots

§ 121 Receipt of pilots by vessels; penalties for refusal; jurisdiction.

(a) Except vessels of less than 100 gross tons, every foreign vessel and every vessel engaged in foreign commerce or trade entering, departing or underway upon the Delaware Bay or River, the navigable tributaries thereof, including the C & D Canal, or upon such other waters designated pilotage waters by the Board, shall be obliged to receive and employ a pilot licensed under this chapter or by the Commonwealth of Pennsylvania.

(b) As used in this section, "vessel engaged in foreign trade" shall be defined as any vessel carrying any cargo loaded in a foreign port, or destined for a foreign port, as well as any vessel in ballast, having discharged its cargo of foreign origin, unless such vessel has specific orders to a port in the United States at which it is to load cargo. Orders to a vessel to proceed to Delaware Bay, to sea or any other place for orders or instructions shall not be deemed such specific orders.

(c) If the master of any vessel refuses or neglects to take a pilot, the master, owner, charterer, operator, manager, consignee or agent of such vessel shall:

(1) Forfeit and pay to any such pilot suing for the same a sum equal to the pilotage of such vessel plus attorney fees and costs to be recovered by a suit in the courts of this State or before a Justice of the Peace, or such pilot may pursue a remedy therefore by a suit in admiralty in any United States court either in personam or by proceeding in rem, to enforce the lien given the person on such ship or vessel, as such pilot may see fit and proper to do; and

(2) Be liable to pay a civil penalty of up to $25,000, payable to the State, which penalty shall be enforceable via an action to be brought by the Attorney General in the courts of this State.

(16 Del. Laws, c. 449, § 5; 17 Del. Laws, c. 145, § 1; 18 Del. Laws, c. 619, § 2; Code 1915, § 957; Code 1935, § 1069; 23 Del. C. 1953, § 121; 62 Del. Laws, c. 105, § 7; 69 Del. Laws, c. 20, § 15; 70 Del. Laws, c. 186, § 1.)

§ 122 Exception as to receipt of pilots by certain coastal vessels.

No vessel employed in and licensed for the coasting trade shall be obliged to receive a pilot or be subjected to the payment of pilotage in case of refusal to receive such pilot, except ships or vessels bound to the states, territories or possessions of the United States on the Pacific Ocean, but a coastwide vessel voluntarily taking a pilot shall pay the pilot a fee which is no more than the fee for pilotage as prescribed in the case of a vessel bound to or from a foreign port.

(16 Del. Laws, c. 449, § 6; Code 1915, § 958; 28 Del. Laws, c. 65; Code 1935, § 1070; 23 Del. C. 1953, § 122; 57 Del. Laws, c. 158, § 4; 70 Del. Laws, c. 186, § 1.)

§ 123 Acceptance by inward bound vessel of pilot first offering.

The pilot who first offers services to any inward bound ship or vessel shall be entitled to take charge thereof, if the pilot's license authorizes the pilot to pilot ships or vessels of such draught of water. Such pilot, if required, shall exhibit the license to the master or commander of such ship or vessel. In case the draught of water of such ship or vessel is greater than the pilot is licensed to carry, the pilot may, nevertheless, with the consent of the master, take charge of the ship or vessel until a pilot duly qualified offers. If such qualified pilot

offers before the ship or vessel has passed Brandywine Shoals, bearing east, the qualified pilot shall be received, and the former pilot entitled to pilotage according to the distance the pilot may have conducted such ship or vessel, and the latter to the residue of the pilotage which shall be ascertained by the President of the Board of Pilot Commissioners for the time being.

(16 Del. Laws, c. 449, § 6; Code 1915, § 958; 28 Del. Laws, c. 65; Code 1935, § 1070; 23 Del. C. 1953, § 123; 70 Del. Laws, c. 186, § 1.)

§§ 124, 125 [Reserved.]

§ 126 Outward bound vessel to discharge pilot; penalty.

Every master or commander of a ship or vessel outward bound shall remain 6 hours after arrival at the Capes to give to the pilot on board such ship or vessel an opportunity to be taken out. If the master or commander of such ship or vessel refuses to do so, and if the same can be done without endangering the vessel, the master, owner or consignee of such ship or vessel shall forfeit and pay to such pilot, the pilot's executors or administrators any sum not exceeding the applicable pilotage rate, to be recovered in any court of record in which the same may be sued for by a civil action or otherwise.

(16 Del. Laws, c. 449, § 7; Code 1915, § 960; Code 1935, § 1072; 23 Del. C. 1953, § 126; 69 Del. Laws, c. 20, § 18; 70 Del. Laws, c. 186, § 1.)

Subchapter IV

Pilotage Rates

§ 130 Definitions.

As used in this chapter:

(1) "Deep draft vessel" shall mean any vessel which by virtue of its draft is limited in its ability to navigate such that its navigation will be of extraordinary duration or will occasion its pilot extraordinary care or trouble.

(2) "Piloting" is defined as the work of directing a ship or vessel's movement on the waters of the Bay and River Delaware, all navigable tributaries thereof, the C & D Canal, and such other waters as may, from time to time be designated as pilotage waters by the Board.

(3) "Underway" is the condition of any vessel which is not at anchor, aground or attached by 1 or more lines ashore.

(4) "Vessel" is defined as any ship, however powered, barge, or tug and barge or other craft used or capable of being used in navigation for the transportation of cargo or passengers.

(69 Del. Laws, c. 20, § 19.)

§ 131 Pilotage rates.

(a) For services rendered on and after January 1, 1990, the rates of pilotage for conducting a vessel from the Capes of the Delaware to a point on the Delaware River no further upriver than the Delair Railroad Bridge between Philadelphia, Pennsylvania and Delair, New Jersey, or from a point on the Delaware River no further upriver than the Delair Railroad Bridge between Philadelphia, Pennsylvania and Delair, New Jersey, to the Capes of the Delaware shall be, in either case, the charge resulting from the following computation:

1″=.1	4″=.3	7″=.6	10″=.8
2″=.2	5″=.4	8″=.7	11″=.9
3″=.3	6″=.5	9″=.8	

(1) a. A charge, to be known as a unit charge, will be made for each pilotage, determined by length overall (in feet) multiplied by the extreme breadth (in feet) of the vessel, divided by 100.

b. For the purposes of this section, the following definitions shall be applied:

1. "Length overall" shall be the distance between the forward and after extremities of the vessel.

2. "Extreme breadth" shall be the maximum breadth between the outside of the shell platings of the vessel.

3. All measurements shall be in feet and in inches (United States). Inches shall be converted as follows:

(2) The charges per unit are as follows:

Effective January 1, 2025, $17.26 per unit.

Effective January 1, 2026, $17.78 per unit.

Effective January 1, 2027, $18.31 per unit.

Effective January 1, 2028, $18.86 per unit.

(3) There is a minimum charge of 200 units and a maximum unit charge as follows:

Effective January 1, 2025, 1,550 units.

Effective January 1, 2026, 1,600 units

Effective January 1, 2027, 1,600 units.

Effective January 1, 2028, 1,600 units.

(b) Every such vessel bound to the breakwater for orders shall pay pilotage fees as follows: A sum equal to 1/2 of the inward rates of pilotage to the port of Philadelphia, and the same fees when outwardbound from the breakwater; provided, however, if the pilot bringing such ship or vessel to the breakwater be there discharged, and the ship or vessel afterward proceed to Philadelphia or any other port or place on the Delaware Bay or River, it shall make the usual signal for a pilot, and continue to make such signal till reaching Brandywine Light, and if spoken by, or offered the services of, a duly licensed Delaware pilot before reaching Brandywine Light, shall be obliged to employ such pilot and pay such pilot for services rendered as follows: On and after January 1, 1990, the rates of pilotage for conducting a vessel from the Capes of the Delaware to a point on the Delaware River no further upriver than the Delair Railroad Bridge between Philadelphia, Pennsylvania and Delair, New Jersey, or from a point on the Delaware River no further upriver than the Delair Railroad Bridge between Philadelphia, Pennsylvania and Delair, New Jersey, to the Capes of the Delaware shall be, in either case, the charge resulting from the following computation:

1″=.1	4″=.3	7″=.6	10″=.8
2″=.2	5″=.4	8″=.7	11″=.9
3″=.3	6″=.5	9″=.8	

(1) a. A charge, to be known as a unit charge, will be made for each pilotage, determined by length overall (in feet) multiplied by the extreme breadth (in feet) of the vessel, divided by 100.

b. For the purposes of this section, the following definitions shall be applied:

1. “Length overall” shall be the distance between the forward and after extremities of the vessel.

2. “Extreme breadth” shall be the maximum breadth between the outside of the shell platings of the vessel.

3. All measurements shall be in feet and in inches (United States). Inches shall be converted as follows:

(2) The charges per unit are as follows:

Effective January 1, 2025, $17.26 per unit.

Effective January 1, 2026, $17.78 per unit.

Effective January 1, 2027, $18.31 per unit.

Effective January 1, 2028, $18.86 per unit.

(3) There is a minimum charge of 200 units and a maximum unit charge as follows:

Effective January 1, 2025, 1,550 units.

Effective January 1, 2026, 1,600 units.

Effective January 1, 2027, 1,600 units.

Effective January 1, 2028, 1,600 units.

(c) The Board shall establish and enforce charges for additional services, including, but not limited to, provisions for transporting charges and a credit policy, including carrying charges and attorney’s fees.

(16 Del. Laws, c. 449, § 18; 18 Del. Laws, c. 619, § 4; 21 Del. Laws, c. 271, § 2; Code 1915, § 971; 28 Del. Laws, c. 65; Code 1935, § 1083; 46 Del. Laws, c. 22, § 1; 23 Del. C. 1953, § 131; 50 Del. Laws, c. 89, § 1; 52 Del. Laws, c. 43; 53 Del. Laws, c. 312; 54 Del. Laws, c. 176; 56 Del. Laws, c. 27; 57 Del. Laws, c. 158, § 5; 58 Del. Laws, c. 53, § 2; 59 Del. Laws, c. 385, § 1; 60 Del. Laws, c. 614, § 1; 61 Del. Laws, c. 275, § 1; 63 Del. Laws, c. 11, §§ 1-6; 64 Del. Laws, c. 232, §§ 1-6; 66 Del. Laws, c. 9, §§ 1-4; 67 Del. Laws, c. 198, §§ 1-6; 69 Del. Laws, c. 20, §§ 20-22; 70 Del. Laws, c. 11, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 233, §§ 1, 2; 73 Del. Laws, c. 13, § 2; 74 Del. Laws, c. 211, §§ 1-4; 76 Del. Laws, c. 5, §§ 1-4; 77 Del. Laws, c. 254, §§ 1-4; 79 Del. Laws, c. 32, §§ 1-4; 80 Del. Laws, c. 408, §§ 1-4; 82 Del. Laws, c. 119, §§ 1-4; 83 Del. Laws, c. 372, § 1; 85 Del. Laws, c. 16, §§ 1-4.)

§ 132 Compensation of pilot carried to sea.

If it happens that any pilot having a boat attending the pilot is carried to sea in any ship or vessel, contrary to the pilot’s inclinations, by stress of weather or other unavoidable accident, the master, owner or consignee of such ship or vessel shall pay to such pilot, the pilot’s executors or administrators the same wages as the master of the vessel receives until the return of the pilot to the Capes.

(16 Del. Laws, c. 449, § 8; Code 1915, § 961; Code 1935, § 1073; 23 Del. C. 1953, § 132; 64 Del. Laws, c. 360, § 7; 70 Del. Laws, c. 186, § 1.)

§ 133 Compensation of pilot carried to other port.

When any inward bound ship or vessel having a pilot on board is prevented by the ice or by any other cause from proceeding to any port on the Bay or River Delaware, and is compelled to proceed to some other port or place not in the Bay or River Delaware, the pilot shall be entitled to receive and recover from the owner or consignee of such ship or vessel full pilotage, as if the pilot had conducted such ship or vessel to such ports, and shall also receive first-class transportation to the pilot’s usual place of abode.

(16 Del. Laws, c. 449, § 9; Code 1915, § 962; Code 1935, § 1074; 23 Del. C. 1953, § 133; 64 Del. Laws, c. 360, § 8; 70 Del. Laws, c. 186, § 1.)

§ 134 Compensation for extraordinary piloting services.

Any vessel which has suffered any casualty limiting the capabilities of its steering, propulsion or navigational equipment or which is otherwise limited by its speed, draft or other factor in its ability to navigate such that its navigation will be of extraordinary duration or will

occasion its pilot extraordinary care or trouble shall be obliged to receive 2 licensed pilots and to pay to each the full amount of pilotage required by this chapter; in the event that such services are provided by a single pilot, the pilot may charge up to double the pilotage amount calculated in accordance with the rates of this chapter.

(16 Del. Laws, c. 449, § 11; Code 1915, § 964; Code 1935, § 1076; 23 Del. C. 1953, § 134; 64 Del. Laws, c. 360, § 9; 69 Del. Laws, c. 20, § 23; 70 Del. Laws, c. 186, § 1.)

§ 135 Ships detained to discharge pilot; compensation.

When any ship or vessel having a pilot on board is detained by order of the master, owner or consignee of such vessel by quarantine or by ice and conducted by such pilot to a place of safety, the master of any such ship or vessel may discharge the pilot, and in such case the pilot shall be entitled to receive and recover full pilotage, and the compensation for such detention shall be $100 per day for every day the pilot is detained.

(16 Del. Laws, c. 449, § 12; 18 Del. Laws, c. 619, § 3; Code 1915, § 965; Code 1935, § 1077; 46 Del. Laws, c. 113, § 2; 23 Del. C. 1953, § 135; 69 Del. Laws, c. 20, § 24; 70 Del. Laws, c. 186, § 1.)

§ 136 Compensation for detention.

Any pilot retained as pilot on a vessel inward bound to the Delaware Breakwater shall be allowed detention money at the rate of $100 for every 24 hours or any portion thereof that the pilot may have been retained, after the expiration of 24 hours from the time the anchor has been let go, off the Breakwater. If a vessel is eventually ordered to Philadelphia or other port on the Delaware Bay or River and the same pilot has been retained, the local charge for inward pilotage shall be 1 full inward pilotage and detention money as provided in this section. If the pilot is discharged at the Breakwater, and the same or another pilot afterward employed to pilot the vessel to Philadelphia or other port on the Delaware Bay or River, the total inward pilotage shall amount to 1½ inward pilotage and detention money as provided in this section.

(16 Del. Laws, c. 449, § 5; 18 Del. Laws, c. 619, § 2; Code 1915, § 957; Code 1935, § 1069; 46 Del. Laws, c. 113, § 1; 23 Del. C. 1953, § 136; 69 Del. Laws, c. 20, § 25; 70 Del. Laws, c. 186, § 1.)

§ 137 Legal fee limits; penalty.

No licensed pilot shall demand, ask or receive, for any pilotage of any vessel or for any other services for which compensation is fixed by law, a greater sum than is authorized by this chapter. The Board of Pilot Commissioners, whenever it has been satisfactorily proven to it that any licensed pilot has demanded, asked or received for the pilotage of any vessel or services on board any vessel a greater sum than is authorized by this chapter, shall deprive such pilot of a license for the term of 1 year from the time when proof thereof has been made to it.

(16 Del. Laws, c. 449, § 14; Code 1915, § 967; Code 1935, § 1079; 23 Del. C. 1953, § 137; 70 Del. Laws, c. 186, § 1.)

§ 138 Pilotage for outbound deep draft vessels.

Outbound deep draft vessels shall be assigned 2 pilots for the outbound passage, and the vessel's pilotage rate for such passage shall be doubled to account for the use of the 2 pilots.

(69 Del. Laws, c. 20, § 26.)

Chapter 11
OBSTRUCTING NAVIGATION

§ 1101 Casting ballast in tideway; penalty.

Whoever casts into the tideway of the Delaware Bay or River, above Bombay Hook Island or within 1/2 mile of the mouth of any navigable stream between the Island and the Delaware Breakwater or within 3 miles of the breakwater, any ballast, stone or other heavy articles shall be fined not more than $100.

(Code 1852, § 1232; 16 Del. Laws, c. 310, § 1; Code 1915, § 2949; Code 1935, § 3457; 23 Del. C. 1953, § 1101.)

§ 1102 Sweeping for anchors, cables or buoys near breakwater; penalty.

Whoever sweeps for or takes possession of anchors, cables or buoys within 1 mile of the Delaware Breakwater or ice breaker, unless it be the person who has lost such anchor, cable or buoy, or the person's agent, shall be fined not less than $5.00 nor more than $50.

(Code 1852, § 1233; Code 1915, § 2950; Code 1935, § 3458; 23 Del. C. 1953, § 1102; 70 Del. Laws, c. 186, § 1.)

§ 1103 Regulation of anchorage.

Vessels anchoring in any river or creek shall do so out of the channel and as near the shore as they can with safety, and, when necessary, shall moor parallel with the channel, so as to leave a free passage, or they shall be held liable, as for gross negligence, in case of collision.

The Town of Lewes shall enforce this regulation as to vessels in the Lewes River above the mouth of the back channel, and the master or owner of any vessel refusing to comply shall be fined $10 for the use of the town, and also the expense of mooring.

(Code 1852, §§ 1234, 1235; Code 1915, § 2951; Code 1935, § 3459; 23 Del. C. 1953, § 1103.)

§ 1104 Obstructions interfering with use of shore or harbor.

Whoever causes any obstruction to be erected or placed or remain upon the shore of any navigable river in this State so as to interfere with the public use of the river shore or harbor of any city or town situated upon the bank of such river, and, after notice, allows the obstruction to remain unabated for the period of 30 days, shall be guilty of maintaining a public nuisance, and shall be fined not less than $1,000 nor more than $10,000. Upon conviction thereof, the defendant shall be required by order of court to remove such obstruction.

Prosecutions under this section shall be brought in the county where such obstruction exists.

The Attorney General, upon a proper representation by the authorities of any city or town of the existence of any obstruction in the harbor of such city or town, shall institute the proceedings as provided in this section.

(15 Del. Laws, c. 117, §§ 1, 2; Code 1915, § 2952; Code 1935, § 3460; 23 Del. C. 1953, § 1104.)

§ 1105 Mistreatment of buoy, beacon and daymark; notice; penalty; disposition of fine.

Whoever moors any vessel or vessels of any kind or name whatsoever or any raft or any part of a raft to any buoy, beacon or daymark placed in the waters of Delaware by the authority of the Commandant of the United States Coast Guard, or, in any manner, hangs on with any vessel, raft or part of a raft to any such buoy, beacon or daymark, or wilfully removes, damages or destroys any such buoy, beacon or daymark, or cuts down, removes, damages or destroys any beacon or beacons erected on land in this State by the authority of the Commandant, or having, through unavoidable accident, run down, dragged from its position, or in any way injured any buoy, beacon or daymark, and fails to give notice as soon as practicable of having done so to the Coast Guard inspection official of the district in which the buoy, beacon or daymark may be located, shall for every such offense be fined not more than $200 or imprisoned not more than 3 months. Two thirds of the fine shall be paid to the Commandant to be used in repairing the buoys and beacons.

(16 Del. Laws, c. 156, § 1; Code 1915, § 2953; Code 1935, § 3461; 23 Del. C. 1953, § 1105.)

§ 1106 Anchoring on range line of range lights; penalty.

No vessel shall anchor on the range line of any range lights established by the Commandant of the United States Coast Guard in this State. The master of any vessel so anchoring shall be fined not more than $50.

(16 Del. Laws, c. 156, § 2; 16 Del. Laws, c. 310, § 1; Code 1915, § 2954; Code 1935, § 3462; 23 Del. C. 1953, § 1106.)

§ 1107 Lien on vessel causing damage.

The cost of repairing or replacing any buoy, beacon or daymark which has been misplaced, damaged or destroyed by any vessel or raft whatsoever, having been made fast to any such buoy, beacon or daymark, shall, when the same has been legally ascertained, be a lien upon such vessel or raft, and may be recovered against such vessel or raft and the owner or owners thereof in a civil action in any court of competent jurisdiction in the State.

(16 Del. Laws, c. 156, § 3; Code 1915, § 2955; Code 1935, § 3463; 23 Del. C. 1953, § 1107.)

§ 1108 Obstructions of navigation in St. Jones' River; penalties.

Whenever any obstruction to the navigation of the St. Jones' River occurs, by reason of dirt or other material falling or being washed into the River, in consequence of any wharf thereon being out of proper repair, the owner of the wharf shall remove the obstruction without delay. If the owner fails to do so, the owner shall be fined not less than $20 nor more than $500. The court shall, if the nuisance exists at the time of the conviction, make an order for its abatement.

This section shall not apply in the case of obstructions arising from the nonrepair of any wharfing upon the River done by authority of the Department of Highways and Transportation for protection of a public road, but the Department of Highways and Transportation shall remove such obstructions, and the Department of Highways and Transportation shall be chargeable with the expenses thereof.

(11 Del. Laws, c. 425, §§ 1, 2; Code 1915, § 2956; 40 Del. Laws, c. 107, § 1; Code 1935, § 3464; 23 Del. C. 1953, § 1108; 70 Del. Laws, c. 186, § 1.)

§ 1109 Anchoring regulations in St. Jones' River.

No captain or commander of any vessel, boat, barge or scow shall moor, anchor or make fast in any manner to the west side of the St. Jones' River, commonly known as the Murderkill side, within 1/2 mile of the mouth of the River.

All vessels, boats, barges or scows lying within 1/2 mile of the mouth of the river shall be anchored, moored or made fast upon the east or what is commonly known as the St. Jones' side of the river, and in such case not more than 2 shall lie abreast and in no case shall extend beyond the middle of the stream, and when so anchored, moored or made fast, the vessel, boat, barge or scow, being next to the channel, shall show the lights as prescribed by law.

All vessels awaiting wind or tide above the limit shall moor or make fast (avoiding the channel) upon the convex or point side of the river, keeping the channel and the concave or bend side clear for vessels passing up or down. All vessels, boats, barges and scows going with the tide shall have the right-of-way, those going against the tide shall be considered as waiting tide or tide bound.

The captain or commander of any vessel, boat, barge or scow upon entering the river shall house the anchor or anchors, that is to say, so place them that they will not protrude over the railings of their respective crafts.

In case of damage resulting from collision or otherwise by reason of the violation of any of the provisions of this section, the owner or owners of the vessel, boat, barge or scow whose captain or commander has violated such provisions shall, as well as the captain or commander, be liable to the owner or owners whose vessel, boat, barge or scow is injured by reason of the violation as for gross negligence, and shall pay to the owner or owners of the vessel, boat, barge or scow suffering such injury all the actual damages sustained, together with damages caused from detention by reason of the injury, with cost of suit, to be recovered by a civil action.

(18 Del. Laws, c. 618, §§ 1-5; Code 1915, § 2957; Code 1935, § 3465; 23 Del. C. 1953, § 1109; 70 Del. Laws, c. 186, § 1.)

§ 1110 Obstruction of navigation in Murderkill River and Spring Creek.

Whoever fills up or designedly or intentionally injures or obstructs any canal already cut between the waters of Murderkill River and Spring Creek, or either of the streams and the branches of the other, or injures or obstructs the navigation of the streams of the branches of Spring Creek, or either of them, by wears, hedges or in any other manner whatsoever, shall severally forfeit and pay $100, 1 moiety thereof to the use of the county and the other moiety thereof to the use of the person or persons who will sue for the same before any justice of the peace in Kent County. The justice shall have full power and authority to hear and determine all questions arising under this section.

Upon an affidavit being made before any justice of the peace in Kent County stating that any obstruction is made as contemplated by this section, the justice shall authorize some suitable person to cause the obstructions to be removed and to call to assistance a sufficient number of persons to make such removal, and certify to the justice the costs of doing the same, which costs, in any proceeding against the person who it is ascertained caused such obstruction, shall be recovered in addition to the fine imposed by this section.

(12 Del. Laws, c. 220, §§ 1, 2; 16 Del. Laws, c. 310, § 1; Code 1915, § 2958; Code 1935, § 3466; 23 Del. C. 1953, § 1110; 70 Del. Laws, c. 186, § 1.)

§ 1111 Removal or destruction of channel stakes in Murderkill River; penalty.

Whoever wilfully destroys or removes any of the stakes settled and planted to designate the channel of Murderkill River, by and under the authority of 13 Del. Laws, c. 153, shall be fined $20 for each stake removed.

(13 Del. Laws, c. 153, § 2; 16 Del. Laws, c. 310, § 1; Code 1915, § 2959; Code 1935, § 3467; 23 Del. C. 1953, § 1111.)

§ 1112 Liability for collision caused by anchoring in Deep Hole below Broadkiln Creek.

Whenever any captain or commander of a vessel anchors any vessel under the captain's or commander's charge within the limits of the place known as the Deep Hole, just below the mouth of Broadkiln Creek, in Sussex County, and whenever, if by reason of the anchoring of the vessel in such place, the vessel so anchoring is injured by collision with another vessel, the captain or commander of the vessel so anchoring shall be held liable as for gross negligence, and shall pay to the owner or owners of the vessel suffering such injury all the actual damages sustained, with costs of suit, to be recovered by a civil action.

Whenever by reason of the anchoring of any vessel in such place any other vessel is injured by collision with the vessel so anchoring, the owner or owners of the vessel so anchoring shall be held liable to the owner or owners of the vessel so injured, as for gross negligence, and shall pay to the owner or owners of the vessel suffering such injury all the actual damages sustained, with costs of suit, to be recovered by a civil action.

(13 Del. Laws, c. 152, §§ 1, 2; Code 1915, § 2960; Code 1935, § 3468; 23 Del. C. 1953, § 1112; 70 Del. Laws, c. 186, § 1.)

§ 1113 Regulations for anchoring at mouth of Mahon's River; penalties; jurisdiction.

No boat or vessel of any kind or description shall anchor, moor, make fast or cause to be anchored, moored or made fast so it may swing in the western half of the mouth of Mahon's River, commencing at Mahon's Light House and ending at or abreast of the road between the store of Walter Hendrickson and the steamboat wharf. The mouth of Mahon's River on the western side must at all times be kept clear of

all obstructions, either of vessels at anchor or moored therein, or anchors, chains, hawsers or lines, from the shore on the west side to the middle of the river or harbor from where Mahon's Light House now stands to the road. Nothing in this section shall interfere with vessels or boats made fast to wharves or to the shore loading or unloading. When they are hauled close to the wharf or shore, both ends of such boat or vessel must be made fast and not more than 1 abreast.

Whoever, either permanently or temporarily in charge of any vessel or boat, anchors, moors or makes fast, or causes to be anchored, moored or made fast the same, or obstructs with lines or in any manner whatsoever any part of the River or harbor mentioned in this section shall be fined $10 for each offense, together with the costs of the prosecution, and, upon failure to pay such fine and costs, shall be imprisoned for a term of not more than 3 months, if the fine and costs be not sooner paid.

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

Whoever violates this section shall be liable for damages for any loss of life or property or for any injury to person or property caused by such violation.

(21 Del. Laws, c. 272, §§ 1-3; Code 1915, § 2961; Code 1935, § 3469; 23 Del. C. 1953, § 1113.)

Chapter 13
VESSEL PROPERTY

§ 1301 Control by owner or owners of more than half part; master's refusal to surrender; penalty.

Every vessel owned by a citizen or citizens of this State shall be subject to the control of the vessel's owner, if there be but 1, or, if such vessel be owned by several jointly or in common, the vessel shall be subject to the control of the owner or owners of more than a 1/2 half part.

The owner or owners of such share may discharge the master of such vessel, though the master be a part owner, and may maintain a civil action against the master to recover possession of the vessel if the master refuse to deliver the vessel to the owner or owners or to an agent, and recover damages for the detention.

If such master, upon being discharged, refuses or neglects to deliver to such owner or owners of more than a half part, or to an agent, on demand, the vessel with all the vessel's papers, tackle, apparel and furniture, the master shall be fined $100.

(Code 1852, §§ 1236-1238; Code 1915, § 2989; Code 1935, § 3482; 23 Del. C. 1953, § 1301; 70 Del. Laws, c. 186, § 1.)

§ 1302 Forcible, fraudulent or secret taking of vessel; penalty.

Whoever forcibly, fraudulently or secretly takes or attempts to take and remove any vessel from any harbor, river, creek or sound within this State, on any pretense whatever, shall be fined not more than $500, and shall restore to the owners the vessel and cargo or the full value thereof.

(Code 1852, § 1239; Code 1915, § 2990; Code 1935, § 3483; 23 Del. C. 1953, § 1302.)

§ 1303 Vessels adrift or abandoned on public property and lost, abandoned, or stolen property relating to vessels.

(a) A person finding or having in that person's own possession a vessel that was adrift or abandoned, or any lost, abandoned, or stolen property relating to a vessel, shall turn the vessel or property over to the Department of Natural Resources and Environmental Control for disposition pursuant to subsection (b) of this section.

(b) (1) Notwithstanding § 8026 of Title 29, whenever a vessel or property relating to a vessel comes into the custody of the Department and the person entitled to possession of the vessel or property cannot be located and fails to claim possession for a period of 6 months, the Secretary of the Department may dispose of the vessel or property at public sale at a place which is convenient and accessible to the public, provided that the time, place, and terms of the sale, together with a description of the vessel or property, are published in 1 or more daily newspapers in the State at least once each week for 2 successive weeks prior to the sale. The Secretary shall, in the Secretary's discretion, fix the terms of sale and may employ an auctioneer to conduct the sale. If the vessel or property is of a kind for which a certificate of title or registration has been or should have been issued by the Department, the Secretary shall cause notice by registered mail to be sent at least 10 days before the sale to the owner and lienholder, if any, shown on the records of the Department, or to the person entitled to possession of the vessel or property, if the person's address is known or if it can be ascertained by the exercise of reasonable diligence. If an address cannot be ascertained, then notice under this paragraph is not required to be given.

(2) Notice pursuant to this subsection is not required when an abandoned vessel or property relating to a vessel is removed in an emergency situation which creates an actual or potential hazard to navigation.

(c) The proceeds from any vessel or property relating to a vessel sold pursuant to subsection (b) of this section must be placed in the General Fund, but only after any liens on the vessel or property are paid and any expenses incurred by the Department or by the person who turned over the vessel or property to the Department are paid. Reimbursable expenses include all direct expenses associated with the seizure, removal, transportation, preservation, storage, and disposal of a vessel or property relating to a vessel.

(d) For purposes of this chapter, unless the context otherwise requires:

(1) "Abandoned vessel" means:

a. A vessel that has been left illegally or has remained without permission for more than 30 days on public property, including public marinas, public docks, and public boatyards; or

b. A vessel that has been found adrift or unattended in or upon the public waters or public subaqueous land of the State, and is found in a condition of disrepair that constitutes a hazard or obstruction to the use of public waters or subaqueous land of the State or that presents a potential or actual health or environment hazard;

(2) "Department" means the Department of Natural Resources and Environmental Control;

(3) "Vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water or ice.

(e) The Department may seize, remove, transport, preserve, store, and dispose of any abandoned vessel or property relating to a vessel. For this purpose, the Department may use its own personnel, equipment, and facilities or use other persons, equipment, and facilities. The Department may not be held liable for any damage to an abandoned vessel or property relating to a vessel which may occur during seizure, removal, transportation, preservation, storage, or disposition.

(f) If an abandoned vessel or property relating to a vessel is in such a condition of disrepair that the Department cannot remove it intact,

the Department may dispose of it in whatever manner is reasonable without providing the notice required under paragraph (b)(1) of this section.

(g) The Department may delegate to any local jurisdiction the Department's authority under this chapter to seize, remove, transport, preserve, store, and dispose of abandoned vessels and property relating to a vessel.

(h) This § 1303 and § 1304 of this title do not apply to archaeological resources, including shipwrecks embedded in or located on the State's subaqueous lands, which are regulated by the Department of State, Division of Historical and Cultural Affairs pursuant to Chapter 53 of Title 7.

(64 Del. Laws, c. 242, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 153, § 13; 76 Del. Laws, c. 84, § 1.)

§ 1304 Vessels and property relating to vessels adrift or abandoned on private property.

(a) Abandoned vessels and property relating to vessels on the strand on private property, such as private waters, private subaqueous land, private marinas, private docks, and private boatyards, may be seized, removed, transported, preserved, stored, and disposed of by the Department pursuant to the provisions of this chapter upon written request to the Department by the private property owner, if the Department receives funding to provide such a service.

(b) Subsection (a) of this section does not apply to:

(1) A vessel whose owner has not complied with the terms of a financial agreement to pay docking, mooring, storage, or similar fees at a private marina, dock, boatyard, or other nautical facility, yet allows the vessel to remain at the marina, dock, boatyard, or other facility;

(2) A vessel whose owner trespasses on private property by leaving that owner's vessel in another person's boat slip or dockspace without the permission of the other person.

(76 Del. Laws, c. 84, § 2; 70 Del. Laws, c. 186, § 1.)

§ 1305 Penalties; jurisdiction.

A person who abandons a vessel or property relating to a vessel on public or private property for more than 30 days or who violates any other provision of § 1303 or § 1304 of this title is subject to a civil penalty of not less than $100 nor more than $500 for each offense. In addition, the sentencing official shall order the person to reimburse the Department for all expenses incurred by the Department in the enforcement of §§ 1303 and 1304 of this title, including seizure, removal, transportation, preservation, storage, and disposal expenses of or for abandoned vessels and for property relating to a vessel. Superior Court has jurisdiction over violations of this chapter.

(76 Del. Laws, c. 84, § 3.)

Chapter 15
WHARF LINES AND BULKHEADS

§ 1501 Limitation on wharves in City of New Castle.

Whoever builds or extends any wharf or wharves or landing places, filled up solid from the foundation into the Delaware River, further than by the determination and limitation by the City Council of the City of New Castle of the wharf line in front of the city upon the river, under 14 Del. Laws, c. 546, which they shall be allowed to do, or neglects or refuses to leave such proper sluice ways in the wharves or landing places (as may be necessary) in the proper places thereof, according to such limitation or determination, shall forfeit and pay for every such offense the sum of $500, besides the costs of prosecution, 1 moiety for the use of the City of New Castle to be paid to the City Council of the city, and the other moiety for the use of the person who sues for the same, and any such wharf extended beyond the limitation fixed may and shall be abated and removed by the City of New Castle.

(14 Del. Laws, c. 546, § 2; Code 1915, § 2962; Code 1935, § 3470; 23 Del. C. 1953, § 1501.)

§ 1502 Laurel River; wharf lines and limitations.

Commissioners appointed under 18 Del. Laws, c. 224, having adjusted and determined certain limits on each side of the Laurel River in Sussex County, from the iron bridge over the river down river, to which wharves may be extended out into the river, and having returned their proceedings in that behalf, together with a plot showing the limits to the clerk of the peace of such County, in accordance with such statute, no person, for any purpose whatsoever, shall construct or cause to be constructed on either side of the Laurel river, between the iron bridge and the point down the river as determined upon by the Commissioners, any wharf, platform, landing place, marine railway, pier, piles, abutment or other obstruction to the current of the river, extending into the river beyond the limits adjusted and determined on by the return.

No person shall construct or cause to be constructed, or have or keep on either side of the Laurel River, between the iron bridge and the point down the river, as determined upon by the Commissioners, and within the limits adjusted and determined (that is to say, between either 1 of the limits and the shore with respect to which such limits shall be fixed), any wharf or platform supported on piles, piers or abutments so fixed as to leave spaces between them open to the river, or construct or cause to be constructed, have or keep between the points and within the limit to be adjusted and determined any sluice way or sluice ways in any wharf built or to be built on the river.

(18 Del. Laws, c. 244, §§ 1-3; 18 Del. Laws, c. 456, § 1; Code 1915, §§ 2963, 2964; Code 1935, §§ 3471, 3472; 23 Del. C. 1953, § 1502.)

§ 1503 Enforcement of Laurel River restrictions.

The Levy Court Commissioners of Sussex County, upon complaint of 1 or more inhabitants of either of the Fourth or Fifth Representative Districts, that any wharf, platforms, landing place, marine railway, pier, pile, abutment or other obstruction of the river has been constructed and is held or kept in or upon the Laurel River contrary to § 1502 of this title, shall, upon giving at least 10 days' notice to the owner or occupier of the same, hear and determine such complaint, and, if necessary, view and examine the matter or thing complained of. If the Levy Court Commissioners shall, upon such hearing, adjudge that the matter or thing complained of is held or kept contrary to such section, they shall forthwith deliver to the owner or occupier of any such wharf, platform, landing place, marine railway, pier, pile, abutment or other obstruction a certified copy of their finding in that behalf and a written notice to remove the same. If any such wharf, platform, landing place, marine railway, pier, pile, abutment or other obstruction be not removed or conformed to such section within 90 days after the delivery of such certified copy, the person holding the same as the owner thereof shall forfeit and pay to any person who will sue for the same the sum of $500, to be recovered with costs of suit as debts of like amount are by law recoverable, 1/2 of the penalty to be for the use of the person suing therefor, and the residue thereof to be for the use of Broad and Little Creek Hundreds. The Prothonotary of Sussex County, if any such wharf, platform, landing place, marine railway, pier, pile, abutment or other obstruction be not removed or conformed to such section within 90 days after the delivery of such certified copy, without delay, shall issue a warrant or writ directed to the Sheriff of the County commanding the sheriff to abate such wharf, platform, landing place, marine railway, pier, pile, abutment or other obstruction, or to conform the same to such section, whereupon the Sheriff shall forthwith proceed to abate the same or to conform the same to such section. The expenses incurred in carrying into effect this provision shall be such as the Levy Court shall allow, and the same having been paid by the County Treasurer, the amount thereof may be recovered in the name of the County of Sussex from the owner or occupier of the matter or thing abated, as debts of like amount are by law recoverable.

(18 Del. Laws, c. 244, § 4; Code 1915, § 2965; Code 1935, § 3473; 23 Del. C. 1953, § 1503; 70 Del. Laws, c. 186, § 1.)

§ 1504 Drainage into Laurel River.

Nothing contained in §§ 1502 and 1503 of this title shall be construed to prevent the Town of Laurel from constructing, erecting or providing proper sluices, culverts and waste ways for the drainage of the town or to prevent the present drains or gutters from being emptied into Laurel River.

(18 Del. Laws, c. 244, § 7; Code 1915, § 2966; Code 1935, § 3474; 23 Del. C. 1953, § 1504.)

§ 1505 Delaware River opposite Wilmington and Edge Moor; bulkhead and pier lines.

The bulkhead line or lines of solid filling and the pier line in the tidewaters of the River Delaware, lying between the Christina River and the northerly boundary of Edge Moor, opposite the City of Wilmington and Edge Moor, as fixed, established and adopted, or hereafter to be fixed, established and adopted, by the Secretary of the Army of the United States, under the acts of Congress in that behalf, are adopted and declared to be fixed and established as the exterior bulkhead and pier lines between the points, as such exterior bulkhead and pier lines so fixed, established and adopted are or may hereafter be shown upon the manuscript map or maps, report or reports filed in the office of the Secretary of the Army or the Department of the Army.

(22 Del. Laws, c. 2, § 1; Code 1915, § 2982; Code 1935, § 3475; 23 Del. C. 1953, § 1505.)

§ 1506 Filing federal maps and reports.

The Secretary of State shall procure duplicate copies of the federal government's manuscript map or maps, report or reports accompanying the same, from time to time, and file 1 of the copies in the Secretary's office at Dover and the other in the office of the Recorder of Deeds for New Castle County. The copies when so filed, or certified copies thereof, shall be competent evidence for all purposes.

(22 Del. Laws, c. 2, § 2; Code 1915, § 2983; Code 1935, § 3476; 23 Del. C. 1953, § 1506; 70 Del. Laws, c. 186, § 1.)

§ 1507 Filling in beyond established bulkhead line; structures outside bulkhead line.

It shall not be lawful to fill in with earth, stone or other solid material in the tidewaters of the Delaware River between the points referred to in § 1505 of this title, beyond the bulkhead line or lines of solid filling by §§ 1505-1510 of this title adopted, fixed, established, laid down and exhibited on the map or maps, report or reports, except in the construction of duly authorized piers. No erection or structure of any kind shall hereafter be erected, allowed or maintained beyond or exterior to such bulkhead line or lines of solid filling, except duly authorized piers, which shall not be less than 150 feet distant one from the other, and which shall in no case extend beyond the lines indicated for piers on such map or maps, report or reports.

(22 Del. Laws, c. 2, § 3; Code 1915, § 2984; Code 1935, § 3477; 23 Del. C. 1953, § 1507.)

§ 1508 Littoral proprietors' rights; deposit of dredgings by United States.

The littoral proprietors abutting on the River Delaware, between Christina River and the northerly boundary of Edge Moor, may erect bulkheads, wharves and piers on the line or lines now or hereafter to be fixed, established and adopted as provided in § 1505 of this title, opposite their respective littoral holdings on the river, between the Christina River and the northerly boundary of Edge Moor, and fill in with earth, stones or other material the space or spaces between the bulkhead line or lines of solid filling shown or exhibited on the map or maps, report or reports referred to in § 1505 of this title, and the westerly bank of the river (designating the high watermark thereof), between the Christina River and the northerly boundary of Edge Moor. Nothing contained in this section shall operate to prevent the United States from utilizing all or any portion of the space between the bulkhead and the westerly bank of the river for the deposit of dredged material taken from the River Delaware in the progress of the improvement thereof, not exceeding 12 feet in height above mean low water. The filling in of the space between the lines by any littoral proprietor shall be under and subject to the regulations of the Department of the Army of the United States.

(22 Del. Laws, c. 2, § 4; Code 1915, § 2985; Code 1935, § 3478; 23 Del. C. 1953, § 1508.)

§ 1509 Title of littoral proprietors to lands filled in.

The land under the waters of the Delaware River, within the limits as determined in § 1510 of this title, on the front of the littoral holdings of the littoral proprietors, respectively, and between the bulkhead line or lines of solid filling, as shown and exhibited on the maps referred to in § 1505 of this title, and the westerly bank of the river (designating the high watermark thereof), shall vest in fee in the littoral proprietors, their heirs, executors, administrators, successors and assigns, respectively. When a suitable bulkhead has been constructed in front of any of the littoral holdings of any of the littoral proprietors, the Attorney General, upon satisfactory evidence of that fact, and the tender to the Attorney General of the reasonable and necessary expenses of preparing the conveyance or conveyances named in this section, shall seasonably prepare and forthwith execute under the seal of the State a grant assuring to the littoral proprietors, respectively, their heirs, executors, administrators, successors and assigns the lands under water in front of their respective littoral holdings between the bulkhead line and the river bank.

(22 Del. Laws, c. 2, § 5; Code 1915, § 2986; Code 1935, § 3479; 23 Del. C. 1953, § 1509; 70 Del. Laws, c. 186, § 1.)

§ 1510 Waterfront of respective proprietors; determination of.

The breadth of waterfront appertaining to each littoral proprietor or owner of land abutting on the river bank shall be determined by protracting the line of the land to the bulkhead line established under §§ 1505-1511 of this title, wherever the protraction of the lines would not result in giving the owner more or to any other littoral proprietor less than the owner's proportionate share of frontage on the bulkhead line. In case of a conflict arising from the divergence or convergence of the lines of the littoral proprietors or of the public streets, the Attorney General may settle the lines outside of the river bank so that equal justice shall be done to all concerned.

(22 Del. Laws, c. 2, § 6; Code 1915, § 2987; Code 1935, § 3480; 23 Del. C. 1953, § 1510; 70 Del. Laws, c. 186, § 1.)

§ 1511 Proprietors' right to own and hold structures on river front; further rights.

The littoral proprietors, respectively, may own and hold all bulkheads, docks, wharves, buildings and piers that hereafter may be erected

pursuant to §§ 1505-1511 of this title on the front of their littoral holdings, respectively, and may use, possess, repair and keep the same in order, and lay any steamboat, vessel or other craft at the same, and may demand, take, sue for and recover reasonable wharfage, demurrage, rent or dockage of and from any steamboat, vessel or other craft using the same, and from all persons who may use the bulkhead, docks, wharves, buildings and piers in any way whatsoever, and may also sue for and recover any damage that may be done to the same.

(22 Del. Laws, c. 2, § 7; Code 1915, § 2988; Code 1935, § 3481; 23 Del. C. 1953, § 1511.)

Chapter 17
DREDGING AND BEACHES

§ 1701 Removal of dredgings beyond limits of State; penalty.

Whoever knowingly and wilfully transports or removes or attempts to transport or remove to any point or place of deposit beyond the territorial limits of the State, by any process or in any manner, any dredging, earth, dirt, mud, soil, sand, silt or other material of any kind, either in a solid or liquid state, that is taken, dug, dredged or excavated from under the waters of the bays, rivers and creeks within the limits of the State, in the prosecution of works of improvement or maintenance of any channelway or harbor within the State, shall be fined not less than $250 nor more than $2,500, or imprisoned for not less than 30 days nor more than 1 year, or both.

(25 Del. Laws, c. 249, § 1; Code 1915, § 3530; Code 1935, § 4021; 23 Del. C. 1953, § 1701.)

§ 1702 Depositing dredged material outside State; penalty.

Whoever, being in any manner engaged in the work of dredging or excavating any earth, soil, dirt, mud, sand, silt or other material of any kind from any channelway or harbor within this State, or of removing the same therefrom, in the prosecution of works of improvement or maintenance thereof, wilfully deposits and discharges any of such material outside the territorial limits of this State shall be fined $5 for every cubic yard of earth, soil, dirt, mud, sand, silt or other material of any kind which is so deposited or discharged.

(25 Del. Laws, c. 249, § 4; Code 1915, § 3533; Code 1935, § 4024; 23 Del. C. 1953, § 1702.)

§ 1703 Liability of masters, pilots and engineers.

Whoever, being a master, pilot, engineer or other person acting in such capacity on board of any boat or vessel, knowingly engages in towing any scow, boat, vessel or other craft loaded with any such matter or substance described in § 1701 of this title to any point or place of deposit beyond the territorial limits of this State shall be guilty of a violation of §§ 1701 and 1702 of this title, and shall be fined not less than $250 nor more than $2,500 or imprisoned for not less than 30 days nor more than 1 year, or both.

(25 Del. Laws, c. 249, § 2; Code 1915, § 3531; Code 1935, § 4022; 23 Del. C. 1953, § 1703.)

§ 1704 Vessels liable for pecuniary penalties; enforcement of lien.

Any boat, vessel, scow or other craft used or employed in violating any of the provisions of §§ 1701 and 1703 of this title shall be liable to the pecuniary penalties imposed by such sections, and the penalties shall be a lien upon the boat, vessel, scow or other craft and may be enforced summarily by the Attorney General in the name of the State by way of libel in any court having jurisdiction thereof.

(25 Del. Laws, c. 249, § 3; Code 1915, § 3532; Code 1935, § 4023; 23 Del. C. 1953, § 1704.)

§ 1705 Removal of building materials.

Sections 1701-1704 of this title shall not be construed to prevent any person from dredging, excavating or removing from this State clay, sand or other mineral or substance intended to be used in building or any other art or trade.

(25 Del. Laws, c. 249, § 5; Code 1915, § 3534; Code 1935, § 4025; 23 Del. C. 1953, § 1705.)

§ 1706 Removing sand from beach areas.

No sand shall be dug, mined, removed or carried away from any public or private beach extending from mean high watermark to the Ocean Highway between Rehoboth and the Maryland state line.

(41 Del. Laws, c. 197, § 1; 42 Del. Laws, c. 178, § 1; 45 Del. Laws, c. 277, § 1; 23 Del. C. 1953, § 1706.)

§ 1707 Permission for sand removal; exception of gravel.

No person shall dig, mine, remove or carry away, or cause to be dug, mined, removed or carried away, any sand from any public or private beach along the Delaware Bay or along the Atlantic Ocean within 500 feet from mean high watermark, whereby, because of such digging, mining, removal or carrying away of such sand, the beaches or lands abutting thereon or adjacent thereto would become flooded or barrier dunes would be destroyed, or so nearly destroyed, as to become ineffectual in holding back any of the waters from the Delaware River or Delaware Bay or the Atlantic Ocean, or the probability of the flooding of such lands would be materially increased, without first obtaining written consent from the Department of Transportation to dig, mine, remove or carry away the quantity of sand desired from the place designated from which such sand is to be taken, provided that this section shall not prohibit the digging or removal of gravel therefrom.

For the purpose of §§ 1706-1708 of this title, gravel shall be construed to mean any gravel or coarse sand suitable for concrete masonry such as can be had or found between high and low watermark.

(41 Del. Laws, c. 197, § 1; 42 Del. Laws, c. 178, § 1; 45 Del. Laws, c. 277, § 1; 23 Del. C. 1953, § 1707; 60 Del. Laws, c. 503, § 27.)

§ 1708 Penalties for removing sand; enforcement.

(a) Whoever violates §§ 1706 and 1707 of this title shall be fined not less than $10 nor more than $50, or imprisoned for not less than 5 nor more than 30 days.

(b) The justices of the peace shall have jurisdiction to hear and determine violations of §§ 1706 and 1707 of this title.

(41 Del. Laws, c. 197, §§ 2, 3; 23 Del. C. 1953, § 1708.)

§ 1709 Exemption.

The provisions of this chapter shall not apply to the transport or removal from this State of any dredging, earth, dirt, mud, soil, sand, silt or other material of any kind, either in a solid or liquid state, from the Nanticoke River.

(74 Del. Laws, c. 10, § 1.)

Chapter 19
DAMS

§ 1901 Building on unnavigable streams.

Any person may erect or raise a dam to raise water for working any mill upon and across any stream in this State, where it is not navigable, upon the terms and conditions and subject to the regulations hereinafter expressed. No such dam shall be erected to the injury of any mill lawfully existing above it upon the same stream, nor to the injury of any mill site above it on the same stream, where the fall is more than 3 feet upon the lands of any 1 person lying on or upon the stream, above the land of the person who makes application for the building or raising of such dam, nor unless the person applying shall be the owner of the land where the abutment of the dam is built on 1 side of the stream. The Superior Court within each county shall have jurisdiction on all applications to authorize the building or raising of any dam in such county. The proceedings shall be by petition to the Court upon 14 days' notice, in writing, to all persons owning or holding land that will be affected by raising or building such dam. Such notice may be served upon persons residing in the county personally or by leaving a copy at their dwelling house, and persons residing out of the county by a copy sent to their address by mail. The Court shall by order appoint 5 disinterested and substantial freeholders of the county as commissioners, directing them to go upon and view the premises embraced within the application for authority to raise or erect any dam. In conformity with this section, after due and careful examination of the premises, they shall determine to what height the person making application may raise or build such dam, and they shall affix some durable mark at some place convenient and contiguous to such dam to designate the height thereof. They shall also assess the full value of the damages that each owner of the lands may sustain by reason of the erection or raising of such dam, taking into consideration the benefit as well as damages accruing to such owners, and shall make return in writing, on the first day of the next term of the Court held after their appointment, of their proceedings, clearly set forth in writing under their hands or the hands of a majority of them. Before the commissioners shall enter upon the discharge of their duties under this section, they shall severally take and subscribe an oath or affirmation to perform their duty with fidelity. The commissioners may employ a surveyor or civil engineer to go upon the premises with them, if they deem it necessary. The commissioners and surveyor or civil engineer shall be paid the sum of $2.00 for each day they may be employed under the order. If any owner of land affected by raising or building any dam shall be dissatisfied with the damages assessed to the owner, as returned by the commissioners or a majority of them on an order for viewing, and shall apply to the Court, within 6 days after the return, for an order of review, the Court shall grant such order and appoint 5 other suitable persons to review the premises and reassess the damages to the lands of such persons as join in the application for a review, and which are or will be damaged by the raising or building of the dam. If no greater damages are allowed to the owner of any land than were given on the first order, the owner shall not receive any larger sum than is assessed by the commissioners appointed on the order of review.

All expenses on each order of Court shall be paid by the person who applies for the order. Whenever any person who makes any application to raise or build any dam shall have paid the damages assessed in conformity with this section, or, in case of a refusal to receive any of the damages, shall have made a lawful tender of the sums so refused, the person may raise or build such dam to the height as returned by the commissioners, or a majority of them, who were appointed upon the petition.

(11 Del. Laws, c. 537; 11 Del. Laws, c. 645; Code 1915, § 3669; Code 1935, § 4221; 23 Del. C. 1953, § 1901; 70 Del. Laws, c. 186, § 1.)

§ 1902 Procedure to condemn materials for building and repair of dams.

Whenever earth, sand, gravel, stone or other material requisite for the construction or repair of any lawful dam shall lie contiguous or adjacent to such dam, the owner of such dam may proceed by petition, setting forth the facts, to the Superior Court of any county in term time, or to any Judge thereof in vacation, upon 10 days' notice to the owner of such earth, sand, gravel, stone or other material, if resident within the State, or, if nonresident, to the tenant residing upon the premises. The Court or any Judge thereof shall thereupon by order appoint 5 disinterested freeholders of the county as commissioners, directing them to go upon the premises described in the petition and assess the value of such earth, sand, gravel, stone or other material stated in the petition to be required, and also to determine the damages sustained by the owner thereof by reason of taking the same, and make return thereof under their hands or the hands of a majority of them, which return shall be forthwith filed in the office of the Clerk of the Court in the county wherein the proceedings shall take place. Upon amount of damages so being paid unto the person entitled, or deposited to their credit in any state or national bank having an office or a branch in the county where the proceedings shall have been commenced, the owner of such dam may enter in and upon the premises described in the petition, containing such earth, stone, sand, gravel or other material, and take and remove and use the same for the construction or repair of their dam. If either party be dissatisfied with the amount of damages awarded, upon notice and petition filed within 30 days after the return of the commissioners, the Court or any Judge thereof shall grant an order of review and appoint 5 other freeholders, who shall review the premises and reassess the damages and make return.

If greater damages are allowed than were given on the first order, such increase shall be forthwith paid or deposited by the owner of the dam, and if less damages shall be allowed, the difference between the sums so awarded shall be refunded, the costs of such review to be borne by the unsuccessful party. Proceedings for a review shall not delay the right of the owner of the dam to take and use the materials in question in the repair or construction of such dam after having paid or deposited the amount first awarded.

(13 Del. Laws, c. 450, § 1; Code 1915, § 3670; Code 1935, § 4222; 23 Del. C. 1953, § 1902; 63 Del. Laws, c. 142, § 40.)

§ 1903 Right of entry to repair banks of stream.

If at any time a breach in the banks of any stream, upon which a lawful dam shall exist, shall occur by reason of flood or from any other cause whereby the usual volume of water shall be diverted from its customary channel to the injury of the owner of such dam and water power, such owner may enter in and upon the lands where such breach shall have occurred and repair the dam. All damages which may occur unto the premises by reason of such entry and repair shall be assessed upon the application of either party in interest in the mode appointed in § 1902 of this title and subject to the same provisions as to payment or deposit and review.

(13 Del. Laws, c. 450, § 1; Code 1915, § 3671; Code 1935, § 4223; 23 Del. C. 1953, § 1903.)

§ 1904 Forcing water back to injury of adjoining landowners; penalty; exceptions.

Whoever owns, leases or controls any milldam or millpond upon or across any stream of water shall construct and maintain the dam across such stream in such manner and with such gates and appliances that the waters of the stream shall not at any time be thrown, held or forced back upon the land of any other owner above such millpond to the injury or damage of such other owner.

Whoever violates this section, upon the complaint of the owner of land injured or damaged thereby, shall be fined not more than $10 for each day such violation continues. Whoever offends shall also be liable in pecuniary damages to the owner of land injured by any violation of this section, to be recovered in an action at law. This section shall not apply to the flooding of lands by backwater occasioned by rains or freshets. This section shall apply within the limits of Kent and Sussex Counties only.

(26 Del. Laws, c. 176, §§ 1, 2; Code 1915, § 3672; 28 Del. Laws, c. 231; Code 1935, § 4224; 23 Del. C. 1953, § 1904.)

Chapter 21
MOTORBOATS

Subchapter I

General Provisions

§ 2101 Restriction on speed of motorboats.

No person shall operate a boat in Noxentown Lake, New Castle County, propelled by a motor of more than 5 horsepower, except when such boat is being used for the purpose of training a crew of a shell or other racing boat, or is following such a shell or racing boat during a boat or crew race.

(46 Del. Laws, c. 310, § 1; 48 Del. Laws, c. 82, § 1; 23 Del. C. 1953, § 2101; 71 Del. Laws, c. 329, § 1.)

§ 2102 Penalty.

Whoever violates this subchapter shall be guilty of a class D environmental violation.

(46 Del. Laws, c. 310, § 2; 48 Del. Laws, c. 82, § 2; 23 Del. C. 1953, § 2102; 71 Del. Laws, c. 427, § 1; 79 Del. Laws, c. 421, § 14.)

Subchapter II

Registration, Equipment and Operation

§ 2111 Declaration of policy.

It is hereby declared to be the policy of the General Assembly and the purpose of this subchapter to improve boating safety and to foster greater development, use and enjoyment of all the waters of the State by encouraging and assisting participation by the State, the boating industry and the boating public in the development of boating safety programs which are more comprehensive, and by creating flexible regulatory authority concerning the use of boats and equipment. It is further declared to be the policy of the General Assembly to encourage greater and continuing uniformity of boating laws and regulations between the State, its subdivisions and the federal government; a higher degree of reciprocity and comity among the several jurisdictions; and closer cooperation and assistance between the State and the federal government in developing, administering and enforcing federal and state laws and regulations pertaining to boating safety.

(23 Del. C. 1953, § 2111; 52 Del. Laws, c. 154, § 1; 59 Del. Laws, c. 576, § 1.)

§ 2112 Definitions.

Unless as otherwise provided for in this section or Department regulations, the definitions used in this chapter shall be the same as those used in the Federal Boat Safety Act of 1971 [46 U.S.C. § 4301 et seq.]. Other definitions are:

(1) “Department” means the Department of Natural Resources and Environmental Control, unless stated otherwise in this chapter.

(2) “Fish and Wildlife Agent” means a law-enforcement officer employed by the Department of Natural Resources and Environmental Control pursuant to this title and § 8003(13) of Title 29.

(3) “Physical injury” means impairment of physical condition or substantial pain.

(4) “Secretary” means the Secretary of the Department of Natural Resources and Environmental Control, unless otherwise stated in this chapter.

(5) “Serious physical injury” means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(6) “State” means the State of Delaware.

(7) “Vessel” shall mean every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water or ice. Jet skis, surf jets, ski craft and other personal watercraft are vessels for purposes of this chapter.

(8) “Waters of the State” means any waters within the territorial limits of this State, the marginal sea adjacent to this State and the high seas when navigated as a part of a journey or ride to or from the shore of this State.

(9) “Waterway management” means those activities necessary to provide for the planning, surveying, design, engineering and construction, or other activities directly related to the maintenance of public waterways, including dredging, channel marking, debris and derelict vessel/structure removal, the beneficial use of sediment, and shoreline and bathymetric survey work for commercial or recreational waterways.

(10) “Waterway Management Fund” means 50% of funds collected pursuant to § 2113(a) of this title shall be considered waterway management funds and utilized for waterway management.

(23 Del. C. 1953, § 2112; 52 Del. Laws, c. 154, § 2; 52 Del. Laws, c. 231, § 2; 59 Del. Laws, c. 576, § 1; 68 Del. Laws, c. 185, § 1; 70 Del. Laws, c. 105, § 18; 71 Del. Laws, c. 427, § 8; 80 Del. Laws, c. 331, § 1.)

§ 2113 Licensing and registration fees and waterway management fund.

(a) All vessels subject to this subchapter shall be divided into classes as follows and subject to the appropriate registration fees:

Class A—less than 16 feet	$20 per year
Class 1—16 feet or over and less than 26 feet in length	$40 per year
Class 2—26 feet or over and less than 40 feet in length	$60 per year
Class 3—40 feet or over and less than 65 feet in length	$100 per year
Class 4—65 feet or over and not required to be documented	$120 per year

(b) The registration number may be retained by the owner in the event of a transfer by paying a fee of $3.45 per transfer. In the event a duplicate registration card is required, there shall be a fee of $2.30.

(c) Nonresident vessels using the waters of this State for principal use over 60 days and nonresidents owning a boat docked and/or stowed in waters of this State for over 60 days shall be required to register with the Department. Registration of a motorboat shall not be valid for more than 3 years.

(d) Dealers shall be issued 1 registration number for a fee of $11.50 and for each additional number the dealer shall pay a fee of $5.75, to be used for demonstration purposes only.

(e) Any vessel utilizing tidal water boat access facilities provided by the Department shall be registered as required in this section in the State (which license includes funds for maintenance of these facilities under § 2118(b) of this title) or shall purchase a "boat ramp certificate." Boats belonging to the United States government (except recreational type public vessels), State and any rescue vessel operated for the public benefit are exempt from this requirement. The "boat ramp certificate" shall cost $35, shall be affixed in a satisfactory location to the boat for which intended and shall be nontransferable. Income accrued from the sale of boat ramp certificates is appropriated to the Department (Division of Fish and Wildlife) and shall be used in accordance with the requirements of the Federal Aid in Fish Restoration Act [16 U.S.C. § 777 et seq.].

(f) Beginning July 1, 2000 and annually thereafter, the funds derived by the State from Boat Registration Fees shall be deposited as Appropriated Special Funds by the Department with the State Treasurer.

(g) Effective January 1, 2017, and annually thereafter, the funds derived by the State from the registration fees pursuant to subsection (a) of this section shall be deposited as appropriated special funds by the Department with the State Treasurer, and 50 percent of those funds shall be considered a Waterway Management Fund.

(h) Fifty percent of all funds collected pursuant to subsection (a) of this section shall be considered a Waterway Management Fund and the Department shall be authorized to utilize these waterway management funds in the maintenance of Delaware's public waterways for the purposes defined in waterway management in this subchapter. In addition, the Secretary may direct the Department to perform any other waterway management services that may be identified to preserve, maintain and enhance recreational and commercial use of the State's waters.

(59 Del. Laws, c. 576, § 1; 60 Del. Laws, c. 224, § 1; 61 Del. Laws, c. 303, § 1; 63 Del. Laws, c. 27, § 1; 65 Del. Laws, c. 334, § 1; 67 Del. Laws, c. 221, § 1; 67 Del. Laws, c. 260, § 1; 68 Del. Laws, c. 9, §§ 10, 11; 68 Del. Laws, c. 86, §§ 11-13; 71 Del. Laws, c. 443, § 6; 72 Del. Laws, c. 395, § 272; 80 Del. Laws, c. 331, § 2.)

§ 2113A Licensing Agents; service charge; regulations.

(a) The Department may authorize as many qualified persons as licensing agents as it deems necessary to effectuate the efficient distribution of boat registrations and boat ramp certificates. All new licensing agents shall be engaged in both retail sales and repairs of boats as a prerequisite for the issuance of boat registrations.

(b) Licensing agents may add a service charge to the required fee for a boat registration or boat ramp certificate, provided the service charge does not exceed $10 for a boat registration and $5.00 for a boat ramp certificate. Said service charge, if imposed, shall be posted by the licensing agent and shall be clearly visible to prospective purchasers.

(c) The Secretary may adopt, amend, modify or repeal rules and regulations to effectuate the policy and purpose of this section.

(71 Del. Laws, c. 443, § 7; 80 Del. Laws, c. 331, § 3; 84 Del. Laws, c. 27, § 1.)

§ 2114 Regulations and standards.

(a) The Department shall issue rules and regulations for all vessels using state waters in accordance with the safety procedures outlined by the United States Coast Guard and present federal law. Every vessel shall be provided with the equipment prescribed by current United States Coast Guard regulations or Department regulations, and any amendments or changes thereto. No person shall operate or give permission for the operation of a vessel which is not in accordance with the rules and regulations of the Coast Guard or the Department, and any vessel deemed unseaworthy by the Department or its agent shall not be operated on the waters of the State.

(b) The Department may issue regulations for the use, manufacture and sale of vessels to which this subchapter applies, with respect to:

(1) The registration, numbering and marking of undocumented vessels;

(2) Requirements for associated equipment;

(3) Boat and associated equipment standards;

(4) Operating requirements;

(5) Boating safety education; and

(6) Safety patrol and enforcement activity.

(c) The Department shall prescribe such rules and regulations as may be necessary concerning the reporting and investigation of casualties and accidents, including those vessels otherwise exempted.

(23 Del. C. 1953, §§ 2113, 2114; 52 Del. Laws, c. 154, § 4; 54 Del. Laws, c. 135; 57 Del. Laws, c. 739, §§ 107, 108; 59 Del. Laws, c. 576, § 1.)

§ 2115 Applicability.

(a) This chapter shall apply to vessels and associated equipment used, to be used, or carried in vessels used on waters subject to the jurisdiction of this State.

(b) This chapter, except those sections where the content expressly indicates otherwise, does not apply to:

(1) Foreign vessels temporarily using waters subject to state jurisdiction;

(2) Military or public vessels of the United States, except recreational-type public vessels;

(3) A vessel whose owner is a state or subdivision thereof, other than this State, which is used principally for governmental purposes, and which is clearly identifiable as such;

(4) A ship's lifeboats;

(5) Vessels for sale by authorized dealers, or for charter, livery or rent by authorized persons or agencies shall be subject to all requirements referred to in this subchapter.

(c) No vessel propelled safely by wind power or physical exertion shall be subject to the licensing and registration fee of this subchapter, but shall be subject to all safety requirements referred to in § 2114 of this title.

(59 Del. Laws, c. 576, § 1.)

§ 2116 Operation of noncomplying vessels prohibited; careless operation; inattentive operation; reckless operation; assault by vessel in the second degree; assault by vessel in the first degree.

(a) No person shall use or give permission for the use of any vessel to which this subchapter applies, unless the vessel is in compliance with the requirements of this subchapter and the applicable standards and regulations promulgated under the authority of this subchapter.

(b) Notwithstanding § 2115(b) of this title, whoever uses a vessel or associated equipment in a careless or imprudent manner, or without due regard for the conditions then existing (i.e., visibility, weather, etc.), shall be guilty of careless operation.

(c) Notwithstanding § 2115(b) of this title, whoever uses a vessel and fails to give full time and attention to the operation of the vessel, or whoever fails to maintain a proper look-out while operating the vessel, shall be guilty of inattentive operation.

(d) Notwithstanding § 2115(b) of this title, whoever uses a vessel or associated equipment in wilful or wanton disregard for the safety of persons or property shall be guilty of reckless operation.

(e) Notwithstanding § 2115(b) of this title, a person is guilty of assault by vessel in the second degree when:

(1) While in the course of operating a vessel, the person's criminally negligent operation of said vessel causes serious physical injury to another person; or

(2) While in the course of operating a vessel and under the influence of alcohol or drugs, as defined by § 2301 of this title, the person's negligent operation of said vessel causes physical injury to another person.

Assault by vessel in the second degree is a class B misdemeanor.

(f) Notwithstanding § 2115(b) of this title, a person is guilty of assault by vessel in the first degree when while in the course of operating a vessel and under the influence of alcohol or drugs, as defined by § 2301 of this title, the person's negligent operation of said vessel causes serious physical injury to another person.

Assault by vessel in the first degree is a class F felony.

(59 Del. Laws, c. 576, § 1; 67 Del. Laws, c. 216, § 1; 71 Del. Laws, c. 427, §§ 2, 9.)

§ 2117 Release and use of information.

(a) Any person may request vessel numbering and registration information from the Department, if such is retrievable from the vessel numbering system records of the State. When the Department is satisfied that the request is reasonable and related to a boating safety purpose, the information shall be furnished upon payment by such person of the cost of retrieval and furnishing of the information requested.

(b) Boating accident reports, filed by those parties directly involved, and required under the authority of § 2114(c) of this title, are not public records available for public inspection or release. The fact that such reports have been made shall be admissible in evidence solely to show compliance with this section or regulations promulgated under the authority of § 2114(c) of this title. No such report nor any part thereof nor any statement contained therein shall be admissible as evidence for any purpose in any civil or criminal trial.

(c) Boating accident reports and any information compiled therefrom may be released to state and federal law-enforcement agencies and officials of the United States Coast Guard for analytical and statistical purposes at no cost.

(d) Any federal agency or agency of Delaware state government may request information from the Department concerning the registration of a vessel. After the Department receives such a request and the Department is satisfied that such a request is reasonable and related to a boating safety, law-enforcement or fishery management purpose, the Department may release information concerning the registration of a vessel. In each case where said information is released, the Department may seek reimbursement from the agency

requesting the information for all costs incurred by the Department in connection with the gathering and transmitting of the information to the requesting agency.

(e) The Department may use or provide a contractor with vessel registration information for the following limited purposes:

(1) Retaining or recruiting boaters.

(2) Sustaining and increasing associated registration sales.

(f) Any contractor selected by the Department pursuant to subsection (e) of this section shall be subject to a confidentiality agreement that prevents the contractor from releasing, transferring, or using registration information for any other purposes.

(59 Del. Laws, c. 576, § 1; 63 Del. Laws, c. 313, § 1; 80 Del. Laws, c. 106, § 3.)

§ 2118 Public facilities; administration and enforcement of subchapter.

(a) The Department shall maintain and improve public facilities for launching of vessels in all counties of the State.

(b) The Department shall assign a Boating Administrator who shall be qualified by training and experience to perform the duties of office. The Boating Administrator shall train and maintain a staff of Fish and Wildlife Agents who are capable of insuring compliance with state law and Department regulations of all vessels using, moored or anchored on state waters. The Boating Administrator shall train and maintain a clerical staff to operate the boating safety office and all boat registration offices. For the purpose of carrying out this subchapter, Fish and Wildlife Agents shall have all the powers of investigation, detention and arrest conferred by law on peace officers and constables. Such officers shall have the right to arrest with a warrant for violations or without a warrant for violations of such regulations committed in their presence.

(c) If a Fish and Wildlife Agent observes a boat being used without sufficient life-saving or fire-fighting devices or in overloaded or other unsafe condition as defined by state or federal law or Department regulations, and in Agent's judgment such use creates an especially hazardous condition, the agent may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to mooring and to remain there until the situation creating the hazard is corrected or ended.

(d) Any person designated by the Secretary and empowered to enforce state laws and Department regulations and of any rule or regulation adopted pursuant thereto shall have the authority to stop and board any vessel subject to state laws or Department regulations for the purpose of inspection or determining compliance with the state laws or Department regulations. Vessels of law-enforcement personnel shall be marked to identify them as designated enforcement vessels.

(e) Enforcement personnel, whether in uniform or civilian clothes, shall give proper identification issued by the Secretary when boarding a vessel on waters of this State.

(f) Every vessel, if underway on the "waters of this State" and upon being hailed by a designated law-enforcement officer, shall stop immediately and lay to, or shall maneuver in such a way as to permit such officer to come ahead.

(g) The State Police shall have the same authority as Fish and Wildlife Agents in enforcement of this subchapter.

(59 Del. Laws, c. 576, § 1; 70 Del. Laws, c. 105, §§ 19, 20, 21; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 266, § 19.)

§ 2119 Annual appropriation.

(a) For purposes of implementing this subchapter, there shall be appropriated annually the funds necessary to establish and maintain reasonable support in terms of equipment and personnel to carry out the purposes of this subchapter.

Such support shall be based on the utilization of a Boating Administrator, Fish and Wildlife Agents and the resources necessary to allow for 1 Fish and Wildlife Agent plus equipment and operating expenses for each 2,000 boats registered as of July 1 of the preceding year. Each Fish and Wildlife Agent shall receive an appropriate salary as set by the Department pursuant to the merit system.

(b) For purposes of implementing § 2118(a) of this title, there shall be appropriated not more than $2 annually for every boat registered as of July 1 of the preceding fiscal year.

(59 Del. Laws, c. 576, § 1; 70 Del. Laws, c. 105, § 22.)

§ 2120 Regattas, motorboat races, marine parades, tournaments or exhibitions.

(a) The Department may authorize the holding of regattas, motorboat or other boat races, marine parades, tournaments or exhibitions on any waters of this State. It shall adopt and may, from time to time, amend regulations concerning the safety of motorboats and other vessels and persons thereon, either observers or participants. Whenever a regatta, motorboat race, or other boat race, marine parade, tournament or exhibition is proposed to be held, the person in charge thereof shall, at least 30 days prior thereto, file an application with the Department for permission to hold such regatta, motorboat race, or other boat race, marine parade, tournament or exhibition. The application shall set forth the date, time and location where it is proposed to hold such regatta, motorboat race or other boat race, marine parade, tournament or exhibition and it shall not be conducted without authorization of the Department in writing.

(b) This section shall not exempt any person from compliance with applicable federal law or regulation, but nothing contained in this subchapter shall be construed to require the securing of a state permit pursuant to this section if a permit therefor has been obtained from an authorized agency of the United States.

(23 Del. C. 1953, § 2125; 52 Del. Laws, c. 154, § 15; 57 Del. Laws, c. 739, § 117; 59 Del. Laws, c. 576, § 1.)

§ 2121 Local regulations.

(a) This subchapter and other applicable laws of this State shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessels shall be operated on the waters of this State, or when any activity regulated by this subchapter shall take place thereon; but nothing in this subchapter shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels, the provisions of which are identical to this subchapter, amendments thereto or regulations issued thereunder; provided, however, that such ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to this subchapter, amendments thereto or regulations issued thereunder.

(b) Any subdivision of this State may, at any time, but only after public notice, make formal application to the Department for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

(c) The Department shall make special rules and regulations with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this State.

(23 Del. C. 1953, § 2126; 52 Del. Laws, c. 154, § 16; 57 Del. Laws, c. 793, § 118; 59 Del. Laws, c. 576, § 1.)

§ 2122 Rules of the road.

The United States Coast Guard "Rules of the Road," "International-Inland" and the "United States Coast Guard Regulations (pilot rules) for Inland Waters," established pursuant thereto, and any amendments or changes thereto, shall be the state law on all "waters of the State," unless modified by state law or Department regulations. Fish and Wildlife Agents and the State Police shall have the authority for enforcement of these rules on all waters of the State.

(23 Del. C. 1953, § 2115; 52 Del. Laws, c. 154, § 5; 57 Del. Laws, c. 739, § 109; 59 Del. Laws, c. 576, § 1; 70 Del. Laws, c. 105, § 23.)

§ 2123 Vessel liveries.

(a) The owner of a vessel livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel which is designed or permitted by the owner to be operated as a motorboat or vessel, the identification number thereof and the departure date and time and the expected time of return. The record shall be preserved for at least 1 year. When boats are 3 hours overdue or at the close of the day, the owner shall notify the Division of Fish and Wildlife.

(b) Neither the owner of a vessel livery, nor an agent or employee, shall permit any motorboat or any vessel designed or permitted by the owner to be operated as a motorboat or vessel to depart from the owner's premises unless it shall have been provided, either by owner or renter, with the equipment required pursuant to this subchapter and any laws or regulations made pursuant thereto.

(c) Neither the owner of a vessel livery, nor an agent or employee, shall permit any motorboat or any vessel designed or permitted by the owner to be operated as a motorboat or vessel to depart from the owner's premises if, in the owner's opinion:

(1) The lessee is physically incapable of safely operating the motorboat or vessel; or

(2) The weather is prohibitive for safe operation.

(23 Del. C. 1953, § 2121; 52 Del. Laws, c. 154, § 11; 59 Del. Laws, c. 576, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2124 Filing of regulations.

A copy of the regulations adopted pursuant to this subchapter and any amendments thereto shall be filed in the office of the Secretary of State. This subchapter and the regulations of the Department shall be published by the Department in convenient form and distributed to or made available to all persons registering boats or vessels in Delaware or those operating boats or vessels in the waters of the State who request this information.

(23 Del. C. 1953, § 2128; 52 Del. Laws, c. 154, § 18; 52 Del. Laws, c. 231, § 1; 57 Del. Laws, c. 739, § 119; 59 Del. Laws, c. 576, § 1.)

§ 2125 Penalties; jurisdiction.

(a) Whoever violates any of the provisions of this chapter, except §§ 2113(e), 2116(b), (c), (d), (e) and (f), or any regulation promulgated thereunder, shall for the first offense be guilty of a class D environmental violation. For each subsequent like offense occurring within 12 months of a prior conviction, the person will be guilty of a class C environmental violation.

(b) Whoever violates § 2113(e) of this title shall be guilty of a class D environmental violation.

(c) Whoever violates § 2116(b) or (c) of this title shall be guilty of a class D environmental violation.

(d) Whoever violates § 2116(d) of this title shall be guilty of a class C environmental violation. For each subsequent like offense occurring within 3 years of a prior conviction, the person shall be guilty of a class B environmental misdemeanor. No person sentenced under this subsection as a repeat offender shall receive a suspended sentence.

(e) The Justice of the Peace Courts shall have jurisdiction over any violation of this chapter, with the exception of § 2116(f) of this title.

(f) Violations of Chapters 21, 22 and 23 of this title or department orders, rules or regulations promulgated to implement provisions of these chapters are designated as environmental misdemeanors and violations punishable pursuant to the sentencing categories set forth in § 1304 of Title 7.

(23 Del. C. 1953, § 2130; 52 Del. Laws, c. 154, § 20; 53 Del. Laws, c. 27, § 8; 58 Del. Laws, c. 193; 58 Del. Laws, c. 239, § 1; 59 Del. Laws, c. 576, § 1; 71 Del. Laws, c. 427, § 3; 79 Del. Laws, c. 421, § 14.)

§ 2126 Arrest without warrants.

(a) Any Fish and Wildlife Agent or police officer of this State authorized to make arrests for violations of this title and regulations

promulgated thereunder is further authorized to arrest a person without a warrant at the scene of a boating accident upon reasonable and probable cause to believe, based upon personal investigation which may include information obtained from eye witnesses, that a violation has been committed by any person then and there present.

(b) An arrest without a warrant is further authorized under this subsection:

(1) Whenever a subject voluntarily leaves the scene of the accident; and

(2) Whenever a suspect is removed from the scene of the accident for the purpose of receiving medical attention in which case the medical facility shall be considered as an extension of the scene of the accident.

(c) When a suspect has been initially detained by an active duty member of the United States Coast Guard, an arrest of that suspect without a warrant is authorized under this section, when based upon reasonable and probable cause, which shall include information obtained from the said active duty member of the United States Coast Guard, that the suspect had been operating a vessel while under the influence of alcohol or drugs in violation of this title.

(68 Del. Laws, c. 67, § 1; 70 Del. Laws, c. 186, § 1.)

Chapter 22
BOATING SAFETY

Subchapter I

Personal Flotation Devices for Children

§ 2201 Definitions.

(a) "Department" means the Department of Natural Resources and Environmental Control.

(b) "Operator" means that person in control or in charge of the vessel while the vessel is in use.

(c) "Recreational boat" means any vessel manufactured or used primarily for noncommercial use; or leased, rented or chartered to another for the latter's noncommercial use. Charter boats, head boats or other vessels under the command of a person who is licensed by the United States Coast Guard to carry passengers for hire shall be defined as commercial and therefore exempt from this definition of "recreational boat."

(d) "Use" means operate, navigate or employ.

(e) "Vessel" includes every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on the water.

(f) "Waters of this State" means any waters within the territorial limits of this State, the marginal sea adjacent to this State and the high seas when navigated as part of a journey or ride to or from the shores of this State.

(66 Del. Laws, c. 193, § 1; 69 Del. Laws, c. 60, § 1.)

§ 2202 Child safety on recreational boats.

(a) Every operator of a recreational boat shall be responsible for providing for the protection of any child 12 years of age or under by having any such child who is aboard a recreational boat upon the waters of this State, properly wear a Type I, II, III or V Coast Guard-approved personal flotation device which is in good serviceable condition and of the proper size. This section shall not apply to any child who is below deck or in an enclosed cabin or while said recreational boat is anchored or moored.

(b) Whoever violates subsection (a) of this section shall be guilty of a class D environmental violation. The failure to provide a flotation device for more than 1 child in the same recreational boat at the same time, as required by this section, shall be treated as separate offenses.

(66 Del. Laws, c. 193, § 1; 69 Del. Laws, c. 60, § 2; 79 Del. Laws, c. 421, § 15.)

§ 2203 [Repealed.]

Subchapter II

Personal Watercraft

§ 2211 Definitions.

The following words, terms and phrases, when used in this subchapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Approved personal flotation device" shall mean any United States Coast Guard approved type I, II, III or V personal flotation device.

(2) "Headway speed" shall mean the minimum speed necessary to maintain steerage and control of a personal watercraft while such personal watercraft is moving.

(3) "Personal watercraft" shall mean any class A in-board vessel (less than 16 feet in length) as defined by the United States Coast Guard which uses either an internal combustion engine powering a water jet-pump or a propeller as its primary source of propulsion and which is designed to be operated either by a person or persons sitting, standing or kneeling on the vessel, or by a water skier via remote control, instead of in the conventional manner of vessel operation, such as riding in the vessel.

(68 Del. Laws, c. 185, § 3.)

§ 2212 Restrictions and regulations relating to the operation of personal watercraft.

(a) No person shall operate a personal watercraft unless such person is 16 years of age or older, except that a person between 14 and 16 years of age may operate a personal watercraft if such operation occurs under the direct supervision of said person's parent or legal guardian.

(b) No person shall operate a personal watercraft at any time between sunset and sunrise and at times of restricted visibility unless the personal watercraft is equipped with navigation lights.

(c) No person shall operate or ride in a personal watercraft unless such person is wearing an approved personal flotation device.

(d) No person shall operate a personal watercraft unless the personal watercraft is equipped with a self-circling device or a lanyard-type engine cutoff switch. If the personal watercraft is equipped with a lanyard-type engine cutoff switch, no person shall operate such personal watercraft unless the lanyard is attached to the person, clothing or personal flotation device of the operator of such personal watercraft.

(e) No person shall remove, alter or tamper with any part of the spring-loaded throttle mechanism on a personal watercraft which immediately returns the engine to an idle speed upon release of the operator's hand from the throttle control, or any feature of an engine cut-off switch on a personal watercraft which is installed by a manufacturer.

(f) A personal watercraft shall at all times be operated in a reasonable and prudent manner. Maneuvers which may endanger the safety of persons or property shall include but are not limited to:

(1) Weaving through congested vessel traffic;

(2) Jumping or attempting to jump the wake of another vessel within 100 feet of such other vessel, or when visibility around such other vessel is obstructed;

(3) Following within 100 feet of a water skier; or

(4) Speeding in restricted speed areas.

(g) No person who is the owner of a personal watercraft or who has charge or control over a personal watercraft shall permit another person to operate such personal watercraft in violation of any provision of this subchapter.

(h) No person shall operate a personal watercraft at any speed greater than headway speed while within or at the entrance to a marina or other place utilized as an anchorage.

(i) Except for the waters of Delaware's Inland Bays contiguous to incorporated areas, on Delaware waters other than the Atlantic Ocean, no person shall operate a personal watercraft at any speed greater than headway speed unless said personal watercraft is at least 100 feet from all wharfs, piers, docks, boat launching areas, pilings, bridge structures or abutments, moored, drifting or anchored vessels, all nonmotorized vessels, and any shoreline, and at least 300 feet from all people in the water; provided however, that the provisions of this subsection shall not apply to the waters of the Nanticoke River.

(j) Within the waters of Delaware's Inland Bays contiguous to incorporated areas, no person shall operate a personal watercraft at any speed greater than headway speed unless said personal watercraft is at least 300 feet from all wharves, piers, docks, boat-launching areas, pilings, bridge structures or abutments, moored, drifting or anchored vessels, all nonmotorized vessels, any shoreline and all people in the water.

(k) Within the Delaware waters of the Atlantic Ocean, no person shall operate a personal watercraft at any speed greater than headway speed unless such personal watercraft is at least 300 feet from all wharfs, piers, docks, boat launching areas, pilings, bridge structures or abutments, moored, drifting or anchored vessels, all nonmotorized vessels, all people in the water and any shoreline.

(*l*) No person shall operate a personal watercraft in an area where motorized vessels are prohibited.

(m) No person shall operate a personal watercraft to tow a water skier, aquaboard or other similar device unless there is in such vessel a competent observer, in addition to the operator, and the personal watercraft is designed by the manufacturer to carry the operator, the observer and the person or persons being towed. The observer shall be considered competent if the observer is facing toward the person or persons being towed.

(68 Del. Laws, c. 185, § 3; 68 Del. Laws, c. 346, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 268, §§ 1, 2; 71 Del. Laws, c. 206, § 1; 71 Del. Laws, c. 427, § 4; 72 Del. Laws, c. 358, §§ 1-3.)

§ 2213 Rentals of personal watercraft.

(a) No person shall rent a personal watercraft to any person who does not hold a valid automobile driver's license.

(b) No person shall rent a personal watercraft to any person unless and until such personal watercraft is conspicuously marked with the word "rental" and such other markings as are designated by the Department of Natural Resources and Environmental Control.

(c) No person shall rent a personal watercraft to any person without explaining to the person the areas where the personal watercraft is and is not allowed to be operated. A printed map or chart of the area where the person is permitted to operate shall be provided by the person from whom the personal watercraft is rented.

(d) No person shall rent a personal watercraft to any person without providing, at the site where such personal watercraft is rented, a vessel equipped to render assistance, guidance and policing of rented personal watercraft.

(e) The Department of Natural Resources and Environmental Control shall prepare educational material setting forth excerpts from or a summary of the pertinent provisions of this subchapter and subchapter III of this chapter and information pertinent to personal watercraft safety. Any person who is in the business of renting personal watercraft shall be furnished this material without charge.

(f) No person who is in the business of renting personal watercraft shall rent a personal watercraft to any person without obtaining from such person a written acknowledgment that the educational material prepared by the Department of Natural Resources and Environmental Control pursuant to subsection (e) of this section has been read and understood.

(68 Del. Laws, c. 185, § 3; 72 Del. Laws, c. 358, §§ 4, 5.)

§ 2214 Exceptions.

The restrictions and prohibitions of this subchapter shall not apply to law-enforcement vessels operated by law-enforcement personnel in the performance of their duties, nor shall the provisions of this subchapter apply to any person engaged in a professional exhibition or participating in a regatta, race, marine parade, tournament or exhibition held in compliance with § 2120 of this title.

(68 Del. Laws, c. 185, § 3.)

§ 2215 Enforcement; penalties.

(a) The Department of Natural Resources and Environmental Control shall be the State agency authorized to promulgate such rules and regulations as are necessary for the safe and proper administration of this subchapter.

(b) The State, each county within this State and each municipality within this State shall have concurrent authority to enforce, each within its respective jurisdiction, the provisions of this subchapter. All fines and penalties collected by a county or municipality as a result of the efforts of that county or municipality to enforce the provisions of this subchapter shall be paid to such county or municipality.

(c) Whoever violates any of the provisions of this subchapter or any regulation promulgated thereunder, shall for the first offense be guilty of a class D environmental violation. For each subsequent like offense occurring within 12 months of a prior conviction, the person shall be guilty of a class C environmental violation.

(d) The Justice of the Peace Courts shall have jurisdiction over any violation of this subchapter.

(68 Del. Laws, c. 185, § 3; 71 Del. Laws, c. 427, § 5; 79 Del. Laws, c. 421, § 15.)

Subchapter III

Boating Safety Education

§ 2221 Certificate of boating safety education.

(a) From and after January 1, 1994, except as provided in § 2222 of this subchapter, a person born on or after January 1, 1978, may not operate on the waters of this State a vessel required to be registered in this State or any other state, or documented by the United States Coast Guard, without first successfully completing a course of instruction prescribed by the Department and obtaining from the Department a certificate of boating safety education.

(b) Any certificate of boating safety issued by any state, and approved by the National Association of State Boating Law Administrators, shall be deemed to be sufficient compliance with the requirements of this section.

(c) A person who is subject to the provisions of subsection (a) of this section shall:

(1) Maintain in the person's possession, at all times while operating a vessel or recreational boat on the waters of this State, the certificate of boating safety education issued by the Department; and

(2) Upon demand of a Fish and Wildlife Agent or any other law-enforcement officer, show the certificate of boating safety education issued by the Department to such agent or officer.

(d) It shall be a defense to any charge under subsection (c) of this section if the person so charged produces in court a Certificate of Boating Safety Education theretofore issued to such person and valid at the time of arrest.

(69 Del. Laws, c. 60, § 4; 70 Del. Laws, c. 105, § 24; 71 Del. Laws, c. 427, § 6.)

§ 2222 Exemptions.

The following persons shall be exempted from the requirements of this section:

(1) Any person who holds a valid Coast Guard captain's license; or

(2) Any person who holds a valid Delaware River and Bay pilot's license, or its equivalent from another jurisdiction.

(69 Del. Laws, c. 60, § 4.)

§ 2223 Powers and duties of the Department.

(a) The Department shall coordinate and provide a statewide course of instruction in boating safety education for certification, and insure that courses are available at regular intervals within each county.

(b) Any course of instruction in boating safety education offered by the Department is not required to consist of more than 6 classes, nor to exceed a cumulative total of 12 hours.

(c) Tests may be administered verbally when appropriate.

(d) The Department shall replace, free or at cost, a lost or destroyed boating safety certification originally issued by the Department.

(69 Del. Laws, c. 60, § 4.)

§ 2224 Validity of certificate.

Once issued, the certification of boating safety education shall be valid for the lifetime of the person to whom it was issued and may not be revoked by the Department or a court of law.

(69 Del. Laws, c. 60, § 4.)

§ 2225 Penalties; jurisdiction.

(a) Whoever violates § 2221(a) of this title shall be guilty of a class D environmental violation. For each subsequent like offense, the person shall be guilty of a class C environmental violation.

(b) Whoever violates § 2221(c) of this title shall be guilty of a class D environmental violation. For each subsequent like offense, the person shall be guilty of a class C environmental violation.

(c) The Justice of the Peace Courts shall have jurisdiction over any violation of this subchapter.
(69 Del. Laws, c. 60, § 4; 71 Del. Laws, c. 427, § 7; 79 Del. Laws, c. 421, § 15.)

Chapter 23

OPERATION OF A VESSEL OR BOAT WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR AND/OR DRUGS

§ 2301 Definitions.

(a) "Alcohol concentration of 0.08 or more" shall mean:

(1) An amount of alcohol in a sample of a person's blood equivalent to 0.08 or more grams of alcohol per 100 milliliters of blood; or

(2) An amount of alcohol in a sample of a person's breath equivalent to 0.08 or more grams per 210 liters of breath.

(b) "Chemical test" or "test" shall include any form or method of analysis of a person's blood, breath or urine for the purposes of determining alcohol concentration or the presence of drugs which is approved for use by the Division of Forensic Science, the Delaware State Police Crime Laboratory, any state or federal law-enforcement agency, or any hospital or medical laboratory. It shall not, however, include a preliminary screening test of breath performed in order to estimate the alcohol concentration of a person at the scene of a stop or other initial encounter between a law-enforcement officer and the person.

(c) "Operating a vessel or vessel operation" shall include driving, operating or having actual physical control of a vessel or boat.

(d) "Prior or previous offense" shall mean:

(1) A conviction pursuant to this chapter, or a similar statute of any state, local jurisdiction or the District of Columbia, within 5 years immediately preceding the date of the present offense; or

(2) A conviction, under a criminal statute encompassing death or injury caused to another person by the person's operation of a vessel, where operating a vessel under the influence or with a prohibited alcohol concentration was an element of the offense.

For the purpose of computing the periods of time set out in § 2305 of this title, the period shall run from the date of the commission of the prior or previous offense to the date of the commission of the charged offense. In any proceeding under § 2305 of this title, a person may not challenge the validity of any prior or previous conviction unless that person first successfully challenges the prior or previous conviction in the court in which the conviction arose and provides written notice of the challenge in the present proceeding to the prosecution at least 20 days before trial.

(e) "Underway" shall be defined as any vessel which is not at anchor or made fast ashore.

(f) "Vessel" shall mean every device in, upon or by which any person may be transported upon the water excepting devices moved by human power.

(g) "While under the influence" shall mean that the person is, because of alcohol or drugs or a combination of both, less able than the person would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the operation of a vessel or boat.

(67 Del. Laws, c. 216, § 2; 70 Del. Laws, c. 565, § 1; 75 Del. Laws, c. 437, § 1; 79 Del. Laws, c. 265, § 17.)

§ 2302 Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs.

(a) No person shall motor, sail, row, operate, command or have actual physical control of any vessel or boat underway on Delaware waters:

(1) When the person is under the influence of alcohol;

(2) When the person is under the influence of a drug;

(3) When the person is under the influence of any combination of alcohol and any drug;

(4) When the person's alcohol concentration is 0.08 or more; or

(5) When the person's alcohol concentration is, within 4 hours after the time of vessel operation, 0.08 or more.

(b) Any person charged under subsection (a) of this section whose blood alcohol concentration is $^{8}/_{100}$ of 1% or more by weight as shown by a chemical analysis of a blood, breath or urine sample taken within 4 hours of the alleged offense shall be guilty of violating subsection (a) of this section. This provision shall not preclude a conviction based on other admissible evidence.

(c) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or a drug shall not constitute a defense against any charge of violating this section.

(d) It shall be an affirmative defense to a prosecution premised on paragraph (a)(5) of this section if the person proves by a preponderance of evidence that the person consumed a sufficient quantity of alcohol after the time of actual vessel operation and before any sampling to cause the person's alcohol concentration to exceed 0.08. Such evidence shall not be admitted unless notice of this defense is given to the prosecution at least 20 days before trial.

(e) The charging document may allege a violation of subsection (a) of this section without specifying any particular paragraph of subsection (a) of this section and the prosecution may seek conviction under any of the paragraphs of subsection (a) of this section.

(67 Del. Laws, c. 216, § 2; 70 Del. Laws, c. 565, §§ 2, 3; 75 Del. Laws, c. 437, §§ 1, 2.)

§ 2303 Consent to submit to chemical test.

(a) Any person who motors, sails, rows, commands, operates or has actual physical control of a vessel or boat underway on the waters of this State shall be deemed to have given consent, subject to this section and § 2302 of this title, to a chemical test or tests of the person's

blood, breath and/or urine for the purpose of determining the presence of alcohol or a drug or drugs. The testing may be required of a person when an officer has probable cause to believe the person is in violation of § 2302 of this title or a local ordinance substantially conforming thereto.

(b) At the time that a chemical test specimen is required, the person may be informed that if testing is refused, the person shall be prohibited from operating a vessel upon Delaware's waters for a period of 1 year.

(c) If there are reasonable grounds to believe that there is impairment by a drug or drugs which are not readily subject to detection by a breath test, a blood and/or urine test may be required even after a breath test has been administered.

(d) *Alternative tests; physical incapacity.* — If for any reason a person is physically unable to supply enough breath or complete the chemical test, the person shall submit to other chemical tests as designated by the officer, subject to the requirements of subsection (a) of this section. Any person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal shall be deemed to not have withdrawn the consent provided in this section and any test may be performed as provided in subsection (a) of this section.

(e) *Refusal to submit as admissible evidence.* — Upon any trial of any action or proceeding arising out of the acts alleged to have been committed by any person while in violation of § 2302 of this title, the court may admit evidence of the refusal of such person to submit to a chemical test of the person's breath, blood or urine.

(f) *Admissibility in evidence of results of chemical test.* — For purposes of a conviction premised upon § 2302(a) of this title or any proceeding pursuant to this code in which an issue is whether a person was operating a vessel while under the influence, evidence establishing the presence and concentration of alcohol or drugs in the person's blood, breath or urine shall be relevant and admissible. Such evidence may include the results from tests of samples of the person's blood, breath or urine taken within 4 hours of operating the vessel or at some later time. In any proceeding, the resulting alcohol or drug concentration reported when a test, as defined in § 2301(b) of this title, is performed shall be deemed to be the actual alcohol or drug concentration in the person's blood, breath or urine without regard to any margin of error or tolerance factor inherent in such tests.

(g) Evidence of an alcohol concentration of 0.05 or less in a person's blood, breath or urine sample taken within 4 hours of operating a vessel and tested as defined in § 2301(b) of this title is prima facie evidence that the person was not under the influence of alcohol within the meaning of this chapter. Evidence of an alcohol concentration of more than 0.05 but less than 0.08 in a person's blood, breath or urine sample taken within 4 hours of operating a vessel and tested as defined in § 2301(b) of this title shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

(h) Evidence obtained through a preliminary screening test of a person's breath in order to estimate the alcohol concentration of the person at the scene of a stop or other initial encounter between a law-enforcement officer and the person shall be admissible in any proceeding to determine whether probable cause existed to believe that a violation of this Code has occurred. However, such evidence shall not be admissible in the determination of guilt under this section.

(i) Nothing in this section shall preclude conviction of an offense defined in this chapter based solely on admissible evidence other than the results of a chemical test of a person's blood, breath or urine to determine the concentration or presence of alcohol or drugs.

(j) A jury shall be instructed by the court in accordance with the applicable provisions of this section in any proceeding pursuant to this chapter in which an issue is whether a person was operating a vessel while under the influence.

(k) For the purpose of introducing evidence of a person's alcohol concentration pursuant to this section, a report signed by the Forensic Toxologist, Forensic Chemist or State Police Forensic Analytical Chemist who performed the test or tests as to its nature is prima facie evidence, without the necessity of the Forensic Toxologist, Forensic Chemist or State Police Forensic Analytical Chemist personally appearing in court:

(1) That the blood delivered was properly tested under procedures approved by the Division of Forensic Science or the Delaware State Police Crime Laboratory;

(2) That those procedures are legally reliable;

(3) That the blood was delivered by the officer or persons stated in the report; and

(4) That the blood contained the alcohol therein stated.

(*l*) (1) Any report introduced under subsection (k) of this section must:

a. Identify the Forensic Toxologist, Forensic Chemist or State Police Forensic Analytical Chemist as an individual certified by the Division of Forensic Science, the Delaware State Police Crime Laboratory or any county or municipal police department employing scientific analysis of blood, as qualified under standards approved by the Division of Forensic Science or the Delaware State Police Crime Laboratory to analyze the blood;

b. State that the person made the analysis of the blood under the procedures approved by the Division of Forensic Science or the Delaware State Police Crime Laboratory; and

c. State that the blood, in the person's opinion, contains the resulting alcohol concentration within the meaning of this chapter.

Nothing in this section precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the report entered pursuant to subsections (k) and (l) of this section.

(2) For purposes of establishing the chain of physical custody or control of evidence defined in this section which is necessary to admit such evidence in any proceeding, a statement signed by each successive person in the chain of custody that the person delivered it

to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery stated, without the necessity of a personal appearance in court by the person signing the statement, in accordance with the same procedures outlined in § 4331(3) of Title 10.

(3) In a criminal proceeding, the prosecution shall, upon written demand of a defendant filed in the proceedings at least 15 days prior to the trial, require the presence of the Forensic Toxologist, Forensic Chemist, State Police Forensic Analytical Chemist or any person necessary to establish the chain of custody as a witness in the proceeding. The chain of custody or control of evidence defined in this section is established when there is evidence sufficient to eliminate any reasonable probability that such evidence has been tampered with, altered or misidentified.

(m) The informing or failure to inform the accused concerning the implied consent provision shall not affect the admissibility of such results in any prosecution for a violation of § 2302(a) of this title.

(n) The doctor-patient privilege shall not apply to the disclosure to law-enforcement personnel nor the admissibility into evidence in any criminal proceeding of the results of a chemical test of a person's blood, breath or urine for the purpose of determining the alcohol or drug content of the person's blood irrespective of whether such test was done at the request of a treating physician, other medical personnel or a peace officer.

(67 Del. Laws, c. 216, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 565, §§ 4, 5; 75 Del. Laws, c. 437, § 1; 79 Del. Laws, c. 265, § 18.)

§ 2304 Refusal to submit to chemical test.

(a) If any person requested refuses to submit to a chemical test pursuant to § 2303 of this title, after being informed of the penalty for said refusal, that person shall be prohibited from operating a vessel upon Delaware waters for a period of 1 year. This prohibition shall begin the day of said refusal.

(b) The Secretary of the Department shall notify in writing said persons of this prohibition and its duration and shall maintain a list of these individuals.

(c) Operation upon Delaware waters during the period of prohibition provided in subsection (a) of this section shall be punished by a fine of not less than $500 nor more than $2,000 and/or 30 days in jail.

(67 Del. Laws, c. 216, § 2.)

§ 2305 Penalties; jurisdiction.

Whoever is convicted of a violation of § 2302 of this title shall:

(1) For the first offense, be fined not less than $200 nor more than $1,000, or imprisoned not less than 60 days nor more than 6 months, or both.

(2) For a second offense occurring within 5 years from a prior offense, be fined not less than $500 nor more than $2,000 and imprisoned not less than 60 days nor more than 18 months. No person sentenced under this paragraph shall receive a suspended sentence.

(3) For a third offense occurring within 5 years from a prior offense, be guilty of a class G felony, be fined not less than $1,000 nor more than $3,000 and imprisoned not less than 1 year nor more than 2 years. The provisions of § 4205(b)(7) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 3 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to an early release, furlough or reduction of any kind. No conviction for violation of this chapter for which a sentence is imposed pursuant to this paragraph shall be considered a predicate felony conviction for sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this subsection is applicable shall be considered an underlying felony for a murder in the first-degree charge pursuant to § 636(a)(2) of Title 11.

(4) For a fourth or subsequent offense occurring any time after 3 prior offenses, be guilty of a class E felony, be fined not less than $2,000 nor more than $6,000 and imprisoned not less than 2 years nor more than 5 years. The provisions of this title or any other statute notwithstanding, a court may consider prior offenses outside a 5-year period for sentencing pursuant to this paragraph. The provisions of § 4205(b)(5) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 6 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. No conviction for violation of this chapter for which a sentence is imposed pursuant to this paragraph shall be considered a predicate felony conviction for sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph is applicable shall be considered an underlying felony for a murder in the first-degree charge pursuant to § 636(a)(2) of Title 11.

(5) In addition to the penalties otherwise authorized by this section, a person convicted of a violation of § 2302(a) of this title, committed while a person who has not yet reached that person's seventeenth birthday is on or in the vessel shall:

a. For the first offense, be fined an additional minimum of $200 and not more than an additional $1,000 and sentenced to perform a minimum of 40 hours of community service in a program benefiting children.

b. For each subsequent like offense, be fined an additional minimum of $500 and not more than an additional $2,000 and sentenced to perform a minimum of 80 hours of community service in a program benefiting children.

c. Violation of this paragraph shall be considered as an aggravating circumstance for sentencing purposes for a person convicted of a violation of § 2302(a) of this title. Nothing in this paragraph shall prevent conviction for a violation of both § 2302(a) of this title and any offense as defined elsewhere by the laws of this State.

d. Violation of or sentencing pursuant to this paragraph shall not be considered as evidence of either comparative or contributory negligence in any civil suit or insurance claim, nor shall a violation of or sentencing pursuant to this paragraph be admissible as evidence in the trial of any civil action.

(6) A person who has been convicted of prior or previous offenses under this chapter need not be charged as a subsequent offender in the complaint, information or indictment against the person in order to render the person liable for the punishment imposed by this chapter on a person with prior or previous offenses under this chapter. However, if at any time after conviction and before sentence, it shall appear to the Attorney General or to the sentencing court that by reason of such conviction and prior or previous convictions, a person should be subjected to paragraph (3) or (4) of this section, the Attorney General shall file a motion to have the defendant sentenced pursuant to those provisions. If it shall appear to the satisfaction of the Court at a hearing on the motion that the defendant falls within paragraph (3) or (4) of this section, the Court shall enter an order declaring the offense for which the defendant is being sentenced to be a felony and shall impose a sentence accordingly.

(7) The Justice of the Peace Courts shall have jurisdiction for violations of this chapter, except those offenses which must be sentenced pursuant to paragraph (3) or (4) of this section.

(8) In addition to the penalties prescribed in paragraphs (2), (3) and (4) of this section, anyone convicted of a subsequent like offense shall be ordered to complete a program of education or rehabilitation which may include inpatient treatment and be followed by such other programs as established by the training facility, not to exceed a total of 15 months, and pay a fee not to exceed the maximum fine.

(67 Del. Laws, c. 216, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 565, § 6.)

§ 2306 Enforcement of chapter.

In addition to any other powers of arrest, any law-enforcement officer is hereby authorized to arrest without warrant any person who the officer has probable cause to believe has violated the provisions of this chapter, regardless of whether the alleged violation was committed in the presence of such officer. This authority to arrest extends to any hospital or other medical treatment facility located beyond the territorial limits of the officer's jurisdiction provided there is probable cause to believe that the violation of this chapter occurred within the officer's jurisdiction. This authority to arrest also extends to any place where the person is found within 4 hours of the alleged operation of a vessel if there is reason to believe the person has fled the scene of an accident in which the person was involved, and provided there is probable cause to believe that the violation of this chapter occurred within the officer's jurisdiction.

(67 Del. Laws, c. 216, § 2; 70 Del. Laws, c. 565, § 7.)

§ 2307 Persons qualified to administer tests.

Any person qualified under § 2746 of Title 21 shall be qualified for the purposes of this chapter to withdraw blood from a person submitting to a chemical test or obtaining a specimen of breath or urine under this chapter.

(67 Del. Laws, c. 216, § 2.)

§ 2308 Disposition of vessel and property.

(a) Where the only person on a vessel is an individual suspected of violating this chapter, the following procedure shall apply:

(1) The vessel shall be towed to a safe port and be secured.

(2) An inventory of the vessel's contents shall be made. The occupant of the vessel shall sign the inventory and receive a copy thereof.

(3) All contents of the vessel shall be secured on the boat whenever possible. If it is not possible to secure the contents on the vessel, the contents must be secured safely elsewhere.

(4) The vessel shall remain secured until the vessel's occupant or the occupant's designee is capable of assuming responsibility for the vessel.

(b) Where more than 1 person is on a vessel which has been stopped for a suspected violation of this chapter, the following procedure shall apply:

(1) The vessel shall be towed to a safe port and be secured unless there is a competent person on the vessel who is designated by the operator to take responsibility for the vessel.

(2) If there is no competent person on the vessel to operate it, the procedures set forth in subsection (a) of this section shall apply.

(c) A vessel shall be considered at "a safe port and be secured" if:

(1) The vessel is placed at a marina under a bailment contract with the marina operator, at the owner's expense. The marina operator must be paid a storage fee by the owner or operator upon release of the vessel. When a vessel is placed at a marina, the marina operator shall sign and receive a copy of the inventory of the vessel; or

(2) The vessel is transported to a state-operated facility.

(d) Where a vessel which has been stopped for a suspected violation of this chapter has been damaged or has caused damage as a result of its operation in violation of the chapter, the vessel may, at the direction of the investigating agency, be removed and impounded for evidentiary purposes. The vessel shall be inventoried pursuant to paragraph (a)(2) of this section, but the vessel shall not be released until evidentiary processing is completed.

(67 Del. Laws, c. 216, § 2; 70 Del. Laws, c. 186, § 1.)

Chapter 24

EXEMPTIONS FROM CIVIL LIABILITY FOR RENDERING VESSEL TRAFFIC INFORMATION SERVICES

§ 2401 Definitions.

As used in this chapter:

(1) The term “sponsors and operators” shall mean The Pilots’ Association for the Bay and River Delaware and the Ports of Philadelphia Maritime Exchange.

(2) The term “watch officer” means any river pilot, licensed as such by any state, or any person otherwise certified by the sponsors and operators, and who is maintaining a vessel traffic watch at any designated vessel information traffic station serving the water within the Delaware River and Bay and their tributaries and approaches, including the Chesapeake and Delaware Canal or any other water within the territorial limits of the State.

(68 Del. Laws, c. 46, § 1.)

§ 2402 Limitation of liability of watch officers and vessel traffic information service entities.

(a) The liability of any watch officer who renders informational and/or communications assistance to vessels entering, leaving or transiting the Delaware River and Bay and their tributaries and approaches, including the Chesapeake and Delaware Canal or any other water within the territorial limits of the State for damages caused by or related to such assistance shall be limited to acts or omissions of such watch officer which can be shown to have been the result of gross negligence, reckless, wilful, wanton and/or intentional acts of misconduct on the part of such watch officer.

(b) The liability of The Pilots’ Association for the Bay and River Delaware and the Ports of Philadelphia Maritime Exchange, which sponsor and operate the vessel traffic information service for damages caused by or related to such sponsorship or operation shall be limited to acts or omissions which can be shown to have been the result of gross negligence, reckless, wilful, wanton and/or intentional acts of misconduct on part of such sponsors and operators.

(68 Del. Laws, c. 46, § 1.)