Legislative Council,
General Assembly
State of Delaware

Title 31

Welfare

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Part I
In General
Chapter 1
Department of Health and Social Services

§ 101. Definitions.

As used in this title:

(1) "Board" or "Department" or "Department of Public Welfare" or "Board of Welfare" means the Department of Health and Social Services.

(2) "Secretary" or "Director" means Secretary of the Department of Health and Social Services.

(31 Del. C. 1953, § 101; 57 Del. Laws, c. 591, § 30.)

§ 102. Federal aid and reports.

The Department shall, in this connection, and in order to obtain federal aid, make such reports in such form and containing such information as the federal government may require and shall comply with such provisions as the federal government may find necessary to assure the correctness and verification of such reports.

(Code 1935, § 1108; 41 Del. Laws, c. 95, § 1; 31 Del. C. 1953, § 106.)

§ 103. Duty of Department to coordinate welfare and correctional programs; public reports required.

(a) The Department shall be responsible for the coordination of welfare and correctional programs in this State and, to this end, may call conferences of representatives of public and private agencies responsible for such programs and individuals and organized groups interested in and concerned with matters of welfare. Such activities shall be carried on in the interest of more effectively understanding and making provision for the welfare needs in this State. Participation in such activities on the part of agencies and individuals shall be voluntary. The Department may sponsor and carry out studies of existing provisions for caring for welfare needs and studies of the need for changes in existing facilities.

(b) The Department shall issue periodic public reports on the extent, nature and cost of public and private welfare programs in this State and, to this end, may require the necessary periodic statistical data from public and private welfare, correction, probation and parole agencies and institutions giving resident care for tuberculous patients.

(Code 1915, § 1004C; 30 Del. Laws, c. 64; Code 1935, § 1121; 44 Del. Laws, c. 79, § 2; 31 Del. C. 1953, § 107.)

§ 104. Secretary; powers and duties.

The Secretary shall manage and supervise the operations of the Department and shall see that all functions are properly carried out in accordance with the policies, rules and regulations approved by the Board. The Secretary shall appoint all employees of the Department and shall fix their salaries subject to any general compensation plan adopted by the Board.

(48 Del. Laws, c. 133, § 6; 31 Del. C. 1953, § 109; 57 Del. Laws, c. 591, § 32; 70 Del. Laws, c. 186, § 1.)

§ 105. Political activities of officers and employees limited.

No executive, official or employee of the Department shall participate in any form of political activity other than as may be appropriate to the exercise of the individual's civil rights, duties and privileges or in any manner use the executive's, official's or employee's official position as an executive official or employee of the Department for any political purpose.

Any executive official or employee of the Department who violates the provisions of this section shall be subject to discharge or such other disciplinary measures as may be provided by the rules and regulations of the Department.

(Code 1935, § 1112A; 42 Del. Laws, c. 97, § 2; 31 Del. C. 1953, § 110; 70 Del. Laws, c. 186, § 1.)

§ 106. Organization of Department.

The Secretary shall organize the Department into such divisions or other units as will increase the effectiveness and efficiency with which its affairs are conducted. The organization shall provide for and the efforts of the Department shall be directed toward the maximum degree of integration and consolidation consistent with satisfactory service to the citizens of this State.

(48 Del. Laws, c. 133, § 7; 31 Del. C. 1953, § 111; 57 Del. Laws, c. 591, § 33.)

§ 107. Rules and regulations.

The Secretary shall promulgate rules and regulations for the interpretation of statutes or federal regulations governing programs of public assistance and other programs of the Department and such other rules or regulations as may be necessary for the proper conduct of the business of the Department. No rule or regulation adopted pursuant to the authority granted by this section shall extend, modify or conflict with any law of this State, or the reasonable implications thereof.

(48 Del. Laws, c. 133, § 8; 31 Del. C. 1953, § 112; 57 Del. Laws, c. 591, § 33; 67 Del. Laws, c. 344, § 10.)

§ 108. Merit system of personnel administration unaffected.

Nothing in this chapter shall interfere with the continued operation of a merit system of personnel administration for positions placed under such system by agreement between state and federal authorities.

(48 Del. Laws, c. 133, § 16; 31 Del. C. 1953, § 113.)

§ 109. Annual report.

The Department, annually, shall make a report that shall include:

(1) A list of the officers and agents employed;

(2) The conditions of institutions under its supervision;

(3) A statement of the year's work; and

(4) Complete and comprehensive information relating to all welfare work performed, together with any recommendation the Department may desire to make.

(Code 1915, § 1005A; 30 Del. Laws, c. 64; 37 Del. Laws, c. 85, § 23; 37 Del. Laws, c. 189, § 17; 38 Del. Laws, c. 54, § 3; Code 1935, §§ 1123, 1131, 1626, 1643; 41 Del. Laws, c. 124, § 3; 45 Del. Laws, c. 96, § 4; 31 Del. C. 1953, § 115.)

§ 110. Burial or cremation expenses of an indigent person.

An indigent person's remains may be buried or cremated at public expense on the order of the Division of Social Services. Uniform standards for such burial or cremation shall be established by the Department of Health and Social Services. The fee shall be established by the Department at the lowest cost for which burial or cremation services which meet the standards can be locally obtained. If there are funds available from social security, Veterans' Administration, or any other benefits or insurance, the compensation allowed to be paid for burial or cremation shall be reduced by the amount available from such benefits or insurance.

(37 Del. Laws, c. 189, § 6; 37 Del. Laws, c. 85, § 10; Code 1935, §§ 1613, 1632; 31 Del. C. 1953, § 120; 62 Del. Laws, c. 386, § 1; 85 Del. Laws, c. 530, § 2.)

§ 111. Financial participation.

(a) The State Treasurer shall establish in the State Treasury a State Public Welfare Fund which shall include all funds made available for the purposes of this chapter or of Chapter 5 of this title by the State, the several counties, the federal government or any other source. Within this State Public Welfare Fund there shall be established such separate accounts as the State Treasurer and the State Auditor of Accounts may deem necessary or desirable.

(b) The State Treasurer shall pay from the State Public Welfare Fund the amounts requested by the Department for the purposes of this chapter or of Chapter 5 of this title; provided, that such amount requested is not in excess of the balance remaining in the State Public Welfare Fund plus authorized advances.

(c) All expenditures of the Department shall be paid by check drawn by the State Treasurer except as hereinafter provided. Such expenditures shall be made on the basis of prescribed invoice and payroll forms preapproved by designated officials of the Department; copies of such approved invoice and payroll forms to be transmitted to the Department of Finance for preaudit.

(d) Certain expenditures, due to the responsibilities of the Department, are of an emergency nature. Such expenditures shall be made by the Department over the signature of an authorized official from a revolving fund in an amount to be agreed on by the Department and the State Treasurer and which shall be drawn from the State Public Welfare Fund and be deposited in a fund of the State to the credit of the Department of Public Welfare.

(31 Del. C. 1953, § 121; 50 Del. Laws, c. 220, § 1; 63 Del. Laws, c. 142, § 54; 64 Del. Laws, c. 108, § 9.)

§ 112. Federal financial participation.

The State Treasurer shall receive all money paid to the State by the Secretary of the Treasury of the United States on account of assistance, services and administration, provided under this chapter and under Chapter 5 of this title, and make payments from such moneys and moneys appropriated under such chapters in accordance with the provisions thereof and with the provisions of the United States Social Security Act [42 U.S.C. § 301 et seq.].

(31 Del. C. 1953, § 122; 50 Del. Laws, c. 220, § 1; 64 Del. Laws, c. 108, § 9.)

§ 113. County financial participation.

The State Treasurer shall receive all money paid to the State by the receiver of taxes and county treasurer of each of the 3 counties on account of assistance, services and administration provided under this chapter and under Chapter 5 of this title and make payments from such moneys and moneys appropriated under such chapters in accordance with the provisions thereof.

(31 Del. C. 1953, § 123; 50 Del. Laws, c. 220, § 1; 64 Del. Laws, c. 108, § 9.)

§ 114. Recovery of public assistance overpayments.

(a) Any assistance paid to or in behalf of any person under Temporary Assistance for Needy Families, General Assistance, Food Benefits and Medicaid programs in excess of that to which the person is entitled under the program or programs shall be recoverable by

the Department of Health and Social Services (the Department) for the State in a civil action against such person or the person's estate in any court of competent jurisdiction.

(b) Any judgment entered for the Department in an action brought under this section shall include an award for the court costs of the action. That portion of the judgment that constitutes the court costs of the action shall be remitted by the Department to the State Treasurer.

(c) The Department shall not be required to pay the filing fee or other costs of an action brought under this section and shall not be required to pay fees of any nature or to file a bond or other security of any nature in connection with such action or with proceedings supplementary thereto or as a condition precedent to the availability to the Department of any process in aid of such action or proceedings.

(d) Any judgment entered in any court of competent jurisdiction for the Department pursuant to a confession of judgment regarding any assistance paid to or in behalf of any person under the Temporary Assistance for Needy Families, General Assistance, Food Benefits and Medicaid programs in excess of that to which the person is entitled under the program or programs or regarding any amount of money due under an agreement relating to any assistance paid to or in behalf of any person under the Temporary Assistance for Needy Families, General Assistance, Food Benefits and Medicaid programs in excess of that to which the person is entitled under the program or programs shall include an award for the court costs of such judgment. That portion of such judgment that constitutes the court costs of such judgment shall be remitted by the Department to the State Treasurer.

(e) The Department shall not be required to pay the filing fee or other costs related to any procedure to obtain judgment in any court of competent jurisdiction pursuant to a confession of judgment governed by subsection (d) of this section and shall not be required to pay fees of any nature or to file a bond or other security of any nature in connection with any such procedure.

(66 Del. Laws, c. 287, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 367, § 1.)

§ 115. Subpoena authority.

(a) In addition to the other powers of the Secretary of the Department of Health and Social Services, the Secretary or the Secretary's designee shall, for purposes related to welfare fraud investigations and welfare overpayment investigations, have the power to administer oaths, subpoena witnesses and compel the production of books, papers, documents or other tangible things. Any person who shall fail to appear in response to a subpoena or to answer any question or produce any books, papers, documents or other tangible things relevant to any such investigations may be compelled to do so by order of the Superior Court.

(b) Service of a subpoena issued under this section shall be made by any sheriff, any deputy sheriff, any constable or any employee of the Department of Health and Social Services by delivering a copy of the subpoena to the person to whom it is addressed or by leaving a copy of the subpoena at the person's usual place of abode with a person of suitable age and discretion residing therein. Any fee that the State, or any county or municipality of the State, might otherwise charge for the service of a subpoena shall be waived for the service of a subpoena under this section.

(c) Neither the Secretary of the Department of Health and Social Services nor the Secretary's designee shall be charged any court costs or fees associated with an order of the Superior Court under subsection (a) of this section.

(d) A subpoena issued under subsection (a) of this section shall be effective throughout this State.

(66 Del. Laws, c. 290, § 1; 70 Del. Laws, c. 186, § 1.)

Part I
In General
Chapter 3
Child Welfare
Subchapter I
General Provisions

§ 301. Definitions.

As used in this chapter:

(1) “Abuse” or “abused child” is as defined in § 901 of Title 10.

(2) “Child” means a person who has not yet attained the child’s eighteenth birthday.

(3) “Delinquent child” means a child who commits an act which if committed by an adult would constitute a crime.

(4) “Dependency” or “dependent child” is as defined in § 901 of Title 10.

(5) “Maternal death” means the death of a person during pregnancy or within a year from the end of pregnancy. “Maternal death” includes pregnancy-related death and pregnancy-associated death.

(6) “Near death” means a child in serious or critical condition as a result of child abuse or neglect as certified by a physician.

(7) “Neglect” or “neglected child” is as defined in § 901 of Title 10.

(8) “Truancy” or “truant” shall refer to a pupil enrolled in grades kindergarten through 12 inclusive who has been absent from school without a valid excuse, as defined in the rules and regulations of the district board of education of the school district in which the pupil is or should be enrolled pursuant to the provisions of Title 14, or in the case of a pupil enrolled in a charter school, by the board of directors of the charter school, for more than 3 days or the equivalent thereof during a given school year.

(41 Del. Laws, c. 98, § 1; 31 Del. C. 1953, § 301; 56 Del. Laws, c. 317, §§ 3, 4; 58 Del. Laws, c. 64, § 1; 60 Del. Laws, c. 449, § 6; 61 Del. Laws, c. 334, § 5; 63 Del. Laws, c. 290, § 9; 64 Del. Laws, c. 108, § 4; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 175, § 14; 74 Del. Laws, c. 376, § 1; 76 Del. Laws, c. 136, §§ 21-23; 76 Del. Laws, c. 373, § 1; 83 Del. Laws, c. 364, § 1.)

§ 302. Intent and purpose of chapter.

The intent and purpose of this chapter are to:

(1) Provide humane and scientific treatment, care and highest attainable degree of individual development for the dependent wards of this State;

(2) Provide for the delinquent such wise conditions of modern education and training as will restore the largest possible portion of such delinquents to useful citizenship;

(3) Promote the study of the causes of dependency and delinquency and of mental and physical disabilities, with a view to cure and ultimate prevention; and

(4) Secure, by uniform and systematic management, the highest attainable degree of economy in the administration of the state institutions under supervision of the Division of Child Protective Services consistent with the objects in view.

(Code 1915, § 1005B; 30 Del. Laws, c. 64; Code 1935, § 1124; 31 Del. C. 1953, § 302; 58 Del. Laws, c. 64, § 1; 64 Del. Laws, c. 108, § 4; 78 Del. Laws, c. 179, § 323.)

§ 303. General powers and duties of Division in respect to children.

In order that the State may more effectively exercise the duty and obligation which it owes to minor children, who for any cause are in need of care and protection, the Division of Child Protective Services may:

(1) Search out through investigation, complaints from citizens, or otherwise, the minor children in the State who are in need of its care and protection and shall as far as possible, through existing agencies, public or private, its own welfare workers or through such other resources, aid such children to a fair opportunity in life;

(2) Make surveys and in other ways ascertain the facts and conditions which cause or contribute to the need for state care and protection of children and the extent of such need;

(3) Present the facts so ascertained to the people through conventions, conferences and addresses to the end that a statewide program may be effected for the elimination and suppression of the causes which bring the necessity for such care;

(4) Establish and maintain homes or other agencies for the care of dependent or neglected minor children or contract with any approved agency or home for the care of such children, receive and care for dependent or neglected children committed to its care and, if possible, to arrange for a thorough physical and mental examination of every such child, investigate in detail the personal and family history of a child and its environment, place such children in family homes or in approved suitable institutions and supervise such children however placed; and

(5) Solicit, obtain and hold gifts, devises and bequests of money, real estate and other things of value to be used in support of the development and carrying on of child welfare work.

(38 Del. Laws, c. 54, §§ 1, 2; Code 1935, § 1130; 31 Del. C. 1953, § 303; 58 Del. Laws, c. 64, § 1; 64 Del. Laws, c. 108, § 4.)

§ 304. Dependent or neglected children deemed wards of State; duty of Division [Repealed].

Repealed by 77 Del. Laws, c. 43, § 11, effective June 16, 2009.

§ 305. Use of other child welfare agencies.

The Division of Child Protective Services may utilize services of other child welfare agencies and allocate and turn over unto such agencies, operating within this State and rendering child welfare services, any portion of funds appropriated for the purposes of this chapter and as may from time to time be deemed necessary, proper and expedient for the supervision, care, custody, board and placement of dependent and neglected children. If in the judgment of the Division such payments are necessary, proper and expedient for the care of the child, these allocations and payments may be continued to the said agency for children who were dependent or neglected, but who have been legally adopted.

(41 Del. Laws, c. 98, § 3; 31 Del. C. 1953, § 305; 58 Del. Laws, c. 64, §§ 1, 3; 64 Del. Laws, c. 108, § 4.)

§ 306. Binding minors prohibited.

No court, organization, institution, individual or corporation may bind any minor to any organization, institution, individual or corporation in any manner whatsoever.

Nothing contained in this section shall in any manner interfere with the power and authority of any court to commit any minor to the custody and care of any organization, institution, individual or corporation.

(Code 1852, § 1501; Code 1915, § 3101; 32 Del. Laws, c. 185; Code 1935, § 3591; 31 Del. C. 1953, § 306.)

§ 307. Bringing or sending nonresident children into State regulated; penalty.

(a) No person or corporation of this State or any child placement agency or association operating within this State or any bureau, board or commission of this State or any person, institution, agency, association, corporation, bureau, board or commission without this State shall bring or send into this State or in any way assist in the bringing or sending into this State of any dependent child who is a resident of another state, United States territory or country for the purpose of placing or procuring placement of such child in any way free, wage or boarding home or for adoption without the written consent of the Department of Services for Children, Youth and Their Families having first been obtained, and such person, agency, institution, association, corporation, board or commission shall abide by all rules laid down by the Department of Services for Children, Youth and Their Families.

(b) Whoever violates subsection (a) of this section shall be fined not more than $100; and

Whoever continues to so violate for a period of 10 days after notification from the Department of Services for Children, Youth and Their Families shall be guilty of a new, separate and distinct offense and shall be fined for each offense not less than $100 nor more than $1,000.

(Code 1915, §§ 1005E, 1005G; 32 Del. Laws, c. 50; 38 Del. Laws, c. 64, §§ 2, 5; Code 1935, §§ 1126, 1129; 41 Del. Laws, c. 97, § 1; 31 Del. C. 1953, § 307; 50 Del. Laws, c. 187, § 1; 58 Del. Laws, c. 64, § 1; 64 Del. Laws, c. 108, § 4; 68 Del. Laws, c. 380, § 1; 70 Del. Laws, c. 223, § 1.)

§ 308. Vaccinations.

Every person who is unable to pay for vaccination and every child whose parents or guardians are unable to pay for the same, not residing in the City of Wilmington, may be vaccinated by any physician or physicians who may be designated for that purpose by the Division of Child Protective Services.

For each person or child so vaccinated, the physician or physicians shall be paid by the Division of Child Protective Services the sum of 50 cents.

Every such physician shall give a certificate of vaccination to the person or child so applying.

(17 Del. Laws, c. 68, § 4; Code 1915, § 768; 37 Del. Laws, c. 189, § 15; Code 1935, § 774; 31 Del. C. 1953, § 308; 58 Del. Laws, c. 64, § 1; 64 Del. Laws, c. 108, § 4.)

§ 309. Background checks for child-serving entities and other organizations.

(a) A background check for employees or volunteers of child-serving entities and members of school boards shall consist of a fingerprinted Delaware and national background check completed by the State Bureau of Identification (SBI) and the Federal Bureau of Investigation (FBI) as well as a Child Protection Registry check completed by the Department of Services for Children, Youth and Their Families (DSCYF).

(b) *Definitions.* — For purposes of this section:

(1) "Administrator of educator preparation program" means the individual identified by the higher education institution as being responsible for overseeing the placement of candidates into student teaching placements in a Delaware public school.

(2) "Adult who is impaired" shall have the meaning as defined in § 3902 of this title.

(3) "Child Protection Registry" as used in this section, shall have the meaning as defined in § 921 of Title 16.

(4) “Child-serving entity” means:

a. The DSCYF, which includes any employee or volunteer of DSCYF or 1 of its contractors who have regular direct access to children or adolescents under the age of 18, but who do not provide child-care services at a facility under paragraph (b)(4)b. of this section.

b. Residential child-care facilities in Delaware which are under contract with or operated directly by DSCYF.

c. Public schools and the Department of Education.

d. Child-care facilities required to be licensed under Chapter 30A of Title 14. The requirements of this section are in addition to, and not a substitute for, any other requirements relating to child-care facilities that exist in federal or state law.

e. Youth camps or summer schools that are exempt from child-care licensing requirements.

f. Facilities and individuals registered and eligible for Federal Child Care Development Block Grant funds through the Delaware Department of Health and Social Services.

g. Early intervention service providers as defined under § 3103A of Title 14.

(5) “Contractor” means a person, not an employee, providing services or seeking a contract to provide services within a child-serving entity and any of the following apply to the person:

a. Has regular direct access to children.

b. Provides services directly to a child or children.

(6) “Conviction” or “convicted” shall have the same meaning as defined in § 902 of Title 16.

(7) “Direct access” means the opportunity to have personal, unsupervised contact with persons receiving care or education during the course of one’s assigned duties.

(8) “Elderly person” shall have the meaning as defined in § 222 of Title 11.

(9) “Employee” means any person seeking employment for compensation with a child-serving entity, or any person who for any reason has regular direct access to children at a child-serving entity. This definition shall also include applicants wishing to become adoptive, foster, or respite parents and their adult household members and any person seeking a student teaching placement in a public school.

(10) “Felony convictions involving physical or sexual assault crimes” shall include: §§ 604-607, 612-613, 626, 629-636, 645, 651, 768-780, 782-783A, 785, 787, 802, 803,1100A-1102, 1103A-1103D, 1105, 1108-1112B of Title 11, felony convictions of § 1103E of Title 11, felony convictions of § 1136 of Title 16, and felony convictions of § 3913(c) of Title 31.

(11) “Higher education institution” means a Delaware college or university that has a teacher preparation program that places candidates into student teaching placements in a Delaware public school.

(12) “Member of a school board” means a candidate, prospective, or current member of the State Board of Education, or the board of a public school district, vocational-technical school district, or charter school.

(13) “Misdemeanor convictions against children” shall include: §§ 601-603, 611, 621, 625-628A,763, 764, 765, 766, 767, 781, 785, 1102, 1103, 1106, 1107 of Title 11, misdemeanor convictions of § 1103E of Title 11, and misdemeanor convictions of § 1136 of Title 16.

(14) “Public school” means any public school and includes any board of education, school district, reorganized school district, special school district, charter school or charter school board and any person acting as an agent thereof.

(15) “Student teacher” means an individual participating in a student teaching placement.

(16) “Student teaching placement” means a structured, supervised classroom teaching, internship, clinical or field experience in a teacher education program in which the student teacher practices the skills being learned in the teacher education program and gradually assumes increased responsibility for instruction, classroom management, and other related duties for a class of students in a local school district or charter school. These skills are practiced under the direct supervision of the certified teacher who has official responsibility for the class. Successful completion of a student teaching placement may be used to meet the requirements for an initial license set forth in § 1210 of Title 14.

(17) “Volunteer” means a person providing volunteer services within a child-serving entity and who has regular direct access to children.

(18) “Youth camp” means a child-serving entity having custody or control of 1 or more school-age children, unattended by parent or guardian, for the purpose of providing a program of recreational, athletic, educational and/or religious instruction or guidance and operates for up to 12 weeks for 3 or more hours per day, during the months of May through September or some portion thereof, or during holiday breaks in the course of a school year and is operated in a space or at a location other than a space or location subject to licensing under Chapter 30A of Title 14.

(c) All child-serving entities are required to obtain criminal and Child Protection Registry checks for prospective employees, volunteers, and contractors. Members of school boards must obtain criminal and Child Protection Registry checks under § 209 or § 511 of Title 14.

(1) The SBI shall furnish information pertaining to the identification and criminal history record of prospective employees, volunteers, and contractors of child-serving entities, and members of school boards, except as otherwise allowed or required, provided that the prospective board member, employee, volunteer, or contractor submits to a reasonable procedure established by standards set forth by

the Superintendent of State Police to identify the person whose record is sought. This procedure must include the fingerprinting of the individual subject to a criminal background check and the provision of such other information as may be necessary to obtain a report of the individual's entire criminal history record from SBI and a report of the individual's entire federal criminal history record under the FBI appropriation of Title II of Public Law 92-544. Notwithstanding any provision to the contrary, the information to be furnished by SBI shall include child sex abuser information. The Division of State Police shall be the intermediary for purposes of this section.

(2) Any person who is required to request a Child Protection Registry check under this section shall obtain a statement signed by the prospective board member, employee, volunteer, or contractor wherein the individual authorizes a full release for the person to obtain the information provided as a result of a check. The DSCYF will process a Child Protection Registry check of the individual upon receipt of the signed statement which shall be attached to the request from the person for the Child Protection Registry check.

(3), (4) [Repealed.]

(5) Costs associated with obtaining criminal history information and Child Protection Registry information are borne by the applicant, except as follows:

a. Public schools may use funds other than state funds to pay for criminal background check costs and may enter into consortia of school districts to pay such costs for persons covered by this section who work in more than 1 school district during the course of a year.

b. A candidate for election to a school board may use campaign funds to pay for background check costs under § 1075 of Title 14.

c. The Department of Education and DSCYF may pay for background check costs for prospective or current employees.

d. The State shall bear the costs of background checks for applicants to child-care facilities required to be licensed under Chapter 30A of Title 14.

(6) All employees, volunteers, and contractors shall inform their employer of any criminal conviction or entry on the Child Protection Registry which would lead to a prohibition under subsection (d) of this section.

(7) Child-serving entities may conditionally hire an employee or volunteer or place a child, pending the determination of suitability for employment. If the information obtained from the background checks indicates that the individual is prohibited from employment pursuant to subsection (d) of this section, the person may not continue in employment and is subject to termination.

(8) Any persons or organization whose primary concern is that of child welfare and care, which is not otherwise required to do so under the provisions of this section may voluntarily submit to the provisions of this subchapter at such person's or organization's expense pursuant to procedures established by the Superintendent of State Police.

(9) The Superintendent of State Police may promulgate regulations governing the circumstances under which a background check may be re-used upon written authorization of the individual upon whom a background check was conducted. The regulations permitting re-use must be limited in scope and address the relationship between the original purpose for which the background check was requested, the agency or agencies requesting re-use, the type of license, position of employment, or benefit upon which re-use is predicated and the application process.

(d) *Prohibitions.* — (1) The following criminal convictions or entries on the Child Protection Registry shall prohibit an individual from being an employee, volunteer, or contractor for a child-serving entity for the amount of time indicated:

a. Felony convictions involving physical or sexual assault crimes against a child, an adult who is impaired, or elderly person. Such convictions shall require a lifetime prohibition.

b. Felony convictions involving physical or sexual assault crimes against another adult. Such prohibition shall last for 10 years following the date of conviction.

c. Any other convictions for a violent felony as defined in § 4201(c) of Title 11 not already included within the convictions subject to a lifetime or 10 year prohibition under paragraphs (d)(1)a. and b. of this section shall prohibit the individual for 7 years following the date of conviction, unless the felony is included within the crimes that can lead to entry on the Child Protection Registry pursuant to § 923 of Title 16, in which case the length of time for the prohibition shall be as provided in the Child Protection Registry regulations.

d. Misdemeanor convictions against children. Such prohibitions shall last for 7 years following the date of conviction, unless the misdemeanor is included within the crimes that can lead to entry on the Child Protection Registry pursuant to § 923 of Title 16, in which case the length of time for the prohibition shall be as provided for in the Child Protection Registry regulations.

(2) If an individual has more than 1 prohibition, the higher level prohibition shall apply.

(3) For any other criminal conviction that does not prohibit employment according to paragraph (d)(1) of this section, the child-serving entity may set forth job-related prohibitions for employees, contractors, and volunteers considering number and types of offenses, their recency, the individual's criminal record since the offenses, and the responsibilities of the position which the individual has obtained or is seeking to obtain, provided that such prohibitions are not otherwise prohibited by law.

(4) The child-serving entity may prohibit employment for longer than that set out in paragraph (d)(1) of this section for those crimes that are prohibited and are job-related. The prohibition must not be shorter than the time proscribed in paragraph (d)(1) of this section, provided such time restrictions are not otherwise prohibited by law.

(e) Upon completion of the criminal background and Child Protection Registry checks:

(1) Where the child-serving entity is a public school, a contractor with a school district or the Department of Education, or an employee of a contractor who is an early intervention service provider:

a. 1. The SBI shall provide the criminal background information and DSCYF shall provide the Child Protection Registry check information to the individual and the employer or prospective employer.

2. The school, school district, Department of Education, or employing contractor shall determine whether the individual is prohibited from being employed by or contracting with the school, school district, or contractor under subsection (d) of this section. If the individual is not prohibited from employment by subsection (d) of this section but the individual has a criminal conviction or is on the Child Protection Registry, the school or district shall make a determination regarding suitability for employment or contracting using the factors in paragraph (d)(3) of this section.

3. Information obtained under this subsection is confidential and may only be disclosed to any of the following, as applicable:

A. The chief school officer.

B. The head of school.

C. The employing contractor.

D. The chief personnel officer of the school or school district.

E. One person in each school or school district who is designated to assist in the processing of criminal background checks, receive training in confidentiality, and is required to sign an agreement to keep such information confidential.

F. The Secretary of Education, or the Secretary's designee.

b. Upon making its determination of suitability, the public school, contractor, or Department of Education shall forward the determination to the person seeking employment or a contract. If a determination is made to deny the person employment or a contract with a school or the Department of Education based on the criminal history of the person, the person shall have an opportunity to appeal to the chief school officer, head of school, Secretary of Education, or designee for reconsideration.

c. In the case of a student teacher:

1. The SBI shall provide the criminal background information and DSCYF shall provide the Child Protection Registry check information to the individual and to the Higher Education Institution identified by the individual, through the Administrator of Educator Preparation Program. The Higher Education Institution shall determine whether the individual is prohibited from being employed pursuant to subsection (d) of this section and shall send a copy of the complete criminal background check and Child Protection Registry check information to the district superintendent or charter school director of the Delaware school district or charter school considering the person as a candidate for a student teaching position. If the individual is not prohibited from employment by subsection (d) of this section but the individual has a criminal conviction or is or has been on the Child Protection Registry, the school or district shall make a determination regarding suitability for employment using the factors in paragraph (d)(3) of this section. Information obtained under this subsection is confidential and may only be disclosed to the chief school officer or head of school and the chief personnel officer of the school, and 1 person in each school who shall be designated to assist in the processing of criminal background checks, receive training in confidentiality and be required to sign an agreement to keep such information confidential.

2. Upon making its determination of suitability, the public school shall forward the determination to the administrator of educator preparation program of the designated higher education institution.

d. [Repealed.]

(2) Where the child-serving entity is DSCYF, a residential child-care facility under contract to or operated directly by DSCYF, or where the individual is applying to become an adoptive, foster or respite parent, SBI shall provide the criminal background information to DSCYF and DSCYF shall perform the Child Protection Registry check. DSCYF shall determine whether or not the individual is prohibited based on the results of the criminal background and Child Protection Registry checks. DSCYF may, by regulation, set forth criteria for unsuitability for its employees, contractors, volunteers, residential child-care employees, individuals applying to become an adoptive, foster or respite parent. These criteria shall relate to criminal history information and other information in addition to that set forth above. Such criteria and information shall be reasonably related to the prevention of child abuse. Upon making its determination, the DSCYF shall forward the determination to the applicant and the employer. Any adverse judgment affecting the applicant may be reviewed subject to regulations promulgated by DSCYF. The State Bureau of Identification may release all subsequent criminal history to DSCYF.

(3) Where the child-serving entity is a child-care provider, facility receiving Federal Child Care Development Block Grant funds, or a Youth Camp, SBI shall provide the criminal background information to DSCYF, and DSCYF shall perform the Child Protection Registry check. DSCYF shall determine whether or not the individual is prohibited by subsection (d) of this section based on the results of the criminal background and Child Protection Registry checks. If the applicant has a criminal conviction or is on the Child Protection Registry but is not prohibited from employment pursuant to paragraph (d)(1) of this section, DSCYF will assess the background check information and make a determination of suitability based upon factors set forth by DSCYF regulation consistent with paragraph (d)(3) of this section. If an applicant is determined unsuitable by DSCYF, the employer shall be informed. The employer shall make the final determination of whether or not to employ the individual. Notwithstanding the above, if the employer is a family child-care

provider, DSCYF shall make the final decision based on the criteria established by regulations. If an applicant is determined unsuitable by DSCYF, the applicant and employer shall be informed. Any adverse judgment affecting the applicant shall be reviewed subject to regulations promulgated by the DSCYF. SBI may release all subsequent criminal history to DSCYF.

(4) [Repealed.]

(5) a. When the background checks are for a member of a school board, the SBI shall provide the criminal background information and DSCYF shall provide the Child Protection Registry check information pertaining to members and prospective members within 15 days of a request under subsection (c) of this section as follows:

1. To the Governor, for an individual seeking appointment to or serving on the State Board of Education or a vocational-technical school district.

2. To the Commissioner of Elections, for an individual seeking to be a candidate for election to a school board or seeking to be appointed to fill a vacancy on a school board until the next school board election.

3. To the superintendent of a school district, for an individual serving as a member of the school district board.

4. To the board of a charter school, for an individual seeking to serve or serving on the charter school board.

b. Information provided under paragraph (e)(5)a. of this section is confidential and is not a public record under Chapter 100 of Title 29.

(6) The SBI and DELJIS shall provide all subsequent Delaware criminal history of any current employee or contractor subject to a background check under this section to the entity designated to receive the original criminal history information under paragraphs (e)(1) through (5) of this section. If the "Rap Back System" as defined by § 8502 of Title 11 is available to SBI, SBI shall provide all subsequent criminal history record information available through the Rap Back System for a current employee or contractor subject to a background check under this section to the entity designated to receive the original criminal history information under paragraphs (e)(1) through (5) of this section.

(f) The DSCYF shall, in the manner provided by law, promulgate regulations necessary to implement this section.

(g) The Department of Education shall, in the manner provided by law, promulgate regulations necessary to implement this section. These regulations shall include all of the following:

(1) Establishment, in conjunction with SBI, of a procedure for fingerprinting persons seeking employment with a public school or as an early intervention service provider and providing the reports and certificate obtained under subsection (c) of this section.

(2) Establishment of a procedure to provide confidentiality of information obtained under subsection (c) of this section.

(3) Establishment of a procedure for determining other job-related prohibitions for employees, volunteers, and contractors, under paragraph (d)(3) of this section.

(67 Del. Laws, c. 409, § 1; 79 Del. Laws, c. 290, § 202; 80 Del. Laws, c. 154, § 1; 80 Del. Laws, c. 211, §§ 1, 2; 81 Del. Laws, c. 433, § 1; 82 Del. Laws, c. 184, §§ 2, 3; 83 Del. Laws, c. 187, § 7; 83 Del. Laws, c. 213, § 8; 84 Del. Laws, c. 126, § 14; 84 Del. Laws, c. 205, § 1; 85 Del. Laws, c. 185, § 2; 85 Del. Laws, c. 197, § 1.)

§ 310. Breast-feeding.

Notwithstanding any provisions of law to the contrary, a mother shall be entitled to breast-feed her child in any location of a place of public accommodation wherein the mother is otherwise permitted.

(71 Del. Laws, c. 10, § 1; 70 Del. Laws, c. 186, § 1.)

§ 311. Penalties regarding background checks for child-serving entities and personal information disclosure [For application of this section, see 85 Del. Laws, c. 186, § 8].

(a) Any child-serving entity which fails to comply with the requirements of § 309 of this title, shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of Title 11. The Court of Common Pleas shall have exclusive jurisdiction for any offense under this subsection. Notwithstanding any provision of the law to the contrary, if the misdemeanor offense may be joined properly with a felony, such offense shall be within the jurisdiction of the Superior Court.

(b) Any child-serving entity which fails to comply with the requirements of § 309 of this title shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(c) Any person seeking employment with a child-serving entity or any person seeking a license or permit under Chapter 12 of Title 14 who knowingly provides false, incomplete or inaccurate criminal history information, Child Protection Registry information, or child sex abuser information or who otherwise knowingly violates § 309 of this title shall be guilty of a class G felony and shall be punished according to Chapter 42 of Title 11. The Superior Court shall have exclusive jurisdiction for any offense under this subsection.

(d) The failure of an individual to disclose any relevant criminal history or Child Protection Registry information shall be grounds for immediate termination or for removal of a placement.

(e) Sanctions shall be promulgated via DSCYF regulation for employees, volunteers, or contractors who fail to inform their employer of any criminal conviction or entrance on the Child Protection Registry and for employers who wilfully hire or retain individuals in violation of this section or in violation of the regulations promulgated hereunder.

(80 Del. Laws, c. 154, § 1; 85 Del. Laws, c. 186, § 6.)

§ 312. Background checks for private schools.

(a) A background check is required for all employees, contractors, and volunteers of private schools. The prohibitions set forth in § 309(d) of this title apply to employees, contractors, and volunteers of private schools.

(b) For purposes of this section:

(1) "Background check" means a fingerprint-based Delaware and national background check completed by the State Bureau of Identification (SBI) and the Federal Bureau of Investigation (FBI) as well as a Child Protection Registry check completed by the Department of Services for Children, Youth and Their Families (DSCYF).

(2) "Child Protection Registry" means as defined in § 309 of this title.

(3) "Contractor" means a person, not an employee, providing services or seeking a contract to provide services within a private school who has regular direct access to children or provides services directly to a child or children.

(4) "Direct access" means as defined in § 309 of this title.

(5) "Employee" means any individual employed or seeking employment for compensation with a private school and includes student teachers or any employee of the school or an employee of a related or parent organization of the private school who for any reason has regular direct access to children in a private school.

(6) "Private school" means a school having any or all of grades kindergarten through 12, operating under a board of trustees, which is not a "public school" as that term is defined in § 309 of this title. "Private school" includes a summer school operated by a private school and a youth camp directly operated by a private school.

(7) "Volunteer" means an individual providing volunteer services within a private school who has regular direct access to children.

(8) "Youth camp" means as defined in § 309 of this title.

(c) (1) SBI shall furnish information pertaining to the identification and criminal history record of prospective employees, volunteers, and contractors of private schools, except as otherwise allowed or required, provided that the prospective employee, volunteer, or contractor submits to a reasonable procedure established by standards set forth by the Superintendent of State Police to identify the person whose record is sought. This procedure must include the fingerprinting of the individual subject to a criminal background check and the provision of such other information as may be necessary to obtain a report of the individual's entire criminal history record from SBI and a report of the individual's entire federal criminal history record under the authorization of the Adam Walsh Child Protection and Safety Act [34 U.S.C. § 20901 et seq.] or any other applicable federal law. Notwithstanding any provision to the contrary, the information to be furnished by SBI shall include child sex abuser information. The Division of State Police shall be the intermediary for purposes of this section.

(2) A private school must obtain a statement signed by a prospective employee, contractor, or volunteer that authorizes a full release to the private school to obtain information provided as a result of the Child Protection Registry check. The DSCYF will process a Child Protection Registry check of the individual upon receipt of the signed statement, which must be attached to the request from the private school for the Child Protection Registry check.

(d) (1) Upon completion of a criminal background and Child Protection Registry check the SBI shall provide the criminal history background check and DSCYF shall provide the Child Protection Registry check information to the head of the private school or the head of school's designee. The private school shall determine whether the individual is prohibited from employment, contractual services, or volunteering at the private school according to the prohibitions set forth in § 309(d) of this title.

(2) Criminal history and Child Protection Registry check information is confidential and may only be disclosed to the private school's head of school or the head of school's designee.

(85 Del. Laws, c. 197, § 2.)

Subchapter II

Maternal and Child Death Review Commission

§ 320. Declaration of legislative intent; definitions.

(a) The General Assembly hereby declares that the health and safety of the children and pregnant and postpartum persons of the State will be safeguarded if deaths of children under the age of 18 and stillbirths occurring after at least 20 weeks of gestation and maternal death are reviewed, in order to provide its findings or recommendations to alleviate those practices or conditions which impact the mortality of children and pregnant and postpartum persons.

(b) For the purposes of this subchapter:

(1) "Commission" means the Maternal and Child Death Review Commission.

(2) "Stillbirth" means as defined in § 3101 of Title 16.

(70 Del. Laws, c. 256, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 331, §§ 2, 3; 74 Del. Laws, c. 376, § 3; 75 Del. Laws, c. 269, § 1; 76 Del. Laws, c. 373, § 2; 80 Del. Laws, c. 187, § 17; 81 Del. Laws, c. 142, § 1; 83 Del. Laws, c. 364, § 2.)

§ 321. Organization and composition.

(a) The Maternal and Child Death Review Commission is hereby established.

(b) The following are members of the Commission: The State Attorney General, the Secretary of the Department of Services to Children, Youth and Their Families, the person appointed as the Child Advocate pursuant to § 9003A of Title 29, the Secretary of Education, the Division of Forensic Sciences' Chief Medical Examiner, the Director of the Division of Public Health, the Director of the Division of Medicaid and Medical Assistance, the Director of the Division of Substance Abuse and Mental Health, and the Superintendent of the Delaware State Police, or the designee of any of the preceding persons. Additionally, the following shall be appointed by the Governor as members of the Commission:

(1) A representative of the Medical Society of Delaware specializing in each of pediatrics, neonatology, obstetrics, and perinatology.

(2) A representative of the Delaware Nurses Association.

(3) A licensed mental health professional.

(4) A representative of the Police Chiefs' Council of Delaware who is an active law-enforcement officer.

(5) A representative of the New Castle County Police Department.

(6) One maternal and 1 child advocate from statewide nonprofit organizations.

(7) An individual who is a certified midwife or certified professional midwife.

A Chairperson of each regional child death review panel, each maternal death panel, and each Fetal and Infant Mortality Review Case Review Team established pursuant to subsections (f) and (g) of this section shall also serve as members of the Commission. The term of members appointed by the Governor shall be 3 years and shall terminate upon the Governor's appointment of a new member to the Commission. In making appointments to the Commission, the Governor shall consider representation on the panel of Black, Indigenous, and other persons of color in the membership. The members of the Commission, regional panels, Case Review Teams, and Community Action Teams shall serve without compensation. The Commission shall be staffed, and its staff shall include an Executive Director. The Executive Director shall be hired and supervised by the executive committee of the Commission. The General Assembly may annually appropriate such sums as it may deem necessary for the payment of the salary of the Executive Director and the staff, and for the payment of actual expenses incurred by the Commission.

(c) The Commission shall, by affirmative vote of a majority of all members of the Commission, appoint a chairperson from its membership for a term of 1 year. The Commission shall meet at least semi-annually.

(d) (1) Meetings of the Commission, regional panels, Case Review Teams, and Community Action Teams are closed to the public.

(2) The Commission shall meet at least annually with the Child Protection Accountability Commission to jointly discuss any findings or recommendations released to the public from reviews conducted under § 932 of Title 16, and this meeting is open to the public.

(3) The Commission shall meet at least annually with the Delaware Perinatal Quality Collaborative at 1 of its 2 public meetings to jointly discuss any findings and recommendations released to the public from reviews conducted under § 323 of this title and this meeting is open to the public.

(e) The Commission shall by resolution passed by a majority of its members establish at least 1 but no more than 3 regional panels authorized to review child deaths. For good cause shown to the Commission, any panel may investigate and review any death or stillbirth entitled to review by the Commission. Members of the Commission shall appoint representatives to each regional panel such that the regional panel reflects the disciplines of the Commission. The members of such panel, together with any staff, contractors, or volunteers designated to assist the panel, are agents of the Commission under § 324 of this title. The Commission shall also appoint to each regional panel all of the following:

(1) A representative from each of the 3 police departments that investigate the majority of child deaths in the region covered by the panel.

(2) A citizen of the region interested in child death and stillbirth issues.

(f) The Commission shall by resolution passed by a majority of its members establish Fetal and Infant Mortality Review Case Review Teams and Community Action Teams based on the National Fetal and Infant Mortality Review Program model.

(g) Each regional panel and the Fetal and Infant Mortality Review Case Review Teams shall have the powers, duties, and authority of the Commission as delegated by the Commission. Each regional panel and Fetal and Infant Mortality Review Case Review Team shall, by affirmative vote of a majority of all members of that regional panel or team, appoint co-chairpersons from its membership for a term of 1 year.

(h) The Commission shall by resolution passed by a majority of its members establish 1 regional panel authorized to review maternal deaths. The panel shall include a citizen interested in maternal mortality issues.

(70 Del. Laws, c. 256, § 1; 72 Del. Laws, c. 327, § 1; 73 Del. Laws, c. 65, § 43; 73 Del. Laws, c. 331, §§ 4, 5; 74 Del. Laws, c. 376, §§ 4-7, 14; 75 Del. Laws, c. 269, §§ 2-6; 76 Del. Laws, c. 373, §§ 3, 4; 80 Del. Laws, c. 187, § 18; 81 Del. Laws, c. 142, § 2; 83 Del. Laws, c. 364, § 2.)

§ 322. Voting.

Except as expressly provided in this subchapter, an affirmative vote of 60% of all members of the Commission, any regional panel, Case Review Team or Community Action Team is required to adopt any findings or recommendations of the Commission or such regional panel or team.

(70 Del. Laws, c. 256, § 1; 75 Del. Laws, c. 269, § 7; 81 Del. Laws, c. 142, § 3; 83 Del. Laws, c. 364, § 2.)

§ 323. Powers and duties.

(a) The Commission shall have the power to investigate and review the facts and circumstances of all deaths of children under the age of 18 solely for the purposes provided in § 320 of this title, except deaths of abused or neglected children which are within the jurisdiction of the Child Protection Accountability Commission under subchapter III, Chapter 9 of Title 16, all stillbirths, and all maternal deaths which occur in Delaware. The Commission may review deaths of abused or neglected children, for good cause shown, as determined by the agreement of the Commission and the Child Protection Accountability Commission. The Commission may delegate tasks to its committees, workgroups, and panels as necessary to accomplish its duties. The Commission shall delay the review of deaths involving criminal investigations until the completion of the prosecution. For purposes of this subsection, "completion of the prosecution" means the decision to file no information or seek no indictment, conviction or adjudication, acquittal, dismissal of an information or indictment by a court, the conditional dismissal under a program established by Delaware law or court program, or the nolle prosequi of an information or indictment by the Attorney General.

(b) (1) The Commission shall make its findings or recommendations to the Governor and the General Assembly, at least annually, regarding those practices or conditions which impact the mortality of children and pregnant and postpartum persons.

(2) The Commission shall publicly post its findings and recommendations and invite and accept written public comment. The Commission shall hold a statewide meeting to present findings and recommendations and accept public comment.

(3) All summary information, findings, or recommendations shall include aggregated data by race and ethnicity and include recommendations on how to prevent maternal and infant death and how to reduce racial disparities.

(4) All summary information, findings, or recommendations released by the Commission under this subsection must comply with applicable state and federal confidentiality provisions, including those enumerated in §§ 324 of this title and 9017(e) of Title 29. Notwithstanding any provision of this subchapter to the contrary, a summary information, finding, or recommendation released by the Commission under this subsection may not specifically identify any individual or any nongovernmental agency, organization, or entity.

(c) The Commission shall conduct child death reviews according to procedures promulgated by the Commission. The Commission shall conduct maternal death reviews which utilize a public health model and shall include information gathered through a clinical review and summary of medical and other subpoenaed records. The Commission may amend such procedures upon an affirmative vote of ¾ of all members of the Commission.

(d) The Commission is a "public health authority" and a "health oversight agency," and shall be recognized as such in the performance of its functions.

(e) The Commission shall conduct fetal and infant mortality reviews and facilitate the implementation of recommendations based on the National Fetal and Infant Mortality Review Program model. Utilizing a public health model, the reviews must include information gathered through a clinical review and summary of medical and all other subpoenaed records, and maternal interviews. The Commission may amend such procedures upon an affirmative vote of ¾all members of the Commission.

(f) (1) In connection with any review, the Commission, by and through its staff, a committee, or a panel, shall have the power and authority to do all of the following:

a. Administer oaths.

b. Issue subpoenas to compel the attendance of witnesses whose testimony is related to the death or stillbirth under review.

c. Issue subpoenas to compel the production of records related to the death or stillbirth under review.

(2) A subpoena issued under paragraphs (d)(1)a. through c. of this section may be enforced or challenged only in the Family Court.

(3) All proceedings before the Family Court and all records of such proceedings conducted under paragraph (d)(2) of this section are private.

(4) In a proceeding under paragraph (d)(2) of this section, the Family Court may impose reasonable restrictions, conditions, or limitations on the access to proceedings and records of proceedings to preserve the confidentiality set forth in § 324 of this title.

(g), (h) [Repealed.]

(i) The Commission shall coordinate with the Child Protection Accountability Commission to receive statistics and other necessary information from the Child Protection Accountability Commission related to the Child Protection Accountability Commission's investigation and review of deaths of abused or neglected children.

(j) The Commission shall adopt rules or regulations for the administration of its duties or this chapter, as it deems necessary.

(70 Del. Laws, c. 256, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 331, §§ 6, 7; 73 Del. Laws, c. 386, §§ 1, 2, 6; 74 Del. Laws, c. 376, §§ 8-11; 75 Del. Laws, c. 269, §§ 8-10; 76 Del. Laws, c. 373, §§ 5-10; 78 Del. Laws, c. 137, § 14; 80 Del. Laws, c. 187, § 19; 81 Del. Laws, c. 142, § 4; 83 Del. Laws, c. 364, § 2.)

§ 324. Confidentiality of records and immunity from suit.

(a) The records of the Commission and of all committees, regional panels, Fetal and Infant Mortality Review Case Review Teams, and Community Action Teams, contractors, and volunteers, including original documents and documents produced in the review process with regard to the facts and circumstances of each death or stillbirth, are confidential and may not be released to any person except as expressly provided in subchapter II of this chapter. Such records must be used by the Commission, committees, and any regional panel or

team, and its staff, contractors, and volunteers, only in the exercise of the proper function of the Commission, regional panel, or team and are not public records. Such records, together with the summary information, findings, and recommendations therefrom are not available for court subpoena or subject to discovery, are not admissible into evidence or otherwise in any civil, criminal, administrative, or judicial proceeding, and are not considered binding under claim or issue preclusion doctrines. Except where constitutional provisions require otherwise, statements, records, or information are not subject to any statute or rule that would require those statements to be disclosed in the course of a civil, criminal, or administrative trial, or associated discovery. Aggregate statistical data compiled by the Commission, regional panels, or teams, however, may be released at the discretion of the Commission or regional panels.

(b) Members of the Commission, regional panels, Case Review Teams, and Community Action Teams, and their agents or employees, including committee members, contractors, and volunteers are not subject to, and are immune from, claims, suits, liability, damages, or any other recourse, civil or criminal, arising from or relating to any act, omission, proceeding, decision, determination, finding, or recommendation made in the performance of their duties under § 323 of this title, provided such persons acted in good faith and without malice in carrying out their responsibilities, authority, duties, powers, and privileges of the offices conferred by this law upon them or by any other provisions of the Delaware law, federal law, or regulations, or duly adopted rules and regulations of the Commission or its regional panels or teams. Complainants bear the burden of proving malice or a lack of good faith to defeat the immunity provided by this subsection.

(c) A person in attendance at a meeting of the Commission, or any of its committees, regional panels, Case Review Teams, or Community Action Teams may not be required to testify as to what transpired at such meeting in any forum including any civil, criminal, administrative, or judicial proceeding. An organization, institution, or person furnishing information, data, reports, or records to the Commission or any regional panel or team with respect to any subject examined or treated by such organization, institution, or person, by reason of furnishing such information, is not liable in damages to any person or subject to any other recourse, civil or criminal.

(70 Del. Laws, c. 256, § 1; 73 Del. Laws, c. 386, §§ 3, 4; 74 Del. Laws, c. 376, § 12; 75 Del. Laws, c. 269, §§ 11-13; 80 Del. Laws, c. 187, § 20; 81 Del. Laws, c. 142, § 5.)

Subchapter III
The Delaware Child Care Act

§ 341. Short title [Repealed].

(73 Del. Laws, c. 165, § 1; repealed by 82 Del. Laws, c. 184, § 2, effective July 1, 2020.)

§ 342. Definitions [Repealed].

(Code 1915, § 1004A; 30 Del. Laws, c. 64; 38 Del. Laws, c. 63, § 3; Code 1935, § 1119; 31 Del. C. 1953, § 341; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 165, § 1; 73 Del. Laws, c. 279, § 1; 79 Del. Laws, c. 335, § 1; repealed by 82 Del. Laws, c. 184, § 2, effective July 1, 2020.)

§ 343. Powers of the Office of Child Care Licensing with respect to child care [Repealed].

(Code 1915, § 1004A; 30 Del. Laws, c. 64; 38 Del. Laws, c. 63, § 3; Code 1935, § 1119; 44 Del. Laws, c. 78; 31 Del. C. 1953, § 342; 58 Del. Laws, c. 64, § 1; 64 Del. Laws, c. 108, § 4; 73 Del. Laws, c. 165, § 1; 81 Del. Laws, c. 369, § 1; repealed by 82 Del. Laws, c. 184, § 2, effective July 1, 2020.)

§ 344. Child care licenses; investigation; requirements; notice; hearings and appeals [Repealed].

(Code 1915, § 1004A; 30 Del. Laws, c. 64; 38 Del. Laws, c. 63, § 3; Code 1935, § 1119; 31 Del. C. 1953, § 343; 58 Del. Laws, c. 64, § 1; 64 Del. Laws, c. 108, § 4; 73 Del. Laws, c. 165, § 1; 79 Del. Laws, c. 335, § 2; repealed by 82 Del. Laws, c. 184, § 2, effective July 1, 2020.)

§ 345. Penalties for violations [Repealed].

(Code 1915, § 1004A; 30 Del. Laws, c. 64; 38 Del. Laws, c. 63, § 3; Code 1935, § 1119; 31 Del. C. 1953, § 344; 73 Del. Laws, c. 165, § 1; 80 Del. Laws, c. 125, § 1; repealed by 82 Del. Laws, c. 184, § 2, effective July 1, 2020.)

§ 346. Provider Advisory Board; appointments; composition; terms; vacancies [Repealed].

(78 Del. Laws, c. 146, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 365, § 1; repealed by 82 Del. Laws, c. 184, § 2, effective July 1, 2020.)

§ 347. Provider Advisory Board; powers and duties [Repealed].

(78 Del. Laws, c. 146, § 1; 82 Del. Laws, c. 177, § 1; repealed by 82 Del. Laws, c. 184, § 2, effective July 1, 2020.)

Subchapter IV
Placement of Dependent Children

§ 351. DSCYF assessment required; exceptions [Repealed].

(Code 1915, § 1005D; 32 Del. Laws, c. 50; 38 Del. Laws, c. 64, § 1; Code 1935, § 1125; 31 Del. C. 1953, § 351; 58 Del. Laws, c. 64, § 1; 64 Del. Laws, c. 108, § 4; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 77, § 2; 79 Del. Laws, c. 206, § 3; 83 Del. Laws, c. 280, § 9; repealed by 84 Del. Laws, c. 128, § 20, effective Jan. 27, 2024.)

§ 352. Regulation of placement system and of homes where children are placed.

The Division of Child Protective Services may examine the circumstances and system relating to the placement of any dependent child in any home and may inspect and investigate the particular home to which such dependent child is to be or has been assigned, and, whenever satisfied that a child has been placed by any person, institution, agency, association, corporation or organization in an improper home, it may order its transfer to a proper one or its removal from the State, and, if the order is not obeyed within 30 days, it shall itself take charge of the child, returning it to the person, agency, institution, association, corporation or organization responsible or otherwise providing for it. Any such person, agency, institution, association, corporation or organization failing to remove such child after such notice shall at once pay the State such sum as the State may have expended in the care, maintenance or transportation of such child.

(Code 1915, § 1005F; 32 Del. Laws, c. 50; 38 Del. Laws, c. 64, § 3; Code 1935, § 1127; 31 Del. C. 1953, § 352; 58 Del. Laws, c. 64, § 1; 64 Del. Laws, c. 108, § 4.)

§ 353. Duty of placement agencies to comply with Division's rules.

Any person, agency, institution, association, corporation or organization placing any child, under this subchapter, shall abide by all rules made by the Division of Child Protective Services pertaining to the rejection, importation, placement, supervision, education, health, removal and general welfare of all such children.

(Code 1915, § 1005G; 32 Del. Laws, c. 50; 38 Del. Laws, c. 64, § 4; Code 1935, § 1128; 31 Del. C. 1953, § 353; 58 Del. Laws, c. 64, § 1; 64 Del. Laws, c. 108, § 4.)

§ 354. Power of placement agencies to remove dependent children; penalty for refusal to comply.

(a) All agencies or organizations, engaged in the placement of dependent children within this State, may remove any child so placed when, in the judgment of such agency, the welfare and best interests of the child require such action, whether such right was received or not at the time the child was placed.

(b) Whenever any person with whom a dependent child has been placed refuses to give up such child on the demand of the representative of such agency, the agency, through its duly recognized representative, may give written notice to such person to deliver the child to the nearest railroad station or some other equally convenient place at a day and hour to be fixed in the notice, not less than 1 nor more than 3 days after the date of the notice.

Whoever wilfully refuses or neglects to comply with the requirements of the notice shall be fined in such amount or imprisoned for such term, or both, as the court in its discretion may determine.

(30 Del. Laws, c. 201; Code 1935, §§ 2621, 2622; 31 Del. C. 1953, § 354.)

§ 355. Penalties.

Except as otherwise provided in this subchapter, whoever violates this subchapter shall be fined not more than $100 and whoever continues to disregard this subchapter for a period of 10 days after notification from the Department of Services for Children, Youth and Their Families shall be guilty of a new, separate and distinct offense and shall be fined for each offense not less than $100 nor more than $1,000.

(Code 1915, § 1005I; 32 Del. Laws, c. 50; 38 Del. Laws, c. 64, § 5; Code 1935, § 1129; 31 Del. C. 1953, § 355; 64 Del. Laws, c. 108, § 5.)

§ 356. Kinship Care Program.

(a) The Department of Services for Children, Youth and Their Families (DSCYF) and the Department of Health and Social Services shall establish and operate the Kinship Care Program that promotes the placement of children with relatives when a child needs out-of-home placement, when such placement is in the best interest of the child, and when the child is not in the custody or care of the State.

(b) The Kinship Care Program shall establish eligibility guidelines for kinship caregivers to qualify for kinship care benefits and services, including the following criteria:

(1) The caregiver must be related to the child by blood or marriage within the fifth degree of consanguinity;

(2) The caregiver must have guardianship of the child or actively pursue guardianship;

(3) The child must reside in the home of the caregiver;

(4) The caregiver must have income of no more than 200% of the federal poverty level; and

(5) The parent or parents of a child in the kinship care program may not reside in the home of the kinship caregiver.

(c) The Kinship Care Program shall partner with the Delaware Helpline to maintain a toll-free telephone line that kinship caregivers and other interested persons may call as a centralized source of information about services provided by the kinship care program and other related services and resources for relatives caring for children.

(d) The Department of Services for Children, Youth, and Their Families, in cooperation with the Department of Health and Social Services, shall establish and administer an emergency fund for eligible kinship caregivers, who may receive a 1-time emergency financial subsidy, within the limits of available funding, to assist in purchasing clothes, furniture and other items necessary to prepare the household to accommodate the child or children.

(e) The Department of Health and Social Services and the Department of Services for Children, Youth, and Their Families shall promulgate rules and regulations that are reasonable and necessary to establish or administer a kinship care program and that are consistent with the laws of the State and in harmony with the recommendations of the Kinship Care Taskforce Report of January, 2001.

(73 Del. Laws, c. 270, § 2.)

Subchapter V
Private Child Welfare Agencies

§ 361. Children's Home, Inc.

(a) The Children's Home, Inc., a corporation of this State, may take under its guardianship all children who may be placed under its care and management in either of the following modes:

(1) Children under 14 years of age who shall be voluntarily surrendered by their fathers, or, in case of their death or absence, by their mothers or by their guardians to the care of Children's Home, Inc.; and

(2) Children under 14 years of age who shall be committed to the care of Children's Home, Inc., by the Family Court on account of vagrancy or for the exposure, neglect or abandonment of the children by their parent or parents, guardian or other person having custody of the children.

(b) The corporation shall have the guardianship of the children so placed under its care and management during their minority, shall cause them to be educated and instructed in a proper manner and to learn such trades and employments as in the judgment of the corporation will be most conducive to the benefit and advantage of the children. The power and charge of the corporation over and upon the children shall not extend in the case of children beyond the age of 18 years, but the corporation may return the children to their parents or surviving parent or guardian.

(Code 1852, § 1501; 12 Del. Laws, c. 297, §§ 4, 5; 12 Del. Laws, c. 552; 32 Del. Laws, c. 185; Code 1915, §§ 2253, 2254, 3101; Code 1935, §§ 2578, 2579; 31 Del. C. 1953, § 361; 58 Del. Laws, c. 511, § 64; 70 Del. Laws, c. 186, § 1.)

§ 362. The Elizabeth W. Murphey School, Inc.; admission.

Either parent or, if there are no parents, the guardian or, if there is also no guardian, any relative or the Division of Family Services may place any poor and dependent child, resident in Kent County, between the ages of 2 and 10 years, in and under the charge and control of The Elizabeth W. Murphey School, Inc., and may surrender and deliver the child to The Elizabeth W. Murphey School, Inc., provided that the School is willing to receive the child. When the child is surrendered, delivered to and accepted by the School, the child is subject to all the rules, regulations, and discipline thereof as the same may have been or may hereafter be established by the directors of the School.

(34 Del. Laws, c. 156, § 1; 37 Del. Laws, c. 85; Code 1935, § 2598; 31 Del. C. 1953, § 362; 58 Del. Laws, c. 64, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 256, § 4.)

§ 363. The Elizabeth W. Murphey School, Inc. — Powers over children in custody of School; discharge and appeal.

The Elizabeth W. Murphey School, Inc., in which any such child is placed and to which it is surrendered and delivered, shall have the exclusive custody and control and all rights of a parent, in, to and over such child and its services during the term for which such child shall be surrendered and delivered, not exceeding the minority of such child, and the School shall assume all the duties, liabilities and responsibilities of a parent. The School may discharge any child at any time if for any reason the directors of the School shall deem such discharge for the interest of the School or for the interest of such child or for the interest of the other children under the charge of the School. If at any time after a child is placed under the charge and control of the School, the parents, siblings or other near relative of the child shall make written application to the School for the discharge of such child, stating the reasons therefor, and such application is refused, the applicant shall have a right to appeal to the Resident Judge of the Superior Court in Kent County, and, if the Resident Judge, after hearing the facts, is of the opinion that there is good and sufficient cause for the release applied for and that it would be for the best interest of the child, an order shall be made accordingly. Upon any discharge being made, immediate notice thereof shall be given in writing to the parents, siblings or other near relative of the child, and thereafter the School shall have no further rights to, in or over such child and shall be under no further obligations in respect to such child.

(34 Del. Laws, c. 156, § 2; Code 1935, § 2599; 31 Del. C. 1953, § 363; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 213, § 56.)

§ 364. The Elizabeth W. Murphey School, Inc. — Surrender of child; instrument as evidence.

The surrender of any such child shall be by an instrument in writing, signed and sealed by the parties thereto and duly acknowledged, and the age of such child shall therein be stated as correctly as can be ascertained. Any such written instrument, when duly executed and acknowledged, shall be presented within 30 days to the Resident Judge of the Superior Court residing in Kent County for approval, and, if approved by such Judge, it shall be admitted as evidence in all courts of law or equity in this State.

No written instrument for the surrender of any such child made under the provisions of this section shall be subject to assignment or transfer.

(34 Del. Laws, c. 156, §§ 3, 4; Code 1935, §§ 2600, 2601; 31 Del. C. 1953, § 364; 76 Del. Laws, c. 213, § 57.)

§§ 365-368. [Reserved.] [Reserved].

Subchapter VI

Interstate Compact on the Placement of Children [Effective until enactment of the new Compact by 35 states and upon promulgation of rules by the Interstate Commission]

§ 381. Interstate Compact on the Placement of Children; enactment [Effective until enactment of the new Compact by 35 states and upon promulgation of rules by the Interstate Commission].

The Interstate Compact on the Placement of Children is enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

ARTICLE I. PURPOSE AND POLICY

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. DEFINITIONS

As used in this compact:

(a) “Child” means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) “Sending agency” means a party state, officer or employee thereof, a subdivision of a party state or officer or employee thereof, a court of a party state, a person, corporation, association, charitable agency or other entity which sends, brings or causes to be sent or brought any child to another party state.

(c) “Receiving state” means the state to which a child is sent, brought or caused to be sent or brought, whether by public authorities or private persons or agencies and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) “Placement” means the arrangement for the care of a child in a family home, either free or for boarding, or in a child-caring agency or institution, but does not include any institution caring for persons with mental illnesses, mental disabilities or epilepsy or any institution primarily educational in character, or any hospital or other medical facility.

ARTICLE III. CONDITIONS FOR PLACEMENT

(a) No sending agency shall send, bring or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child;

(2) The identity and address or addresses of the parents or legal guardian;

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child;

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice, pursuant to paragraph (b) of this article, may request of the sending agency or of any other appropriate officer or agency of or in the sending agency’s state and shall be entitled to receive therefrom such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency in writing to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. PENALTY FOR ILLEGAL PLACEMENT

The sending, bringing or causing to be sent or brought into any receiving state of a child, in violation of the terms of this compact, shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in

accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

ARTICLE V. RETENTION OF JURISDICTION

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state until the child is adopted, reaches maturity, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained in this paragraph shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of 1 or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) of this article.

ARTICLE VI. INSTITUTIONAL CARE OF DELINQUENT CHILDREN

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to being sent to such other party jurisdiction for institutional care, and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. COMPACT ADMINISTRATOR

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in the executive head's jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. LIMITATIONS

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by a parent, stepparent, grandparent, adult sibling, adult uncle or aunt or guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party or to any other agreement between said states which has the force of law.

ARTICLE IX. ENACTMENT AND WITHDRAWAL

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same but shall not take effect until 2 years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(31 Del. C. 1953, § 381; 57 Del. Laws, c. 501; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, § 324.)

§ 382. Financial responsibility; default in Compact [Effective until enactment of the new Compact by 35 states and upon promulgation of rules by the Interstate Commission].

Financial responsibility for any child placed pursuant to this Compact shall be determined in accordance with Article V of the Compact in the first instance. However, in the event of partial or complete default of performance thereunder, this chapter also may be invoked.

(31 Del. C. 1953, § 382; 57 Del. Laws, c. 501.)

§ 383. Notices; Department of Services for Children, Youth and Their Families [Effective until enactment of the new Compact by 35 states and upon promulgation of rules by the Interstate Commission].

The "appropriate public authorities" as used in Article III of this Compact shall, with reference to this State, mean the Department of Services for Children, Youth and Their Families and the Department shall receive and act with reference to notices required by Article III of this Compact.

(31 Del. C. 1953, § 383; 57 Del. Laws, c. 501; 64 Del. Laws, c. 108, § 6.)

§ 384. "Appropriate authority"; Department of Services for Children, Youth and Their Families [Effective until enactment of the new Compact by 35 states and upon promulgation of rules by the Interstate Commission].

As used in paragraph (a) of Article V of this Compact, the phrase "appropriate authority in the receiving state" shall, with reference to this State, mean the Department of Services for Children, Youth and Their Families.

(31 Del. C. 1953, § 384; 57 Del. Laws, c. 501; 64 Del. Laws, c. 108, § 6.)

§ 385. Financial commitment; approval [Effective until enactment of the new Compact by 35 states and upon promulgation of rules by the Interstate Commission].

The officers and agencies of this State and its subdivisions, having authority to place children, are empowered to enter into agreements with appropriate officers or agencies of or in other party states, pursuant to paragraph (b) of Article V of this Compact. Any such agreement which contains a financial commitment or imposes a financial obligation on this State or subdivision or agency thereof shall not be binding unless it has the approval in writing of the State Budget Director, in the case of the State, and of the chief local fiscal officer in the case of a subdivision of the State.

(31 Del. C. 1953, § 385; 57 Del. Laws, c. 501.)

§ 386. Other related statutes; provisions met if performed as contemplated by Compact [Effective until enactment of the new Compact by 35 states and upon promulgation of rules by the Interstate Commission].

Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under § 307 of this title shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this State or a subdivision thereof as contemplated by paragraph (b) of Article V of this Compact.

(31 Del. C. 1953, § 386; 57 Del. Laws, c. 501.)

§ 387. Out-of-state placement restrictions; not applicable if made pursuant to Compact [Effective until enactment of the new Compact by 35 states and upon promulgation of rules by the Interstate Commission].

Section 307 of this title shall not apply to placements made pursuant to this Compact.

(31 Del. C. 1953, § 386A; 57 Del. Laws, c. 501.)

§ 388. Jurisdiction of court; placement pursuant to Compact [Effective until enactment of the new Compact by 35 states and upon promulgation of rules by the Interstate Commission].

Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to Article VI of this Compact and shall retain jurisdiction as provided in Article V of this Compact.

(31 Del. C. 1953, § 386B; 57 Del. Laws, c. 501.)

§ 389. Governor; appointment of officer to coordinate activities of Compact [Effective until enactment of the new Compact by 35 states and upon promulgation of rules by the Interstate Commission].

As used in Article VII of this Compact, the term "executive head" means the Governor. The Governor is authorized to appoint a compact administrator in accordance with the terms of Article VII of this Compact.

(31 Del. C. 1953, § 386C; 57 Del. Laws, c. 501.)

Subchapter VI

Interstate Compact for the Placement of Children [Effective upon enactment by 35 states and upon promulgation of rules by the Interstate Commission]

§ 381. Interstate Compact for the Placement of Children; enactment [Effective upon enactment by 35 states and upon promulgation of rules by the Interstate Commission].

The State of Delaware hereby enters into the Interstate Compact for the Placement of Children as set forth in this section. The Compact shall take effect upon enactment by at least 35 states and upon approval of the Interstate Commission on the Placement of Children. The text of the Compact is as follows:

ARTICLE I. PURPOSE

The purpose of this Interstate Compact for the Placement of Children is to:

A. Provide a process through which children subject to this compact are placed in safe and suitable homes in a timely manner.

B. Facilitate ongoing supervision of a placement, the delivery of services, and communication between the states.

C. Provide operating procedures that will ensure that children are placed in safe and suitable homes in a timely manner.

D. Provide for the promulgation and enforcement of administrative rules implementing the provisions of this compact and regulating the covered activities of the member states.

E. Provide for uniform data collection and information sharing between member states under this compact.

F. Promote coordination between this compact, the Interstate Compact for Juveniles [§ 5203 of this title], the Interstate Compact on Adoption and Medical Assistance and other compacts affecting the placement of and which provide services to children otherwise subject to this compact.

G. Provide for a state's continuing legal jurisdiction and responsibility for placement and care of a child that it would have had if the placement were intrastate.

H. Provide for the promulgation of guidelines, in collaboration with Indian tribes, for interstate cases involving Indian children as is or may be permitted by federal law.

ARTICLE II. DEFINITIONS

As used in this compact,

A. "Approved placement" means the public child placing agency in the receiving state has determined that the placement is both safe and suitable for the child.

B. "Assessment" means an evaluation of a prospective placement by a public child placing agency in the receiving state to determine if the placement meets the individualized needs of the child, including but not limited to the child's safety and stability, health and well-being, and mental, emotional, and physical development. An assessment is only applicable to a placement by a public child placing agency.

C. "Child" means an individual who has not attained the age of 18.

D. "Certification" means to attest, declare or swear to before a judge or notary public.

E. "Default" means the failure of a member state to perform the obligations or responsibilities imposed upon it by this compact, the bylaws or rules of the Interstate Commission.

F. "Home study" means an evaluation of a home environment conducted in accordance with the applicable requirements of the state in which the home is located, and documents the preparation and the suitability of the placement resource for placement of a child in accordance with the laws and requirements of the state in which the home is located.

G. "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaskan "native village" as defined in section 3(c) of the Alaska Native Claims settlement Act at 43 U.S.C. § 1602(c).

H. "Interstate Commission for the Placement of Children" means the commission that is created under Article VIII of this compact and which is generally referred to as the Interstate Commission.

I. "Jurisdiction" means the power and authority of a court to hear and decide matters.

J. "Legal risk placement" ("legal risk adoption") means a placement made preliminary to an adoption where the prospective adoptive parents acknowledge in writing that a child can be ordered returned to the sending state or the birth mother's state of residence, if different from the sending state, and a final decree of adoption shall not be entered in any jurisdiction until all required consents are obtained or are dispensed with in accordance with applicable law.

K. "Member state" means a state that has enacted this compact.

L. "Noncustodial parent" means a person who, at the time of the commencement of court proceedings in the sending state, does not have sole legal custody of the child or has joint legal custody of a child, and who is not the subject of allegations or findings of child abuse or neglect.

M. "Nonmember state" means a state which has not enacted this compact.

N. "Notice of residential placement" means information regarding a placement into a residential facility provided to the receiving state including, but not limited to the name, date and place of birth of the child, the identity and address of the parent or legal guardian, evidence of authority to make the placement, and the name and address of the facility in which the child will be placed. Notice of residential placement shall also include information regarding a discharge and any unauthorized absence from the facility.

O. "Placement" means the act by a public or private child placing agency intended to arrange for the care or custody of a child in another state.

P. "Private child placing agency" means any private corporation, agency, foundation, institution, or charitable organization, or any private person or attorney that facilitates, causes, or is involved in the placement of a child from 1 state to another and that is not an instrumentality of the state or acting under color of state law.

Q. “Provisional placement” means a determination made by the public child placing agency in the receiving state that the proposed placement is safe and suitable, and, to the extent allowable, the receiving state has temporarily waived its standards or requirements otherwise applicable to prospective foster or adoptive parents so as to not delay the placement. Completion of the receiving state requirements regarding training for prospective foster or adoptive parents shall not delay an otherwise safe and suitable placement.

R. “Public child placing agency” means any government child welfare agency or child protection agency or a private entity under contract with such an agency, regardless of whether they act on behalf of a state, county, municipality or other governmental unit and which facilitates, causes, or is involved in the placement of a child from 1 state to another.

S. “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought.

T. “Relative” means someone who is related to the child as a parent, stepparent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin or a nonrelative with such significant ties to the child that they may be regarded as relatives as determined by the court in the sending state.

U. “Residential facility” means a facility providing a level of care that is sufficient to substitute for parental responsibility or foster care, and is beyond what is needed for assessment or treatment of an acute condition. For purposes of the compact, residential facilities do not include institutions primarily educational in character, hospitals or other medical facilities.

V. “Rule” means a written directive, mandate, standard or principle issued by the Interstate Commission promulgated pursuant to Article XI of this compact that is of general applicability and that implements, interprets or prescribes a policy or provision of the compact. “Rule” has the force and effect of an administrative rule in a member state, and includes the amendment, repeal, or suspension of an existing rule.

W. “Sending state” means the state from which the placement of a child is initiated.

X. “Service member’s permanent duty station” means the military installation where an active duty armed services member is currently assigned and is physically located under competent orders that do not specify the duty as temporary.

Y. “Service member’s state of legal residence” means the state in which the active duty armed services member is considered a resident for tax and voting purposes.

Z. “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other territory of the United States.

AA. “State court” means a judicial body of a state that is vested by law with responsibility for adjudicating cases involving abuse, neglect, deprivation, delinquency or status offenses of individuals who have not attained the age of 18.

BB. “Supervision” means monitoring provided by the receiving state once a child has been placed in a receiving state pursuant to this compact.

ARTICLE III. APPLICABILITY

A. Except as otherwise provided in Article III, Section B, this compact shall apply to:

1. The interstate placement of a child subject to ongoing court jurisdiction in the sending state, due to allegations or findings that the child has been abused, neglected, or deprived as defined by the laws of the sending state, provided, however, that the placement of such a child into a residential facility shall only require notice of residential placement to the receiving state prior to placement.

2. The interstate placement of a child adjudicated delinquent or unmanageable based on the laws of the sending state and subject to ongoing court jurisdiction of the sending state if:

a. The child is being placed in a residential facility in another member state and is not covered under another compact; or

b. The child is being placed in another member state and the determination of safety and suitability of the placement and services required is not provided through another compact.

3. The interstate placement of any child by a public child placing agency or private child placing agency as defined in this compact as a preliminary step to a possible adoption.

B. The provisions of this compact shall not apply to:

1. The interstate placement of a child in a custody proceeding in which a public child placing agency is not a party, provided, the placement is not intended to effectuate an adoption.

2. The interstate placement of a child with a nonrelative in a receiving state by a parent with the legal authority to make such a placement provided, however, that the placement is not intended to effectuate an adoption.

3. The interstate placement of a child by 1 relative with the lawful authority to make such a placement directly with a relative in a receiving state.

4. The placement of a child, not subject to Article III, Section A, of this compact into a residential facility by the child’s parent.

5. The placement of a child with a noncustodial parent provided that:

a. The noncustodial parent proves to the satisfaction of a court in the sending state a substantial relationship with the child; and

b. The court in the sending state makes a written finding that placement with the noncustodial parent is in the best interests of the child; and

c. The court in the sending state dismisses its jurisdiction in interstate placements in which the public child placing agency is a party to the proceeding.

6. A child entering the United States from a foreign country for the purpose of adoption or leaving the United States to go to a foreign country for the purpose of adoption in that country.

7. Cases in which a U.S. citizen child living overseas with the child's family, at least 1 of whom is in the U.S. armed services, and who is stationed overseas, is removed and placed in a state.

8. The sending of a child by a public child placing agency or a private child placing agency for a visit as defined by the rules of the Interstate Commission.

C. For purposes of determining the applicability of this compact to the placement of a child with a family in the armed services, the public child placing agency or private child placing agency may choose the state of the service member's permanent duty station or the service member's declared legal residence.

D. Nothing in this compact shall be construed to prohibit the concurrent application of the provisions of this compact with other applicable interstate compacts including the Interstate Compact for Juveniles and the Interstate Compact on Adoption and Medical Assistance. The Interstate Commission may in cooperation with other interstate compact commissions having responsibility for the interstate movement, placement or transfer of children, promulgate like rules to ensure the coordination of services, timely placement of children, and the reduction of unnecessary or duplicative administrative or procedural requirements.

ARTICLE IV. JURISDICTION

A. Except as provided in Article IV, Section H and Article V, Section B, paragraph 2. and 3. of this compact concerning private and independent adoptions, and in interstate placements in which the public child placing agency is not a party to a custody proceeding, the sending state shall retain jurisdiction over a child with respect to all matters of custody and disposition of the child which it would have had if the child had remained in the sending state. Such jurisdiction shall also include the power to order the return of the child to the sending state.

B. When an issue of child protection or custody is brought before a court in the receiving state, such court shall confer with the court of the sending state to determine the most appropriate forum for adjudication.

C. In cases that are before courts and subject to this compact, the taking of testimony for hearings before any judicial officer may occur in person or by telephone, audio-video conference, or such other means as approved by the rules of the Interstate Commission; and Judicial officers may communicate with other judicial officers and persons involved in the interstate process as may be permitted by their Canons of Judicial Conduct and any rules promulgated by the Interstate Commission.

D. In accordance with its own laws, the court in the sending state shall have authority to terminate its jurisdiction if:

1. The child is reunified with the parent in the receiving state who is the subject of allegations or findings of abuse or neglect, only with the concurrence of the public child placing agency in the receiving state; or

2. The child is adopted;

3. The child reaches the age of majority under the laws of the sending state; or

4. The child achieves legal independence pursuant to the laws of the sending state; or

5. A guardianship is created by a court in the receiving state with the concurrence of the court in the sending state; or

6. An Indian tribe has petitioned for and received jurisdiction from the court in the sending state; or

7. The public child placing agency of the sending state requests termination and has obtained the concurrence of the public child placing agency in the receiving the state.

E. When a sending state court terminates its jurisdiction, the receiving state child placing agency shall be notified.

F. Nothing in this article shall defeat a claim of jurisdiction by a receiving state court sufficient to deal with an act of truancy, delinquency, crime or behavior involving a child as defined by the laws of the receiving state committed by the child in the receiving state which would be a violation of its laws.

G. Nothing in this article shall limit the receiving state's ability to take emergency jurisdiction for the protection of the child.

H. The substantive laws of the state in which an adoption will be finalized shall solely govern all issues relating to the adoption of the child and the court in which the adoption proceeding is filed shall have subject matter jurisdiction regarding all substantive issues relating to the adoption, except:

1. When the child is a ward of another court that established jurisdiction over the child prior to the placement; or

2. When the child is in the legal custody of a public agency in the sending state; or

3. When a court in the sending state has otherwise appropriately assumed jurisdiction over the child, prior to the submission of the request for approval of placement.

I. A final decree of adoption shall not be entered in any jurisdiction until the placement is authorized as an "approved placement" by the public child placing agency in the receiving state.

ARTICLE V. PLACEMENT EVALUATION

A. Prior to sending, bringing, or causing a child to be sent or brought into a receiving state, the public child placing agency shall provide a written request for assessment to the receiving state.

B. For placements by a private child placing agency, a child may be sent or brought, or caused to be sent or brought, into a receiving state, upon receipt and immediate review of the required content in a request for approval of a placement in both the sending and receiving state public child placing agency. The required content to accompany a request for approval shall include all of following:

1. A request for approval identifying the child, birth parent(s), the prospective adoptive parent(s), and the supervising agency, signed by the person requesting approval; and

2. The appropriate consents or relinquishments signed by the birth-parents in accordance with the laws of the sending state, or where permitted the laws of the state where the adoption will be finalized; and

3. Certification by a licensed attorney or authorized agent of a private adoption agency that the consent or relinquishment is in compliance with the applicable laws of the sending state, or where permitted the laws of the state where finalization of the adoption will occur; and

4. A home study; and

5. An acknowledgment of legal risk signed by the prospective adoptive parents.

C. The sending state and the receiving state may request additional information or documents prior to finalization of an approved placement, but they may not delay travel by the prospective adoptive parents with the child if the required content for approval has been submitted, received and reviewed by the public child placing agency in both the sending state and the receiving state.

D. Approval from the public child placing agency in the receiving state for a provisional or approved placement is required as provided for in the rules of the Interstate Commission.

E. The procedures for making and the request for an assessment shall contain all information and be in such form as provided for in the rules of the Interstate Commission.

F. Upon receipt of a request from the public child placing agency of the sending state, the receiving state shall initiate an assessment of the proposed placement to determine its safety and suitability. If the proposed placement is a placement with a relative, the public child placing agency of the sending state may request a determination for a provisional placement.

G. The public child placing agency in the receiving state may request from the public child placing agency or the private child placing agency in the sending state, and shall be entitled to receive supporting or additional information necessary to complete the assessment or approve the placement.

H. The public child placing agency in the receiving state shall approve a provisional placement and complete or arrange for the completion of the assessment within the timeframes established by the rules of the Interstate Commission.

I. For a placement by a private child placing agency, the sending state shall not impose any additional requirements to complete the home study that are not required by the receiving state, unless the adoption is finalized in the sending state.

J. The Interstate Commission may develop uniform standards for the assessment of the safety and suitability of interstate placements.

ARTICLE VI. PLACEMENT AUTHORITY

A. Except as otherwise provided in this compact, no child subject to this compact shall be placed into a receiving state until approval for such placement is obtained.

B. If the public child placing agency in the receiving state does not approve the proposed placement then the child shall not be placed. The receiving state shall provide written documentation of any such determination in accordance with the rules promulgated by the Interstate Commission. Such determination is not subject to judicial review in the sending state.

C. If the proposed placement is not approved, any interested party shall have standing to seek an administrative review of the receiving state’s determination.

1. The administrative review and any further judicial review associated with the determination shall be conducted in the receiving state pursuant to its applicable administrative procedures.

2. If a determination not to approve the placement of the child in the receiving state is overturned upon review, the placement shall be deemed approved, provided however that all administrative or judicial remedies have been exhausted or the time for such remedies has passed.

ARTICLE VII. PLACING AGENCY RESPONSIBILITY

A. For the interstate placement of a child made by a public child placing agency or state court:

1. The public child placing agency in the sending state shall have financial responsibility for:

a. The ongoing support and maintenance for the child during the period of the placement, unless otherwise provided for in the receiving state; and

b. As determined by the public child placing agency in the sending state, services for the child beyond the public services for which the child is eligible in the receiving state.

2. The receiving state shall only have financial responsibility for:

1. Any assessment conducted by the receiving state; and

2. Supervision conducted by the receiving state at the level necessary to support the placement as agreed upon by the public child placing agencies of the receiving and sending state.

3. Nothing in this provision shall prohibit public child placing agencies in the sending state from entering into agreements with licensed agencies or persons in the receiving state to conduct assessments and provide supervision.

B. For the placement of a child by a private child placing agency preliminary to a possible adoption, the private child placing agency shall be:

1. Legally responsible for the child during the period of placement as provided for in the law of the sending state until the finalization of the adoption.

2. Financially responsible for the child absent a contractual agreement to the contrary.

C. The public child placing agency in the receiving state shall provide timely assessments, as provided for in the rules of the Interstate Commission.

D. The public child placing agency in the receiving state shall provide, or arrange for the provision of, supervision and services for the child, including timely reports, during the period of the placement.

E. Nothing in this compact shall be construed as to limit the authority of the public child placing agency in the receiving state from contracting with a licensed agency or person in the receiving state for an assessment or the provision of supervision or services for the child or otherwise authorizing the provision of supervision or services by a licensed agency during the period of placement.

F. Each member state shall provide for coordination among its branches of government concerning the state's participation in, and compliance with, the compact and Interstate Commission activities, through the creation of an advisory council or use of an existing body or board.

G. Each member state shall establish a central state compact office, which shall be responsible for state compliance with the compact and the rules of the Interstate Commission.

H. The public child placing agency in the sending state shall oversee compliance with the provisions of the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) for placements subject to the provisions of this compact, prior to placement.

I. With the consent of the Interstate Commission, states may enter into limited agreements that facilitate the timely assessment and provision of services and supervision of placements under this compact.

ARTICLE VIII. INTERSTATE COMMISSION FOR THE PLACEMENT OF CHILDREN

The member states hereby establish, by way of this compact, a commission known as the "Interstate Commission for the Placement of Children." The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

A. Be a joint commission of the member states and shall have the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent concurrent action of the respective legislatures of the member states.

B. Consist of 1 commissioner from each member state who shall be appointed by the executive head of the state human services administration with ultimate responsibility for the child welfare program. The appointed commissioner shall have the legal authority to vote on policy related matters governed by this compact binding the state.

1. Each member state represented at a meeting of the Interstate Commission is entitled to 1 vote.

2. A majority of the member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

3. A representative shall not delegate a vote to another member state.

4. A representative may delegate voting authority to another person from their state for a specified meeting.

C. In addition to the commissioners of each member state, the Interstate Commission shall include persons who are members of interested organizations as defined in the bylaws or rules of the Interstate Commission. Such members shall be ex officio and shall not be entitled to vote on any matter before the Interstate Commission.

D. Establish an executive committee which shall have the authority to administer the day-to-day operations and administration of the Interstate Commission. It shall not have the power to engage in rulemaking.

ARTICLE IX. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall have the following powers:

A. To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact.

B. To provide for dispute resolution among member states.

C. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules or actions.

D. To enforce compliance with this compact or the bylaws or rules of the Interstate Commission pursuant to Article XII of this compact.

E. Collect standardized data concerning the interstate placement of children subject to this compact as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.

F. To establish and maintain offices as may be necessary for the transacting of its business.

G. To purchase and maintain insurance and bonds.

H. To hire or contract for services of personnel or consultants as necessary to carry out its functions under the compact and establish personnel qualification policies, and rates of compensation.

I. To establish and appoint committees and officers including, but not limited to, an executive committee as required by Article X of this compact.

J. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose thereof.

K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

M. To establish a budget and make expenditures.

N. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

O. To report annually to the legislatures, governors, the judiciary, and state advisory councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

P. To coordinate and provide education, training and public awareness regarding the interstate movement of children for officials involved in such activity.

Q. To maintain books and records in accordance with the bylaws of the Interstate Commission.

R. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

ARTICLE X. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. Bylaws.

1. Within 12 months after the first Interstate Commission meeting, the Interstate Commission shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact.

2. The Interstate Commission’s bylaws and rules shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

B. Meetings.

1. The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states shall call additional meetings.

2. Public notice shall be given by the Interstate Commission of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

a. Relate solely to the Interstate Commission’s internal personnel practices and procedures; or

b. Disclose matters specifically exempted from disclosure by federal law; or

c. Disclose financial or commercial information which is privileged, proprietary or confidential in nature; or

d. Involve accusing a person of a crime, or formally censuring a person; or

e. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy or physically endanger 1 or more persons; or

f. Disclose investigative records compiled for law enforcement purposes; or

g. Specifically relate to the Interstate Commission’s participation in a civil action or other legal proceeding.

3. For a meeting, or portion of a meeting, closed pursuant to this provision, the Interstate Commission’s legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemption provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission or by court order.

4. The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or other electronic communication.

C. Officers and staff.

1. The Interstate Commission may, through its executive committee, appoint or retain a staff director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The staff director shall serve as

secretary to the Interstate Commission, but shall not have a vote. The staff director may hire and supervise such other staff as may be authorized by the Interstate Commission.

2. The Interstate Commission shall elect, from among its members, a chairperson and a vice chairperson of the executive committee and other necessary officers, each of whom shall have such authority and duties as may be specified in the bylaws.

D. Qualified immunity, defense and indemnification.

1. The Interstate Commission's staff director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that such person shall not be immune from suit or liability for damage, loss, injury, or liability caused by a criminal act or the intentional or wilful and wanton misconduct or the reckless or gross negligence of such person.

a. The liability of the Interstate Commission's staff director and employees or Interstate Commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to make immune such person from suit or liability for damage, loss, injury, or liability caused by a criminal act or the intentional or wilful and wanton misconduct or the reckless or gross negligence of such person.

b. The Interstate Commission shall defend the staff director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state shall defend the commissioner of a member state in a civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from a criminal act or intentional or wilful and wanton misconduct or the reckless or gross negligence on the part of such person.

c. To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorneys' fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from a criminal act or from intentional or wilful and wanton misconduct or the reckless or gross negligence on the part of such person.

ARTICLE XI. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedure acts as the Interstate Commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the U. S. Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Interstate Commission.

C. When promulgating a rule, the Interstate Commission shall, at a minimum:

1. Publish the proposed rule's entire text stating the reason(s) for that proposed rule; and

2. Allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available; and

3. Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

D. Rules promulgated by the Interstate Commission shall have the force and effect of administrative rules and shall be binding in the compacting states to the extent and in the manner provided for in this compact.

E. Not later than 60 days after a rule is promulgated, an interested person may file a petition in the U.S. District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside.

F. If a majority of the legislatures of the member states rejects a rule, those states may by enactment of a statute or resolution in the same manner used to adopt the compact cause that such rule shall have no further force and effect in any member state.

G. The existing rules governing the operation of the Interstate Compact for the Placement of Children superseded by this act shall be null and void no less than 12, but no more than 24 months after the first meeting of the Interstate Commission created hereunder, as determined by the members during the first meeting.

H. Within the first 12 months of operation, the Interstate Commission shall promulgate rules addressing the following:

1. Transition rules
2. Forms and procedures
3. Time lines
4. Data collection and reporting
5. Rulemaking
6. Visitation
7. Progress reports/supervision
8. Sharing of information/confidentiality
9. Financing of the Interstate Commission
10. Mediation, arbitration and dispute resolution
11. Education, training and technical assistance
12. Enforcement
13. Coordination with other interstate compacts

I. Upon determination by a majority of the members of the Interstate Commission that an emergency exists:

1. The Interstate Commission may promulgate an emergency rule only if it is required to:

a. Protect the children covered by this compact from an imminent threat to their health, safety and well-being; or

b. Prevent loss of federal or state funds; or

c. Meet a deadline for the promulgation of an administrative rule required by federal law.

2. An emergency rule shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than 90 days after the effective date of the emergency rule.

3. An emergency rule shall be promulgated as provided for in the rules of the Interstate Commission.

ARTICLE XII. OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT

A. Oversight.

1. The Interstate Commission shall oversee the administration and operation of the compact.

2. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and the rules of the Interstate Commission and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The compact and its rules shall be binding in the compacting states to the extent and in the manner provided for in this compact.

3. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact.

4. The Interstate Commission shall be entitled to receive service of process in any action in which the validity of a compact provision or rule is the issue for which a judicial determination has been sought and shall have standing to intervene in any proceedings. Failure to provide service of process to the Interstate Commission shall render any judgment, order or other determination, however so captioned or classified, void as to the Interstate Commission, this compact, its bylaws or rules of the Interstate Commission.

B. Dispute resolution.

1. The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and nonmember states.

2. The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among compacting states. The costs of such mediation or dispute resolution shall be the responsibility of the parties to the dispute.

C. Enforcement.

1. If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, its bylaws or rules, the Interstate Commission may:

a. Provide remedial training and specific technical assistance; or

b. Provide written notice to the defaulting state and other member states, of the nature of the default and the means of curing the default. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default; or

c. By majority vote of the members, initiate against a defaulting member state legal action in the United State District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal office, to enforce compliance with the provisions of the compact, its bylaws or rules. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees; or

d. Avail itself of any other remedies available under state law or the regulation of official or professional conduct.

ARTICLE XIII. FINANCING OF THE COMMISSION

A. The Interstate Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved by its members each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission which shall promulgate a rule binding upon all member states.

C. The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XIV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

A. Any state is eligible to become a member state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 states. The effective date shall be the later of July 1, 2007, or upon enactment of the compact into law by the 35th state. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The executive heads of the state human services administration with ultimate responsibility for the child welfare program of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

C. The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding on the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XV. WITHDRAWAL AND DISSOLUTION

A. Withdrawal.

1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact specifically repealing the statute which enacted the compact into law.

2. Withdrawal from this compact shall be by the enactment of a statute repealing the same. The effective date of withdrawal shall be the effective date of the repeal of the statute.

3. The withdrawing state shall immediately notify the president of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall then notify the other member states of the withdrawing state's intent to withdraw.

4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal.

5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the members of the Interstate Commission.

B. Dissolution of compact.

1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to 1 member state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVI. SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the concurrent applicability of other interstate compacts to which the states are members.

ARTICLE XVII. BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other laws.

1. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

B. Binding effect of the compact.

1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

2. All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

ARTICLE XVIII. INDIAN TRIBES

Notwithstanding any other provision in this compact, the Interstate Commission may promulgate guidelines to permit Indian tribes to utilize the compact to achieve any or all of the purposes of the compact as specified in Article I of this compact. The Interstate Commission shall make reasonable efforts to consult with Indian tribes in promulgating guidelines to reflect the diverse circumstances of the various Indian tribes.

(31 Del. C. 1953, § 381; 57 Del. Laws, c. 501; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 218, §§ 1, 2; 77 Del. Laws, c. 163, §§ 1-5; 84 Del. Laws, c. 42, § 141.)

§ 382. [Reserved.] [Effective upon enactment by 35 states and upon promulgation of rules by the Interstate Commission].

Subchapter VII
Child Day-Care Centers

§ 390. Definition.

As used in this subchapter:

"Child day-care center" means a facility designed and prescribed to meet the daily physical, mental and social needs of children from infancy through 6 years, who would be eligible to be served, in a consistent, wholesome and efficient manner.

(31 Del. C. 1953, § 387; 56 Del. Laws, c. 347.)

§ 391. Intent and purposes.

The intent and purposes of this subchapter are to:

(1) Provide child day-care facilities available within this State so as to provide safe, adequate, economical care for children whose parents, guardians or custodians are employed or are seeking employment or are enrolled in training or education courses or where this service would contribute to the resolution of family problems;

(2) Secure by decentralized neighborhood management the highest attainable degree of assurance that each child day-care center will properly and economically meet the needs of those children who can make the best use of that service within their neighborhoods under supervision of the Division of Social Services consistent with the objectives in view.

(31 Del. C. 1953, § 388; 56 Del. Laws, c. 347; 57 Del. Laws, c. 212, § 9; 58 Del. Laws, c. 64, § 1; 70 Del. Laws, c. 186, § 1.)

§ 392. General powers and duties of Division in respect to children in day-care centers.

In order that the State may provide day-care facilities and services, the Division of Social Services shall:

(1) Establish and operate day-care centers;

(2) Charge such fees as it deems desirable, but such fees may be based on the ability of the parent, guardian or custodian of the child to pay;

(3) Aid in the establishment of privately or publicly operated nonprofit child day-care centers by granting funds to private or public organizations agreeing to operate child day-care centers in accordance with standards set by the Division;

(4) Pay all or part of the fees charged by the organizations established under paragraph (3) of this section for the care of children whose parent, guardian or custodian is financially unable to pay all or part of such fees;

(5) Purchase day-care service from any child day-care center, whether profit or nonprofit, which shall provide such service in conformity with the requirements of this subchapter; and

(6) Pay all or part of the fees for day-care service as is appropriate to the financial position of the parents, parent or guardian of such child.

(31 Del. C. 1953, § 389; 56 Del. Laws, c. 347; 57 Del. Laws, c. 212, § 10; 58 Del. Laws, c. 64, § 1; 70 Del. Laws, c. 186, § 1.)

§ 393. Application for aid; requirements.

Application for aid under this subchapter shall be made to the office of the Division of Social Services. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the Division of Social Services. Such application shall be made by the legally constituted body organized for the express purpose of the operational and managerial functions of child day-care centers and shall contain information as to the organizational structure, stated purposes and objectives of the organization and such other information as may be required by the Division of Social Services.

(31 Del. C. 1953, § 390; 56 Del. Laws, c. 347; 58 Del. Laws, c. 64, § 1.)

§ 393A. Automatic eligibility for child care assistance; children in foster care.

(a) For the purposes of this section:

(1) “Department” means Department of Health and Social Services.

(2) “DSCYF” means the Department of Services for Children, Youth and Their Families.

(3) “Foster care” means care provided by an individual or couple for a child who is in DSCYF custody under Chapter 25 of Title 13. All foster care providers must be approved by DSCYF or a licensed agency.

(4) “Purchase of Care” means the State’s childcare subsidy program that provides financial support to eligible Delaware families who need assistance paying for child care.

(b) A child is automatically eligible for Purchase of Care upon the placement of the child in foster care or when DSCYF otherwise certifies to the Department that the child is in a placement requiring Purchase of Care.

(c) The Department shall promulgate regulations on processes for verification of eligibility for children meeting the circumstances outlined in subsection (b) of this section in coordination with DSCYF, including required documents.

(85 Del. Laws, c. 427, § 1.)

§ 394. Investigation of applications.

Whenever the Division of Social Services receives notification of an application for aid, an investigation shall be made by a member of the child care consultant staff of the Division of Social Services, and a record shall be made of the circumstances in order to ascertain the eligibility of the applicant organization.

(31 Del. C. 1953, § 391; 56 Del. Laws, c. 347; 58 Del. Laws, c. 64, § 1.)

§ 395. Grant of aid; notification; payment.

Upon the completion of the investigation, the Division of Social Services shall decide whether the organization is eligible for aid under the provisions of this subchapter and determine the amount of such aid and the date on which such aid shall begin. The Division of Social Services shall notify the applicant organization of its decision. Such aid shall be allocated and dispensed in a ratio to be determined by the Division of Social Services that recognizes degree of need in proportion to the most effective utilization of the available money.

(31 Del. C. 1953, § 392; 56 Del. Laws, c. 347; 58 Del. Laws, c. 64, § 1.)

§ 396. Periodic reconsideration and changes in amount of aid.

All grants made under this subchapter shall be reconsidered by the Division of Social Services as frequently as it may deem necessary but at least annually. The amount of aid may be changed or aid may be entirely withdrawn if the Division of Social Services finds that the delegated organization’s program is inconsistent with the purposes and intent of this subchapter.

(31 Del. C. 1953, § 393; 56 Del. Laws, c. 347; 58 Del. Laws, c. 64, § 1.)

§ 397. Federal financial participation.

The State Treasurer shall receive all money paid to the State by the Secretary of the Treasury of the United States, on account of aid provided under this subchapter, and shall make payments from such moneys and moneys appropriated by any law of this State in accordance with this subchapter and under the United States Social Security Act [42 U.S.C. § 301 et seq.].

(31 Del. C. 1953, § 394; 56 Del. Laws, c. 347.)

Subchapter VIII

Parents Right to Know Act

§ 398. Inspection of child care facility records [Repealed].

(71 Del. Laws, c. 468, § 1; repealed by 83 Del. Laws, c. 194, § 2, effective Sept. 17, 2021.)

Part I
In General

Chapter 4
Delaware Children’s Trust Fund Act [Repealed].

§§ 401-408. Title; intent and purpose of chapter; definitions; Board of Directors — established; composition; qualifications; advisors; terms; rules and regulations; compensation; duties and responsibilities; award of grants; separate nature of Fund; designation of tax refund as donation; investments; availability of funds for disbursement; reports of Board to Clearinghouse Committee [Repealed].

Repealed by 77 Del. Laws, c. 351, § 1, effective July 12, 2010.

Part I
In General

Chapter 5
State Public Assistance Code

§ 501. Legislative intent.

It is declared to be the legislative intent that the purpose of this chapter is to promote the welfare and happiness of all of the people of this State by providing public assistance to all of its eligible needy, unemployable and distressed, that assistance shall be administered promptly and humanely with due regard for the preservation of family life and without discrimination on account of race, religion or political affiliation and that assistance shall be administered in such a way and manner as to encourage self-respect, self-dependency and the desire to be a good citizen and useful to society. It is further declared to be the legislative intent that public assistance be administered, to the extent practicable, in such a way that: private sector work is more economically attractive than public assistance; public assistance recipients exercise personal responsibility in exchange for government assistance; public assistance is transitional, not a way of life, for recipients; both parents are held responsible for supporting and parenting their children; recipients are not encouraged to have additional children while receiving public assistance; and the formation and maintenance of two-parent families is encouraged and teenage pregnancy is discouraged.

(31 Del. C. 1953, § 501; 50 Del. Laws, c. 278, § 5; 58 Del. Laws, c. 341, § 3; 70 Del. Laws, c. 65, § 2.)

§ 502. Definitions.

For purposes of this chapter:

(1) “Applicant” means any person or family who applies for assistance or welfare services or on whose behalf such application is made under the terms of this chapter.

(2) “Assistance” means assistance to or on behalf of eligible needy persons or eligible families to enable them to improve their standard of living, including money payments, child care, job training, education, other support services, medical or surgical care, dental care, nursing, burial, board and care in a private institution, adult foster care, rest residential facility for adults, public medical institution as a patient, or such other aid as may be deemed necessary.

(3) “Carrier” means any entity that provides health insurance under § 505(3) of this title.

(4) “Dental care” means payment of all or part of the costs on behalf of an eligible recipient for preventive and restorative treatment which the Department of Health and Social Services authorizes by regulation.

(5) “Employable” refers to any person who:

a. Is between the ages of 18 and 54; and who

b. Is determined by the Department of Health and Social Services (pursuant to published regulations developed in consultation with the Department of Labor) to be physically and mentally able to work.

(6) “Medical advisory committee” means a committee appointed by the Secretary of the Department of Health and Social Services, composed of representatives from the field of medicine, osteopathy, dentistry, nursing, pharmacy, hospital services and such other fields concerned with health as the Secretary of the Department of Health and Social Services may deem appropriate, to provide to the board advice, recommendations and assistance in the formulation and administration of programs of medical and health care.

(7) “Medical assistance” means medical or dental care furnished on behalf of recipients who are eligible for assistance in any of the categories in § 505 of this title.

(8) “Medical care” means payment of all or part of the costs on behalf of eligible recipients; provided, that such payments are within the limitations of the funds appropriated by the General Assembly and the United States Congress for this purpose, for any of the following:

a. Inpatient hospital services.

b. Outpatient hospital services.

c. Other laboratory and X-ray services.

d. Nursing services.

e. Physician’s services, whether furnished in the office, the patient’s house, a hospital, a skilled nursing home or elsewhere.

f. Pharmacist’s services, whether furnished in the office, the patient’s house, a hospital, a skilled nursing facility, an assisted living facility, a pharmacy, a federally-qualified health center, a rural health clinic, or elsewhere.

g. Drugs and medicine.

h. Such other health services and supplies as specified by the Department on recommendation by the Medical Advisory Committee.

Such payments may be made only to persons, institutions, and entities which meet the standards as established by the Department of Health and Social Services and which promote safe and adequate treatment of individuals in the interest of public health and safety.

(9) “Purchase of Care” or “POC” means child care assistance provided under this chapter.

(10) “Recipient” means any person or family to whom or for whom assistance is paid under this chapter.

(11) “Standard of need” means the subsistence level for a decent standard of living established by regulations of the Department of Health and Social Services.

(12) “Underemployment” and “unemployment” means as defined under regulations of the Department of Health and Social Services in consultation with the Department of Labor.

(13) “Unemployable” means not employable.

(31 Del. C. 1953, § 502; 50 Del. Laws, c. 278, § 5; 53 Del. Laws, c. 409, § 1; 54 Del. Laws, c. 359, § 1; 55 Del. Laws, c. 367, §§ 1, 2; 56 Del. Laws, c. 332, §§ 1-4; 57 Del. Laws, c. 591, § 34; 58 Del. Laws, c. 135, § 1; 58 Del. Laws, c. 341, § 4; 58 Del. Laws, c. 511, §§ 65, 66; 70 Del. Laws, c. 65, §§ 3-10; 82 Del. Laws, c. 187, § 1; 82 Del. Laws, c. 290, § 1; 82 Del. Laws, c. 290, § 5; 84 Del. Laws, c. 402, § 1; 84 Del. Laws, c. 421, § 5; 85 Del. Laws, c. 435, § 1.)

§ 503. Eligibility for assistance; amount; method of payment [For application of this section, see 85 Del. Laws, c. 251, § 4].

(a) *Anti-fraud.* — Assistance shall not be granted under this chapter to any person or family otherwise eligible for assistance under the categories described in § 505 of this title, having conveyed or transferred real or personal property of a value of $500 or more without fair consideration within 2 years preceding the date of application for assistance or subsequently while receiving assistance, or to any person who is an inmate of any public institution (except as a patient in a medical institution).

(b) *Medicaid.* — (1) Medical assistance may be granted to medically and financially eligible persons in accordance with Titles IV-A, IV-E, XVI, and XIX of the Social Security Act (42 U.S.C. §§ 601 et seq., 1381 et seq., and 1396 et seq.), federally approved waivers of these sections of the act, and rules and regulations established by the Department of Health and Social Services. Eligibility for and payment of medical assistance must be determined under policies and regulations established by the Department of Health and Social Services. Eligibility standards, recipient copay, and provider reimbursement must be set in accordance with state and federal mandates, state and federal funding levels, approved waivers, and rules and regulations established by the Department of Health and Social Services. The amount of assistance in each case of medical care must not duplicate any other coverage or payment made or available for the costs of such health services and supplies. To the extent permitted by federal requirements, no annual or lifetime numerical limitations may be placed on physical therapy or chiropractic care visits that are for the purpose of treating the spine and other neuromusculoskeletal structures, including extremities.

(c) *General assistance.* — Eligibility for and the amount of general assistance granted to recipients shall be determined in accordance with rules and regulations made by the Department with due regard to the resources, income, necessary expenditures of the recipient, the limit of funds appropriated therefor and the legislative intent expressed in § 501 of this title.

(d) *Temporary Assistance for Needy Families.* — Eligibility for and the amount of assistance granted to families under Temporary Assistance for Needy Families shall be determined in accordance with rules and regulations made by the Department with due regard to the resources, income and necessary expenditures of Delaware families the limit of funds appropriated therefor, and the legislative intent expressed in § 501 of this title.

In order to receive assistance under this subsection, the parent, guardian or persons standing in loco parentis to a dependent child must have instituted suit for nonsupport in the Family Court or must cooperate with the Department of Health and Social Services for the purpose of instituting proceedings for nonsupport in Family Court on the behalf of such parent, guardian or person standing in loco parentis.

(e) *Child care assistance.* — (1) a. An individual is eligible to apply for child care assistance under POC if the individual needs child care services in order to do any of the following:

1. Obtain employment.

2. Retain employment.

3. Obtain training leading to employment.

b. An individual seeking employment is eligible to apply for child care assistance under paragraph (e)(1)a. of this section for a period not to exceed 90 consecutive days over the course of 1 year.

(2) Eligibility for and the amount of assistance granted under POC shall be determined in accordance with the rules and regulations established by the Department of Health and Social Services (DHSS) and Chapter 3 of this title, and must include all of the following:

a. Copayments for families receiving POC assistance must be determined based on all of the following:

1. The family’s household size and income.

2. If the child is receiving assistance for a full day of child care or a half day of child care.

b. If a child is eligible for POC assistance, DHSS must pre-authorize a summer child care provider at any time after January 1 if pre-authorization is necessary for enrollment. If a child care provider is pre-authorized under this paragraph (e)(2)b, all of the following apply:

1. The pre-authorization provided in advance of attendance may be for purposes of enrollment only and is subject to meeting eligibility requirements for POC at the time the child attends the summer child care provider.

2. The total number of hours of child care pre-authorized for a child may not exceed 10 hours a day.

3. This pre-authorization must be provided in addition to all provider authorizations for the child's care during the school year.

(f) *Form of payment.* — Such monetary assistance, as shall be granted under this chapter, shall be paid to such needy person in the form of any method meeting the requirements of good accounting control and federal regulations and having the approval of the Secretary of the Finance Department. However, when monetary assistance is paid personally to a recipient, the recipient must have an identification card bearing the recipient's picture. The identification card shall be provided by the State through its appropriate agency upon the request of any recipient at a cost not to exceed $ 2.00, except that any recipient who is 65 years of age or older, or has blindness or a disability shall not be required to pay any fee for an identification card.

During the month of January, the Department shall send a notice to recipients paid by the Department under this subsection in the form of:

(1) Any notice available from the Internal Revenue Service concerning the EIC, including but not limited to the notice of a possible federal tax refund due to the earned income credit; or

(2) A notice developed by the Department which shall include the maximum earned income credit and the maximum earnings to which such tax credit shall apply, as determined by the federal government.

(37 Del. Laws, c. 85, § 7; Code 1935, § 1610; 41 Del. Laws, c. 124, § 2; 45 Del. Laws, c. 96, § 2; 46 Del. Laws, c. 79; 48 Del. Laws, c. 182, § 2; 31 Del. C. 1953, § 503; 50 Del. Laws, c. 278, § 5; 50 Del. Laws, c. 477, §§ 1, 2; 53 Del. Laws, c. 409, § 2; 53 Del. Laws, c. 431, §§ 1-4; 54 Del. Laws, c. 54; 54 Del. Laws, c. 257, §§ 1-3; 54 Del. Laws, c. 359, § 2; 55 Del. Laws, c. 312; 55 Del. Laws, c. 353; 55 Del. Laws, c. 367, §§ 3-6; 56 Del. Laws, c. 330, §§ 1, 2; 56 Del. Laws, c. 452; 57 Del. Laws, c. 72; 57 Del. Laws, c. 236; 57 Del. Laws, c. 248; 57 Del. Laws, c. 250, § 1; 57 Del. Laws, c. 251; 57 Del. Laws, c. 345; 57 Del. Laws, c. 391; 57 Del. Laws, c. 491, §§ 1, 2; 57 Del. Laws, c. 629, § 1; 58 Del. Laws, c. 122; 58 Del. Laws, c. 165; 58 Del. Laws, c. 306, § 5e; 58 Del. Laws, c. 341, § 1; 59 Del. Laws, c. 164, § 1; 59 Del. Laws, c. 394, § 1; 62 Del. Laws, c. 130; 64 Del. Laws, c. 148, § 1; 65 Del. Laws, c. 87, § 127; 65 Del. Laws, c. 107, § 1; 65 Del. Laws, c. 348, § 145; 66 Del. Laws, c. 85, § 178; 66 Del. Laws, c. 303, § 205; 67 Del. Laws, c. 47, § 158; 67 Del. Laws, c. 281, § 123; 69 Del. Laws, c. 443, § 3; 70 Del. Laws, c. 65, §§ 11-14; 78 Del. Laws, c. 179, § 325; 81 Del. Laws, c. 217, § 1; 81 Del. Laws, c. 367, § 2; 81 Del. Laws, c. 430, §§ 5, 7; 82 Del. Laws, c. 187, § 2; 82 Del. Laws, c. 290, § 2; 82 Del. Laws, c. 290, § 6; 83 Del. Laws, c. 363, § 1; 85 Del. Laws, c. 251, § 3; 85 Del. Laws, c. 435, § 2.)

§ 504. Assignment and collection of support payments; powers and duties of Family Court.

(a) Any law of the State to the contrary notwithstanding, the application and/or receipt of public assistance under § 503(d) of this title shall act as an automatic and immediate assignment of all rights of support for the applicant and/or recipient and any dependent child. Such assignment shall have the full force and effect of law to the State and shall be collectible by the Division of Child Support Services. All money collected pursuant to such assignment shall be deposited directly to the credit of the Division of Child Support Services Account for distribution in accordance with § 457 of the Social Services Amendments of 1974 (42 U.S.C. § 657).

(b) Whenever it appears to the Family Court or the Department of Health and Social Services that a child support obligor of any dependent child or children cannot comply with a support order, the Court or the Department may act to improve the earning capacities of a child support obligor by cooperating with the appropriate state agencies to provide the necessary training, job upgrading, or both.

(31 Del. C. 1953, § 503A; 57 Del. Laws, c. 250, § 1; 60 Del. Laws, c. 280, § 1; 70 Del. Laws, c. 65, § 15; 80 Del. Laws, c. 234, § 31; 81 Del. Laws, c. 78, § 14.)

§ 505. Categories of assistance.

Assistance may be granted, in accordance with rules and regulations established by the Department of Health and Social Services under § 503 of this title, in the following categories:

(1) *Temporary Assistance for Needy Families.* —

Assistance with respect to needy families with children. Temporary Assistance for Needy Families means aid granted to a family, as that term is defined pursuant to Department of Health and Social Service Regulations, with respect to a child or children under the age of 18 who has or have been deprived of parental support or care by reason of death, continued absence from the home, physical or mental incapacity, unemployment, or underemployment.

If found feasible by and in accordance with regulations prescribed by the Department, the term Temporary Assistance for Needy Families shall also include aid granted with respect to children who are removed from their home and placed in foster care as a result of a judicial determination initiated during the month in or for which such a family was receiving such aid or initiated during the month in or for which such a family would have received the aid if application for aid had been made, or if such children, who within 6 months prior to the month court proceedings were initiated, had been living with a specified relative and would have been eligible for assistance in or for such month except for failure to meet the "living with" requirements, that continuation in the parent's or relative's home would be contrary to the child's welfare.

(2) *General assistance.* —

Assistance granted to eligible needy persons residing in Delaware who are unemployable.

(3) Medicaid assistance. —

Assistance granted in the form of medical care, including dental care, to individuals eligible in accordance with Title IV-A, XVI, XIX of the Social Security Act [42 U.S.C. §§ 601 et seq., 1381 et seq., and 1396 et seq.], federally approved waivers, and rules and regulations established by the Department of Health and Social Services.

(4) *Child care assistance. —*

Assistance granted to eligible persons who need child care but are unable to pay for all or part of the cost of care.

(37 Del. Laws, c. 85, § 6; Code 1935, § 1609; 41 Del. Laws, c. 124, § 1; 31 Del. C. 1953, §§ 501, 504; 50 Del. Laws, c. 278, § 5; 52 Del. Laws, c. 259; 53 Del. Laws, c. 431, §§ 5-8; 54 Del. Laws, c. 359, § 3; 55 Del. Laws, c. 299, § 2; 55 Del. Laws, c. 367, § 7; 57 Del. Laws, c. 248; 57 Del. Laws, c. 249; 58 Del. Laws, c. 341, § 2; 59 Del. Laws, c. 228, § 1; 59 Del. Laws, c. 433, § 1; 61 Del. Laws, c. 443, § 1; 63 Del. Laws, c. 185, § 1; 66 Del. Laws, c. 85, § 181; 66 Del. Laws, c. 166, § 1; 70 Del. Laws, c. 65, §§ 16, 17; 80 Del. Laws, c. 28, § 5; 81 Del. Laws, c. 28, § 4; 81 Del. Laws, c. 28, § 5; 81 Del. Laws, c. 217, § 2; 81 Del. Laws, c. 367, § 2; 81 Del. Laws, c. 367, § 2; 82 Del. Laws, c. 187, § 3; 82 Del. Laws, c. 290, § 3; 82 Del. Laws, c. 290, § 7.)

§ 506. Duplication of assistance.

No person shall receive assistance for the same period under more than 1 of the categories of assistance listed in § 505(1-3) of this title, including assistance to the needy blind, if the payment of such assistance would be inconsistent with any requirement for federal aid with respect thereto as set forth in rules and regulations of the Department and the Delaware Commission for the Blind [repealed].

(31 Del. C. 1953, § 505; 50 Del. Laws, c. 278, § 5; 54 Del. Laws, c. 359, § 4; 55 Del. Laws, c. 299, § 1; 83 Del. Laws, c. 455, § 5.)

§ 507. Temporary assistance to nonresidents.

Any person in need of public assistance while physically present in Delaware, but who lacks residence in this State as defined in this chapter, may be granted assistance subject to the immediate initiation, pursuant to rules and regulations of the Department, of all lawful steps to determine residence elsewhere. Assistance to any such person shall be terminated when any one of the following events first occurs:

(1) Such person moves to some other jurisdiction;

(2) Such person receives public assistance of any kind from some other jurisdiction;

(3) Such person ceases to be a needy person; or

(4) Such person is found to have residence elsewhere.

(37 Del. Laws, c. 85, §§ 6, 11; Code 1935, §§ 1609, 1614; 41 Del. Laws, c. 124, § 1; 45 Del. Laws, c. 96, §§ 1, 3; 46 Del. Laws, c. 314; 31 Del. C. 1953, § 506; 50 Del. Laws, c. 278, § 5; 70 Del. Laws, c. 186, § 1.)

§ 508. Application for assistance.

(a) Application for assistance shall be made to the appropriate county office of the Department. The application shall be in writing in the manner and form and giving such information as shall be required by the Department. An opportunity to file an application shall be given any person desiring to do so. The Department shall act on all applications and furnish aid to eligible persons with reasonable promptness.

(b) The information supplied by an applicant in an application for assistance shall be sworn to as being true and correct to the best of the applicant's knowledge, and any employee of the Department accepting such application is hereby given the authority to administer an oath to the applicant in the manner prescribed in Chapter 53 of Title 10, that the information given is true and correct to the best of the knowledge of the applicant.

(37 Del. Laws, c. 85, § 8; Code 1935, § 1611; 31 Del. C. 1953, § 507; 50 Del. Laws, c. 278, § 5; 54 Del. Laws, c. 285; 70 Del. Laws, c. 186, § 1.)

§ 509. Continuing eligibility.

All assistance grants made under this chapter shall be reconsidered as frequently as may be required by the rules of the Department to assure continued eligibility. After such further investigation, as the Department may deem necessary, the amount and manner of giving assistance may be changed or the assistance payments shall be terminated if it is found that the recipient's circumstances have altered sufficiently to warrant such action. Assistance payments may at any time be cancelled or revoked or suspended for a temporary period pending further determination if the recipient's eligibility is not clearly established.

(37 Del. Laws, c. 85, § 13; Code 1935, § 511; 31 Del. C. 1953, § 508; 50 Del. Laws, c. 278, § 5; 58 Del. Laws, c. 135, § 2; 64 Del. Laws, c. 148, § 2.)

§ 510. Recipients to report acquisition of resources.

If at any time during the period assistance payments are being made to any person, such person becomes possessed of any property, real or personal, or of any income in excess of the amount of such property and income last declared by such person to the Department, such person shall notify the Department promptly concerning the receipt and possession of such property or income and the Department shall, in accordance with rules established by it, reconsider the eligibility of such person to receive such assistance or the amount of assistance to which entitled, according to the circumstances. Any excess paid to any person by reason of such person's failure to report as required by this section shall be recoverable in a civil action against such person or against such person's estate.

(37 Del. Laws, c. 85, § 12; Code 1935, § 1615; 31 Del. C. 1953, § 509; 50 Del. Laws, c. 278, § 5; 70 Del. Laws, c. 186, § 1.)

§ 511. Responsibility of relatives.

(a) Nothing contained in this chapter shall be construed to relieve any person from the liability of maintaining and supporting the person's parent or parents or child or spouse, as provided by the laws of this State. However, the provisions of § 501(a) of Title 13 shall not be considered by the Department in determining eligibility for assistance of any applicant or recipient of such assistance, but the Department shall encourage persons to seek and relatives to provide support that will eliminate or reduce the need for public assistance.

(b) Notwithstanding the provisions of this section or any other provision of law, the financial responsibility of an individual for any applicant or recipient of medical care shall be disregarded unless such applicant is such individual's spouse or child who is under the age of 18 years or who is blind or permanently and totally disabled.

(31 Del. C. 1953, § 510; 50 Del. Laws, c. 278, § 5; 53 Del. Laws, c. 155; 54 Del. Laws, c. 80; 55 Del. Laws, c. 367, § 8; 59 Del. Laws, c. 48, § 7; 70 Del. Laws, c. 186, § 1.)

§ 512. Administration.

The Department shall administer this chapter and in connection therewith shall:

(1) Establish rules and regulations to carry out the provisions of this chapter consistent with the intent as expressed in § 501 of this title, including, but not limited to, rules, regulations and standards as to eligibility for assistance, the nature, duration and extent of such assistance as well as sanctions for noncompliance with such rules, regulations and standards for eligibility for assistance;

(2) Cooperate with the federal Department of Health and Human Services or with any successor department or agency thereof, in any reasonable manner not contrary to law, as may be required to qualify for federal aid with respect to functions and programs coming within the purview of this chapter, shall make such reports to the Department of Health and Human Services in such form and containing such information as that Department may from time to time require, shall comply with such provisions as said agency may from time to time find necessary to assure the correctness and verification of such reports, and shall apply to the Department of Health and Human Services and other relevant federal departments for waivers of federal rules and regulations deemed to impede the achievement of the legislative intent expressed in § 501 of this title.

(3) Make periodic surveys of cost-of-living factors in relation to the needs of recipients of assistance and welfare services, in order that the standards for such assistance and welfare services remain reasonably sufficient and at the same time provide recipients with incentive to seek and maintain private sector work.

(4) Enter into agreements or understandings with appropriate public agencies in other states whereby any or all of the benefits of this chapter may be extended to Delaware residents living in other states or to residents of other states living in Delaware on a reciprocal basis. In this connection the Department may establish policies which waive or alter the residence requirements of § 505 of this title;

(5) Promulgate such rules and regulations as may be necessary to assure that its information concerning applicants and recipients is used or disclosed solely for purposes directly connected with the administration of assistance;

(6) Cooperate with the federal government in carrying out the purposes of any federal acts concerning public welfare and in other matters of mutual concern pertaining to public welfare, including the adoption of such methods of administration as are necessary for the efficient operation of the plan for such public assistance and welfare services; and

(7) Guarantee that assistance provided as medical care, including dental care, when paid to providers of such medical care is on a prompt basis, usually not later than 30 days from the report of services by a physician, pharmacist, or other professional health care provider, or 20 days from the report of services by a hospital or skilled nursing facility; provided, however, that should financial advances from the Department of Finance be necessary to carry out this chapter, they must be permitted upon the concurrence of the Secretary of the Department of Finance and the Secretary of the Department of Health and Social Services.

(8) *Supplementary Security Income Program (Title XVI Social Security Act).* — a. The Secretary of the Department of Health and Social Services, in carrying out the purposes of this title, may enter into agreements on behalf of the State with the Secretary of Health and Human Services or with other appropriate federal officials, under the Supplementary Security Income Program established by Title XVI of the Social Security Act [42 U.S.C. § 1381 et seq.], as amended, or under any other federal welfare or public assistance programs hereafter established, which are not contrary to or in conflict with the purposes of this title.

b. Notwithstanding any other provision of law, the Secretary of the Department of Health and Social Services is empowered to transfer funds, within the limits of appropriation by the General Assembly, to the Secretary of Health and Human Services or to other appropriate federal official, pursuant to any agreement referred to in paragraph a. of this subdivision or pursuant to any other federal welfare or public assistance programs hereafter established, which are not contrary to or in conflict with the purposes of this title.

(9), (10) [Repealed.]

(31 Del. C. 1953, § 511; 50 Del. Laws, c. 278, § 5; 60 Del. Laws, c. 86, § 1; 70 Del. Laws, c. 65, §§ 16, 18, 30; 81 Del. Laws, c. 367, § 2; 82 Del. Laws, c. 187, § 4; 82 Del. Laws, c. 290, § 4; 82 Del. Laws, c. 290, § 8.)

§ 513. Assistance not assignable; exception.

Assistance granted under this chapter shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this chapter shall be subject to execution, levy, attachment, garnishment or other legal process or to the operation of any bankruptcy or insolvency law, with the exception that the State shall seek recoupment for overpayments. Such recoupment may not exceed an amount

which will result in the assistance unit's retaining from its combined aid, income and liquid resources, less than 90% of the amount payable under the State Plan to a family of the same composition with no other income. Recoupment must be made in accordance with applicable federal laws and regulations. The Department shall publish regulations establishing the recoupment rate at any time when there is a change.

(37 Del. Laws, c. 85, § 19; Code 1935, § 1622; 31 Del. C. 1953, § 512; 50 Del. Laws, c. 278, § 5; 62 Del. Laws, c. 373, § 1; 63 Del. Laws, c. 413, § 1; 66 Del. Laws, c. 286, § 1.)

§ 514. Financial participation [Repealed].

Repealed by 70 Del. Laws, c. 65, § 19, effective June 19, 1995.

§ 515. Effect of change of laws or allowances.

Every allowance of assistance under the provisions of this part shall be deemed to have been allowed under and shall be held subject to the provisions of any amending or repealing act that may be passed, and no person receiving assistance under this part shall have any claim for compensation by reason of the allowance for assistance being affected in any way by any such amending or repealing act.

Taxes and assessments for public purposes by the State or any political subdivision thereof, whether county, hundred, city or town, shall be assessed and levied upon the property of aged persons to whom assistance has been allowed under this chapter in the same manner as such taxes and assessments are levied and assessed by law upon the properties of other owners. The time for payment of any taxes or assessments so levied and assessed shall be deferred until such time as the property of such aged person is transferred from the name of such aged person or until such aged person dies, in which event the face amount of the taxes and assessments so levied or assessed, without penalties or interest, shall be payable within 90 days from the date of such transfer or death. After the expiration of such 90-day period there shall be due, with respect to any such property, the same amount or amounts for taxes or assessments as would have been due after the expiration of 90 days from the date the taxes or assessments became due and payable had the property not been owned by an aged person, to whom assistance had been allowed under this chapter. In the event of the sale of any such property under any form of execution process (including sales in any form of insolvency proceeding), such taxes and assessments shall be due and payable as of the date of the offering of such property for sale under such execution process.

(37 Del. Laws, c. 85, § 20; Code 1935, § 1623; 42 Del. Laws, c. 114; 31 Del. C 1953, § 515; 50 Del. Laws, c. 278, § 5.)

§ 516. Fraudulent acts; penalties [Repealed].

Repealed by 65 Del. Laws, c. 345, § 1, effective June 30, 1986.

§ 517. Hospital and medical treatment for recipients of aid under this chapter.

Notwithstanding any other provision of law, the Levy Court or County Council of any county shall not provide for the hospital treatment and medical care of any individual receiving assistance in any of the categories listed in § 505(1)-(3) of this title or receiving assistance as aid to the blind pursuant to this title.

(31 Del. C. 1953, § 517; 53 Del. Laws, c. 432; 54 Del. Laws, c. 359, § 5; 55 Del. Laws, c. 85, § 39A; 55 Del. Laws, c. 367, § 11.)

§ 518. Failure to comply with job placement, education, training, work eligibility, parenting or personal responsibility requirements

The Department of Health and Social Services may issue and implement rules and regulations establishing sanctions for families receiving Temporary Assistance for Needy Families who fail to comply with work, education, training, work eligibility, parenting or personal responsibility requirements established by the Department pursuant to § 512(1) of this title. Such sanctions may, among other things, reduce assistance to such a family and may include, for a family who has failed to comply with job placement, education, training or work eligibility requirements under the Temporary Assistance for Needy Families program. The Department shall afford recipients due process as provided under applicable rules and regulations prior to the implementation of any such sanctions.

(31 Del. C. 1953, § 518; 57 Del. Laws, c. 247; 70 Del. Laws, c. 65, § 20; 81 Del. Laws, c. 367, § 2.)

§ 519. Payment of assistance grants by the Department of Welfare.

Notwithstanding any other provision of law, the Department of Public Welfare may make payment of assistance grants under the Temporary Assistance for Needy Families program on behalf of certain eligible cases or families directly to the Employment Security Commission, Department of Labor, of this State, with the understanding that such assistance payments so made shall be used to compensate the eligible case or family for employment services rendered through placement of the employable adult or person 16 years of age or older and not in school with a public or private nonprofit agency for the purpose of performing specific duties.

The Employment Security Commission shall maintain accounting controls of such assistance payments made by the Department of Public Welfare and shall refund to the Department of Public Welfare any and all such assistance payments received which may not have been used for the intended purpose, such refunding to be effected within 90 days after such payment is issued.

(31 Del. C. 1953, § 519; 57 Del. Laws, c. 252; 81 Del. Laws, c. 367, § 2.)

§ 520. Judicial review.

Any applicant for or recipient of public assistance benefits under this chapter or Chapter 6 of this title against whom an administrative hearing decision has been decided may appeal such decision to the Superior Court if the decision would result in financial harm to the

appellant. The appeal shall be filed within 30 days of the day of the final administrative decision. The appeal shall be on the record without a trial de novo. The Court shall decide all relevant questions and all other matters involved, and shall sustain any factual findings of the administrative hearing decision that are supported by substantial evidence on the record as a whole. The Court may remand the matter for further factual findings or other proceedings consistent with the Court's order. The notice of appeal and all other matters regulating the appeal shall be in the form and according to the procedure as shall be provided by the rules of the Superior Court.

(64 Del. Laws, c. 482, § 1; 83 Del. Laws, c. 134, § 1.)

§ 521. Emergency and disaster assistance.

Funds appropriated to the Department of Health and Social Services, Division of Social Services, for "Emergency and Disaster Assistance" and used for special emergency needs of any welfare-receiving household (except those households specifically excluded by the regulations) shall not exceed a total of $1,200 for emergency shelter certified by the Department, $450 for mortgage or rent assistance, and $200 for other costs relating to self-sufficiency of the household for any 1 such household in the fiscal year ending June 30. Notwithstanding any other provision of law, the Director of the Office of Management and Budget is empowered to transfer, advance or allocate emergency funds, within the limits of the funds appropriated, to the Department of Health and Social Services for the purpose of administration of emergency assistance. Such transfer, advance or allocation shall not be apportioned by county and shall be allocated in the following manner:

(1) Twenty percent of the total emergency fund appropriation shall be allocated promptly in the first quarter of the state fiscal year;

(2) Twenty-five percent of the total emergency fund appropriation shall be allocated promptly in the second quarter of the state fiscal year;

(3) Thirty percent of the total emergency fund appropriation shall be allocated promptly in the third quarter of the state fiscal year; and

(4) Twenty-five percent of the total emergency fund appropriation shall be allocated promptly in the fourth quarter of the state fiscal year.

(65 Del. Laws, c. 87, § 147; 65 Del. Laws, c. 348, § 158; 66 Del. Laws, c. 85, § 179; 69 Del. Laws, c. 57, §§ 1, 2; 70 Del. Laws, c. 65, § 21; 71 Del. Laws, c. 284, § 1; 75 Del. Laws, c. 88, § 21(14).)

§ 522. Medical care; subrogation.

(a) Subrogation is defined as the doctrine of law which enables insurers to recover payments from any third party who is responsible for an injury. In any claim for benefits by a recipient who receives medical care under this title, where the recipient has a cause of action against any other person, the Department of Health and Social Services shall be subrogated against (substituted for) the recipient to the extent of any payment made by the Department of Health and Social Services on behalf of the recipient receiving medical care, resulting from the occurrence which constituted the basis for the action against the other person.

(b) After the deduction of applicable attorney fees and litigation costs, any funds received by an individual who has received medical care under this title, the individual's attorney or the individual's guardian or personal representative, by means of judgment, award or settlement of the cause of action, shall be held for the benefit of the Department of Health and Social Services to the extent indicated in subsection (a) of this section.

(c) If, after being notified in writing of a subrogation claim and possible liability under this section, a recipient receiving medical care under this title, recipient's attorney or recipient's guardian or personal representative disposes of funds that are required to be held for the benefit of the Department under this section without the written approval of the Department, that recipient shall be liable to the Department for any amount that, as a result of the disposition of the funds, is not recoverable by the Department.

(d) The Department may compromise, settle and release a subrogated claim if the Department determines that collection would result in substantial hardship on the recipient receiving medical care or, in a wrongful death action, on the surviving dependents of the deceased.

(65 Del. Laws, c. 124, § 1; 70 Del. Laws, c. 65, § 22; 70 Del. Laws, c. 186, § 1.)

§ 523. Education and training for recipients of aid under § 505(1) of this title.

(a) Persons who qualify for assistance under § 505(1) of this title shall be eligible to participate in secondary education, post-secondary education up to the baccalaureate level, adult basic education or vocational training as an approved work activity provided each of the following requirements are met:

(1) The person does not hold a baccalaureate degree.

(2) The secondary, postsecondary education up to the baccalaureate level or vocational education is pursued through an accredited or approved school program.

(3) The person is enrolled with enough credit hours to have full-time student status and is in good standing as it relates to attendance and achievement as defined by the program the person is attending.

(4) If the person attending school would otherwise be subject to a work requirement in order to receive assistance under § 505(1) of this title, the combination of credit hours and work hours shall equal at least 20 hours per week while the program is in session. This work requirement may be met through work-study, internships or externships, or through work as a research assistant. If possible, during scheduled breaks, the work requirement will be the same as for other program participants, with work experience related to the

field of study. However, if the student is enrolled full-time for the next semester and work activity placement cannot be arranged for the duration of the break in classes, it may be excused.

(b) Loans, scholarships, grants and work-study received by the recipient to pay for tuition and materials are excluded in the determination of eligibility for assistance under § 505(1) of this title or the amount of assistance received by the recipient.

(c) The Department of Health and Social Services shall advise all persons of this section at application interviews and, at a minimum, at each recertification appointment.

(d) Persons attending education and training programs under this section shall receive support services, such as assistance with transportation and child care, while they attend the educational or vocational training program on the same basis as support services are provided other persons who are receiving assistance under § 505(1) of this title.

(e) If program completion will occur within 1 semester or quarter after the time limit expires, an extension may be granted for that semester or quarter.

(f) Persons sanctioned while attending educational or vocational programs shall be afforded the same due process as provided other persons under §§ 518 and 520 of this title.

(72 Del. Laws, c. 119, § 1.)

§ 524. Eligibility for Temporary Assistance for Needy Families.

Pursuant to the option granted the State by 21 U.S.C. § 862a(d)(1), an individual convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance shall be exempt from the prohibition contained in 21 U.S.C. § 862a(a) against eligibility for assistance under 42 U.S.C. § 601 et seq. if the individual is otherwise eligible for assistance under the Temporary Assistance for Needy Families (TANF) funded program.

(81 Del. Laws, c. 47, § 1.)

§ 525. Insurance coverage for serious mental illness and drug and alcohol dependency for recipients of aid under § 505(3) of this title.

(a) *Definitions.* — For the purposes of this section, the following words and phrases shall have the following meanings:

(1) "ASAM criteria" means the comprehensive set of guidelines for placement, continued stay, and transfer or discharge of patients with addiction established by the American Society of Addiction Medicine ("ASAM") for use in determining medically necessary treatment.

(2) "Drug and alcohol dependencies" means substance abuse disorder or the chronic, habitual, regular, or recurrent use of alcohol, inhalants, or controlled substances as identified in Chapter 47 of Title 16.

(3) "Health benefit plan" means any assistance provided to an individual under § 505(3) of this title.

(4) "Serious mental illness" means any of the following biologically based mental illnesses: schizophrenia, bipolar disorder, obsessive-compulsive disorder, major depressive disorder, panic disorder, anorexia nervosa, bulimia nervosa, schizo affective disorder, and delusional disorder. The diagnostic criteria set out in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders shall be utilized to determine whether a beneficiary of a health benefit plan is suffering from a serious mental illness.

(b) *Coverage of serious mental illness and drug and alcohol dependencies.* — a. Carriers shall provide coverage for serious mental illnesses and drug and alcohol dependencies in all health benefit plans delivered or issued for delivery under § 505(3) of this title. Coverage for serious mental illnesses and drug and alcohol dependencies must provide:

1. Inpatient coverage for the diagnosis and treatment of drug and alcohol dependencies.

2. Unlimited medically necessary treatment for drug and alcohol dependencies as required by the Mental Health Parity and Addiction Equity Act of 2008 (29 U.S.C. § 1185a) and determined by the use of the full set of ASAM criteria, in all of the following:

A. Treatment provided in residential setting.

B. Intensive outpatient programs.

C. Inpatient withdrawal management.

b. Subject to subsections (a) and (c) through (e) of this section, no carrier may issue for delivery, or deliver, in this State any health benefit plan containing terms that place a greater financial burden on an insured for covered services provided in the diagnosis and treatment of a serious mental illness and drug and alcohol dependency than for covered services provided in the diagnosis and treatment of any other illness or disease covered by the health benefit plan. By way of example, such terms include deductibles, copays, monetary limits, coinsurance factors, limits in the numbers of visits, limits in the length of inpatient stays, durational limits or limits in the coverage of prescription medicines.

(2) a. A health benefit plan under § 505(3) that provides coverage for prescription drugs must provide coverage for the treatment of serious mental illnesses and drug and alcohol dependencies that includes immediate access, without prior authorization, to a 72-hour emergency supply of prescribed medications covered under the health benefit plan for the medically necessary treatment of serious

mental illnesses and drug and alcohol dependencies where an emergency medical condition exists, including a prescribed drug or medication associated with the management of opioid withdrawal or stabilization, except where otherwise prohibited by law.

b. Coverage of an emergency supply of prescribed medications must include medication for opioid overdose reversal otherwise covered under the health benefit plan prescribed to a covered person.

c. Coverage provided under this paragraph (b)(2) of this section may be subject to copayments, coinsurance, and annual deductibles that are consistent with those imposed on other benefits within the health benefit plan; provided, however, a health benefit plan must not impose an additional copayment or coinsurance on a covered person who received an emergency supply of the same medication in the same 30-day period in which the emergency supply of medication was dispensed.

d. This paragraph (b)(2) does not preclude the imposition of a copayment or coinsurance on the initial emergency supply of medication in an amount that is less than the copayment or coinsurance otherwise applicable to a 30-day supply of such medication, provided that the total sum of copayments or coinsurance for an entire 30-day supply of the medication does not exceed the copayment or coinsurance otherwise applicable to a 30-day supply of such medication.

(c) *Eligibility for coverage.* — (1) Subject to the limitations set forth in subsection (d) of this section, a health benefit plan may condition coverage of services provided in the diagnosis and treatment of a serious mental illness and drug and alcohol dependency on the following further requirements that the service or services:

a. Must be rendered by a mental health professional licensed or certified by the State Board of Licensing including, but not limited to, psychologists, psychiatrists, social workers, and other such mental health professionals, or a drug and alcohol counselor who has been certified by the Delaware Certified Alcohol and Drug Counselors Certification Board, or in a mental health facility licensed by the State or in a treatment facility approved by the Department of Health and Social Services or the Bureau of Alcoholism and Drug Abuse as set forth in Chapter 22 of Title 16 or substantially similar licensing entities in other states.

b. Must be medically necessary.

c. Must be covered services subject to any administrative requirements of the health benefit plan.

(2) A health benefit plan may further condition coverage of services provided in the diagnosis and treatment of a serious mental illness and drug and alcohol dependency in the same manner and to the same extent as coverage for all other illnesses and diseases is conditioned. Such conditions may include, by way of example, and not by way of limitation, precertification and referral requirements.

(d) *Benefit management.* — (1) A carrier may, directly or by contract with another qualified entity, manage the benefit prescribed by subsection (b) of this section in order to limit coverage of services provided in the diagnosis and treatment of a serious mental illness and drug and alcohol dependency to those services that are deemed medically necessary as follows:

a. The management of benefits for serious mental illnesses and drug and alcohol dependencies may be by methods used for the management of benefits provided for other medical conditions, or may be by management methods unique to mental health benefits. Such may include, by way of example and not limitation, preadmission screening, prior authorization of services, utilization review, and the development and monitoring of treatment plans.

b. A carrier may not impose precertification, prior authorization, preadmission screening, or referral requirements for the diagnosis and medically necessary treatment, including in-patient treatment, of drug and alcohol dependencies.

c. The benefit prescribed by paragraph (b)(1) of this section may not be subject to concurrent utilization review during the first 14 days of any inpatient admission to a facility approved by a nationally recognized healthcare accrediting organization or the Division of Substance Abuse and Mental Health, 30 days of intensive outpatient program treatment, or 5 days of inpatient withdrawal management, provided that the facility notifies the carrier of both the admission and the initial treatment plan within 48 hours of the admission. The facility shall perform daily clinical review of the patient, including the periodic consultation with the carrier to ensure that the facility is using the evidence-based and peer reviewed clinical review tool utilized by the carrier which is designated by the American Society of Addiction Medicine ("ASAM") or, if applicable, any state-specific ASAM criteria, and appropriate to the age of the patient, to ensure that the inpatient treatment is medically necessary for the patient.

d. Any utilization review of treatment provided under paragraph (b)(1) of this section may include a review of all services provided during such inpatient treatment, including all services provided during the first 14 days of such inpatient treatment, 30 days of intensive outpatient program treatment, or 5 days of inpatient withdrawal management; provided, however, the carrier may only deny coverage for any portion of the initial 14-day inpatient treatment on the basis that such treatment was not medically necessary if such inpatient treatment was contrary to the evidence-based and peer reviewed clinical review tool utilized by the carrier which is designated by ASAM or, if applicable, any state-specific ASAM criteria.

e. A covered person does not have any financial obligation to the facility for any treatment under paragraph (b)(1) of this section other than any copayment, coinsurance, or deductible otherwise required under the health benefit plan.

(2) This section shall not be interpreted to require a carrier to employ the same benefit management procedures for serious mental illnesses and drug and alcohol dependencies that are employed for the management of other illnesses or diseases covered by the health benefit plan or to require parity or equivalence in the rate, or dollar value of, claims denied.

(e) *Out of network services.* — Where a health benefit plan provides benefits for the diagnosis and treatment of serious mental illnesses and drug and alcohol dependencies within a network of providers and where a beneficiary of the health benefit plan obtains services

consisting of diagnosis and treatment of a serious mental illness and drug and alcohol dependency outside of the network of providers, this section shall not apply. The health benefit plan may contain terms and conditions applicable to out of network services without reference to this section.

(f) *Reporting requirements.* — Each carrier must submit a report to the Department on or before July 1, 2019, and any year thereafter during which the carrier makes significant changes to how it designs and applies its medical management protocols; the report must contain the following information:

(1) A description of the process used to develop or select the medical necessity criteria for mental illness and drug and alcohol dependencies benefits and the process used to develop or select the medical necessity criteria for medical and surgical benefits.

(2) As requested by the Department, identification of select nonquantitative treatment limitations (NQTLs) that are applied to mental illness and drug and alcohol dependencies benefits and medical and surgical benefits within each classification of benefits; there may be no separate NQTLs that apply to mental illness and drug and alcohol dependencies benefits that do not also apply to medical and surgical benefits within any classification of benefits.

(3) The results of an analysis that demonstrates that for the medical necessity criteria described in paragraph (f)(1) of this section and for each NQTL identified in paragraph (f)(2) of this section, as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each NQTL to mental illness and drug and alcohol dependencies benefits within each classification of benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each NQTL to medical and surgical benefits within the corresponding classification of benefits; at a minimum, the results of the analysis shall:

a. Identify the factors used to determine that an NQTL will apply to a benefit, including factors that were considered but rejected.

b. Identify and define the specific evidentiary standards used to define the factors and any other evidence relied upon in designing each NQTL.

c. Provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to design each NQTL, as written, for mental illness and drug and alcohol dependencies benefits are comparable to, and are applied no more stringently than, the processes and strategies used to design each NQTL, as written, for medical and surgical benefits.

d. Provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to apply each NQTL, in operation, for mental illness and drug and alcohol dependencies benefits are comparable to, and applied no more stringently than, the processes or strategies used to apply each NQTL, in operation, for medical and surgical benefits.

e. Disclose the specific findings and conclusions reached by the carrier that the results of the analyses above indicate that the carrier is in compliance with this section and the Mental Health Parity and Addiction Equity Act of 2008 [P.L. 104-204] and its implementing regulations, which includes 42 C.F.R. Part 438, Subpart K, and any other related federal regulations found in the Code of Federal Regulations.

(4) Any information submitted to the Department of Health and Social Services by a carrier that is considered proprietary by the carrier shall not be made public record.

(5) The Department of Health and Social Services shall retain the authority to enforce the provisions of this section. The provisions of this section shall not give rise to a private cause of action.

(81 Del. Laws, c. 190, § 7; 81 Del. Laws, c. 406, § 3; 84 Del. Laws, c. 402, § 1.)

§ 526. Insurance coverage for contraceptive methods for recipients of aid under § 505(3) of this title.

(a) For purposes of this section:

(1) “FDA” means the Food and Drug Administration.

(2) “Therapeutic equivalent” means a contraceptive drug, device, or product that meets all of the following:

a. Approved as safe and effective.

b. Pharmaceutically equivalent to another contraceptive drug, device or product in that it contains an identical amount of the same active drug ingredient in the same dosage form and route of administration and meets compendial or other applicable standards of strength, quality, purity, and identity.

c. Assigned, by the FDA, the same therapeutic equivalence code as another contraceptive drug, device, or product.

(b) Carriers shall provide coverage for contraceptive methods in all health benefit plans delivered or issued for delivery under § 505(3) of this title. Coverage for contraceptive methods must include all of the following:

(1) All FDA-approved contraceptive drugs, devices, and other products as follows:

a. If the FDA has approved 1 or more therapeutic equivalents of a contraceptive drug, device, or product, a carrier is not required to include all such therapeutically equivalent versions in its formulary as long as at least 1 is included and covered without cost-sharing and in accordance with this section.

b. If there is a therapeutic equivalent of a drug, device, or other product for an FDA-approved contraceptive method, the carrier may provide coverage for more than 1 drug, device, or other product and may impose cost-sharing requirements as long as at least

1 drug, device, or other product for that method is available without cost-sharing. If, however, an individual's attending provider recommends a particular FDA-approved contraceptive based on a medical determination with respect to that individual, regardless of whether the contraceptive has a therapeutic equivalent, the carrier shall provide coverage for the prescribed contraceptive drug, device, or product without cost-sharing.

c. The carrier is not required to provide coverage for male condoms.

(2) FDA-approved emergency contraception available over-the-counter, whether with a prescription or dispensed consistent with the requirements of Chapter 25 of Title 24.

(3) A prescription for contraceptives intended to last for no more than a 12-month period which may be dispensed all at once or over the course of the 12-month period, regardless of whether the covered individual was enrolled in a plan or policy under § 505(3) of this title at the time the prescription contraceptive was first dispensed.

(4) Voluntary female sterilization procedures.

(5) Patient education and counseling on contraception.

(6) Follow-up services related to the drugs, devices, products, and procedures covered under this subsection, including management of side effects, counseling for continued adherence, and device insertion and removal.

(7) Immediate postpartum insertion of long-acting reversible contraception.

(c) A carrier may not impose any deductible, coinsurance, copayment, or any other cost-sharing requirement for coverage provided under this section, except under paragraph (b)(1) of this section or as otherwise required under federal law. A carrier may not impose unreasonable restrictions or delays in the coverage under this section, except that reasonable medical management techniques may be applied to coverage within a method category, as defined by the FDA, but not across types of methods.

(d) This section does not preclude coverage for contraceptive drugs, devices, products, and procedures as prescribed by a provider for reasons other than contraceptive purposes, including decreasing the risk of ovarian cancer, eliminating symptoms of menopause, or providing contraception that is necessary to preserve the life or health of the covered individual.

(e) Carriers are not required under this section to cover experimental or investigational treatments.

(81 Del. Laws, c. 323, § 4; 70 Del. Laws, c. 186, § 1.)

§ 527. Coverage for treatment of pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections and pediatric acute onset neuropsychiatric syndrome.

Carriers shall provide coverage for treatment of pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections and pediatric acute onset neuropsychiatric syndrome, including the use of intravenous immunoglobulin therapy in all health benefit plans delivered or issued for delivery under § 505(3) of this title.

(81 Del. Laws, c. 400, § 4.)

§ 528. Coverage for epinephrine autoinjectors.

(a) For purposes of this section, "epinephrine autoinjector" means a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body.

(b) Carriers shall provide coverage for medically-necessary epinephrine autoinjectors.

(83 Del. Laws, c. 42, § 4; 84 Del. Laws, c. 36, § 4.)

§ 529. Coverage for insulin pumps.

(a) For purposes of this section, "insulin pump" means a small, portable medical device that is approved by the U.S. Food and Drug Administration to provide continuous subcutaneous insulin infusion.

(b) Carriers shall provide coverage for a medically-necessary insulin pump at no cost in all health benefit plans delivered or issued for delivery under § 505(3) of this title.

(83 Del. Laws, c. 241, § 4.)

§ 530. Coverage for doula services.

(a) As used in this section:

(1) "Carrier" means any entity that provides health insurance under § 505(3) of this title.

(2) "Doula services" means services provided by a trained doula and designed to provide physical, emotional, and educational support to pregnant and birthing persons before, during, and after childbirth. "Doula services" include the following:

a. Support and assistance during labor and childbirth.

b. Prenatal and postpartum support and education.

c. Breastfeeding assistance and lactation support.

d. Parenting education.

e. Support for a birthing person following loss of pregnancy.

(b) Beginning January 1, 2024, all carriers shall provide coverage of doula services that includes all of the following:

(1) Three prenatal visits, of up to 90 minutes.

(2) Three postpartum visits, of up to 90 minutes.

(3) Attendance through labor and birth.

(c) Coverage must be provided for additional postpartum doula visits with a recommendation by a practitioner or clinician licensed under Title 24 acting within their scope of practice.

(d) The Division of Medicaid and Medical Assistance shall establish, in collaboration with stakeholders, a process for doulas to be certified and to enroll as participating providers, as well as a reimbursement rate for doula services that supports a livable annual income for full-time practicing doulas.

(83 Del. Laws, c. 366, § 1; 84 Del. Laws, c. 159, § 1; 84 Del. Laws, c. 291, § 1.)

§ 531. Annual behavioral health well check.

(a) As used in this section, "behavioral health well check" means a predeductible annual visit with a licensed mental health clinician with at minimum a masters level degree. The well check must include but is not limited to a review of medical history, evaluation of adverse childhood experiences, use of a group of developmentally-appropriate mental health screening tools, and may include anticipatory behavioral health guidance congruent with stage of life using the diagnosis of "annual behavioral health well check."

(b) All carriers shall provide coverage of an annual behavioral health well check, which, except as provided in subsection (d) of this section, shall be reimbursed at rates comparable to rates for the provision of other medical care, provided that reimbursement may be adjusted for payment of claims that are billed by a nonphysician clinician so long as the methodology to determine such adjustments is comparable to and applied no more stringently than the methodology for adjustments made for reimbursement of claims billed by nonphysician clinicians for other medical care, in accordance with 42 CFR § 438.910(d)(1).

(c) (1) The Division of Medicaid and Medical Assistance shall develop and implement procedural codes for purposes of billing for a behavioral health well check that are comparable to the rates under the following CPT codes:

a. 99381.

b. 99382.

c. 99383.

d. 99384.

e. 99385.

f. 99386.

g. 99387.

h. 99391.

i. 99392.

j. 99393.

k. 99394.

l. 99395.

m. 99396.

n. 99397.

(2), (3) [Repealed.]

(d) An annual behavioral health well check may be reimbursed through a value-based arrangement, a capitated arrangement, a bundled payment arrangement, or any other alternative payment arrangement that is not a traditional fee-for-service arrangement, provided that a carrier must have documentation demonstrating that within such payment arrangement the annual behavioral health well check is valued commensurate to the value established under subsection (b) of this section.

(e) An annual behavioral health well check may be incorporated into and reimbursed within any type of integrated primary care service delivery method including, but not limited to, the psychiatric collaborative care model, the primary care behavioral health model or behavioral health consultant model, any model that involves co-location of mental health professionals within general medical settings, or any other integrated care model that focuses on the delivery of primary care.

(f) Nothing in this section prevents the operation of policy provisions such as copayments, coinsurance, allowable charge limitations, coordination of benefits, or provisions restricting coverage to services rendered by licensed, certified, or carrier-approved providers or facilities.

(83 Del. Laws, c. 388, § 3; 84 Del. Laws, c. 402, § 1; 84 Del. Laws, c. 501, § 1.)

§ 532. Supplemental and diagnostic breast examinations [For application of this section, see 84 Del. Laws, c. 121, § 5].

(a) As used in this section:

(1) “Breast magnetic resonance imaging” or “breast MRI” means a diagnostic tool, including standard and abbreviated breast MRI, that uses radio waves and magnets to produce detailed images of structures within the breast. A breast MRI may be used as a screening tool when clinically indicated, including after indeterminant results from a mammogram that requires additional evaluation and for those at high risk for breast cancer.

(2) “Breast ultrasound” means a noninvasive diagnostic tool that uses high-frequency sound waves and their echoes to produce detailed images of structures within the breast. A breast ultrasound may be used as a screening tool when clinically indicated, including after indeterminant results from a mammogram that requires additional evaluation and for those at high risk for breast cancer.

(3) “Cost-sharing requirement” means a deductible, coinsurance, or copayment and any maximum limitation on the application of such a deductible, coinsurance, copayment, or similar out-of-pocket expense.

(4) “Diagnostic breast examination” means a medically-necessary and clinically-appropriate examination of the breast, including such examination using breast MRI, breast ultrasound, or mammogram, that is used for either of the following:

a. To evaluate an abnormality seen or suspected from a screening examination for breast cancer.

b. To evaluate an abnormality detected by another means of examination.

(5) “Mammogram” means a diagnostic or screening mammography exam using a low-dose X-ray to produce an image of the breast.

(6) “Supplemental breast screening examination” means a medically-necessary and clinically-appropriate examination of the breast, including such examination using breast MRI, breast ultrasound, or mammogram, that is used for either of the following:

a. To screen for breast cancer when there is no abnormality seen or suspected in the breast.

b. Based on personal or family medical history or additional factors that may increase the individual’s risk of breast cancer.

(b) All carriers shall provide coverage for diagnostic breast examinations and supplemental breast screening examinations. The terms of such coverage, including cost-sharing requirements, shall be no less favorable than the cost-sharing requirements applicable to screening mammography for breast cancer.

(84 Del. Laws, c. 121, § 4; 84 Del. Laws, c. 402, § 1.)

§ 533. Medicaid reimbursement for school-based services.

(a) By January 1, 2025, the Department of Health and Social Services shall apply to the Centers for Medicare and Medicaid Services for a state plan amendment that authorizes the State to provide for reimbursement for all medically-necessary behavioral health services provided in a school setting to all individuals enrolled in the program or the Delaware Children’s Health Insurance Program, regardless of whether the services are provided under an Individualized Educational Program or Individualized Family Service Plan.

(b) After the state plan amendment is approved, eligible services provided in a school setting by any school Medicaid allowable licensed or credentialed mental health provider shall be reimbursable.

(c) Local education agencies must use the funds reimbursed for school-based behavioral health services to support school-based behavioral health programs and services.

(d) Local education agencies must reinvest the funds reimbursed to support school-based behavioral health programs and services.

(e) Upon obtaining federal approval, the Department of Health and Social Services shall update its regulations and provider manuals to reflect the changes to the program and provide comprehensive and advanced training to local education agencies.

(f) The Department of Health and Social Services shall notify the Chief Clerk of the House and the Secretary of the Senate of the occurrence of the following:

(1) The submission of the state plan amendment to the Centers for Medicare and Medicaid Services.

(2) Receipt of approval for the state plan amendment.

(3) The submission of a cost allocation plan amendment following the approval of the state plan amendment.

(4) Receipt of approval of the cost allocation plan amendment.

(84 Del. Laws, c. 349, § 1.)

§ 534. Coverage for allergenic protein dietary supplements [For application of this section, see 84 Del. Laws, c. 376, § 5].

(a) For purposes of this section:

(1) “Dietary supplement” means as defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321.

(2) “Early egg allergen introduction dietary supplement” means a dietary supplement that is prescribed to an infant by a health-care practitioner and contains sufficient infant-safe, well-cooked egg protein to reduce the risk of food allergies.

(3) “Early peanut allergen introduction dietary supplement” means a dietary supplement that is prescribed to an infant by a health-care practitioner and contains sufficient infant-safe peanut protein to reduce the risk of food allergies.

(4) “Health-care practitioner” means an individual licensed and authorized to write medical orders for an individual under Title 24.

(5) “Infant” means a child who has not attained the age of 1 year.

(b) Carriers shall provide coverage at no cost in all health benefit plans delivered or issued for delivery under § 505(3) of this title for at least 1 of each of the following:

(1) An early egg allergen introduction dietary supplement.

(2) An early peanut allergen introduction dietary supplement.

(84 Del. Laws, c. 376, § 4.)

§ 535. Services related to termination of pregnancy.

(a) Carriers shall cover services related to the termination of pregnancy up to a maximum of $750 per covered individual per year in all health benefit plans delivered or issued for delivery under § 505(3) of this title.

(b) Coverage provided under this section may not be subject to any deductible, coinsurance, copayment, or any other cost-sharing requirement up to the $750 maximum.

(c) A carrier must provide coverage for the full scope of services permissible under the law.

(d) Coverage provided under this section may not require a referral or prior authorization as a condition of coverage.

(e) If a policy or contract limits an insured's access to a network of participating providers for other health-care services, then it may limit access for services related to termination of pregnancy, but the policy or contract must include in all its provider networks a sufficient number of providers of termination of pregnancy services to accommodate the direct access needs of their enrollees.

(f) Coverage provided under this section must be funded by Delaware state resources if services are not eligible for federal funds. If federal funds are permitted to be used for services under this section, then federal funds must be used.

(84 Del. Laws, c. 402, § 1.)

§ 536. Mammogram referrals.

(a) "Carrier" means any entity that provides health insurance under § 505(3) of this title.

(b) Carriers shall provide coverage for an annual mammogram for the purpose of early detection for a woman 40 years of age or older, with or without referral from the woman's health-care provider.

(84 Del. Laws, c. 483, § 4.)

§ 537. Ovarian cancer screening and monitoring tests [For application of this section, see 84 Del. Laws, c. 488, § 3].

(a) For purposes of this section:

(1) "At risk for ovarian cancer" means any of the following:

a. Having a family history of any of the following:

1. One or more first- or second-degree relatives with ovarian cancer.

2. Clusters of women relatives with breast cancer.

3. Nonpolyposis colorectal cancer.

4. Breast cancer in a male relative.

b. Testing positive for any of the following genetic mutations:

1. BRCA1 or BRCA2.

2. Lynch Syndrome.

c. Having a personal history of any of the following:

1. Ovarian cancer.

2. Endometriosis.

3. Unexplained infertility.

4. Uterine fibroids.

5. Polycystic ovarian syndrome.

(2) "Carrier" means any entity that provides health insurance under § 505(3) of this title.

(3) "Monitoring tests" and "screening tests" mean tests and examinations for ovarian cancer using any of the following methods that are recommended by a patient's physician:

a. Tumor marker tests supported by national clinical guidelines, national standards of care, or peer reviewed medical literature.

b. Transvaginal ultrasound.

c. Pelvic examination.

d. Other screening tests supported by national clinical guidelines, national standards of care, or peer reviewed medical literature.

(b) Carriers shall provide coverage for all the following:

(1) Monitoring tests for ovarian cancer after a woman is treated for ovarian cancer.

(2) Annual screening tests for women at risk for ovarian cancer.

(c) Coverage required by subsection (b) of this section must be at no cost in all health benefits plans delivered or issued for delivery by carriers.

(84 Del. Laws, c. 488, § 2.)

§ 538. Coverage for removal of excess skin and subcutaneous tissue [For application of this section, see 85 Del. Laws, c. 88, § 5].

(a) For purposes of this section:

(1) "Medically necessary" means as defined in § 3581 of Title 18.

(2) "Panniculectomy" means an operative procedure used to contour the abdominal wall by removing significant excess skin and subcutaneous adipose tissue.

(b) Carriers shall provide coverage for medically necessary removal of excess skin and subcutaneous tissue, including a panniculectomy, in all health benefit plans delivered or issued under § 505(3) of this title.

(85 Del. Laws, c. 88, § 4.)

§ 539. Primary care coverage.

(a) To the extent consistent with federal law:

(1) The entities providing health insurance under § 505(3) of this title shall report data for 2 plan years on the percentage of primary care spend as a percentage of total medical costs, each by July 1 of the following year.

(2) In the third year, the entities providing health insurance under § 505(3) of this title shall increase primary care spending by 1% from the higher of the 2 prior plan years.

(3) In fourth, fifth, and additional plan years as necessary, the entities providing health insurance under § 505(3) of this title shall increase primary care spending by 1% until primary care spending reaches 11.5% of total medical costs.

(4) The entities providing health insurance under § 505(3) of this title shall spend at least 11.5% of total cost of medical care on primary care thereafter.

(5) The methodology for compliance with this section shall be determined by the Division, to the extent feasible, consistent with regulations set forth by the Office of Value-Based Health Care Delivery under § 334 of Title 18.

(b) The Division of Medicaid and Medical Assistance may exclude certain high-cost claims in calculating total cost of medical care for purposes of this section.

(c) The entities providing health insurance under § 505(3) of this title shall offer value-based care programs as determined by contract with the Division.

(85 Del. Laws, c. 348, § 11.)

§ 540 . Coverage for pre-exposure prophylaxis treatment and post-exposure prophylaxis treatment [For application of this section, see 85 Del. Laws, c. 452, § 5].

(a) As used in this section:

(1) "Cost-sharing requirement" includes a deductible, coinsurance, copayment, and out-of-pocket expense.

(2) "Essential support services" include all of the following:

a. HIV testing.

b. Hepatitis B and C testing.

c. Kidney function assessment through creatinine testing and calculated estimated creatinine clearance or glomerular filtration rate.

d. Pregnancy testing.

e. Sexually transmitted infection screening and counseling.

f. Adherence counseling.

(3) "FDA" means the United States Food and Drug Administration.

(4) "HIV" means the human immunodeficiency virus.

(5) "Medically necessary" means as defined in § 3581 of Title 18.

(6) "PEP" means post-exposure prophylaxis medication for preventing HIV infection after possible HIV exposure.

(7) "PrEP" means pre-exposure prophylaxis medication for preventing HIV infection before possible HIV exposure.

(8) "Therapeutic equivalent" means a PrEP or a PEP that is all of the following:

a. Approved as safe and effective.

b. Pharmaceutically equivalent to another PrEP or another PEP because it contains an identical amount of the same active drug ingredient in the same dosage form and route of administration and meets compendial or other applicable standards of strength, quality, purity, and identity.

c. Assigned, by the FDA, the same therapeutic equivalence code as another PrEP or another PEP.

(b) (1) In all health benefit plans delivered or issued for delivery under § 505(3) of this title, carriers shall provide coverage for all of the following:

a. Medically necessary PrEP.

b. Medically necessary PEP.

c. Medically necessary essential support services.

(2) Except as otherwise provided in paragraph (b)(3) of this section and to the extent permitted by federal law, the coverage required under paragraph (b)(1) of this section must be provided without any of the following:

a. Cost-sharing requirements.

b. Prior authorization or step therapy requirements.

c. Unreasonable delay in coverage determination.

(3) a. If the FDA has approved 1 or more therapeutic equivalents of a PrEP or a PEP, a health benefit plan is not required to cover all of the therapeutic equivalent versions of that PrEP or that PEP, so long as at least 1 therapeutic equivalent version of that PrEP and at least 1 therapeutic equivalent version of that PEP are covered without cost-sharing, prior authorization, or step therapy requirements. For purposes of this section, a long-acting version of a PrEP or a PEP is not therapeutically equivalent to another long-acting version of a PrEP or a PEP with a different duration.

b. If there is a therapeutic equivalent of a PrEP or a PEP, a health benefit plan may provide coverage for more than 1 version of that PrEP or that PEP and may impose cost-sharing, prior authorization, or step therapy requirements, so long as at least 1 version of that PrEP and at least 1 version of that PEP in the same method of administration is covered without cost-sharing, prior authorization, or step therapy requirements. But a health benefit plan must provide coverage for a particular PrEP or a particular PEP without cost-sharing, prior authorization, or step therapy requirements, regardless of whether the PrEP or the PEP has a therapeutic equivalent, if a recipient's treating health-care provider recommends that particular PrEP or that particular PEP based on a medical determination regarding that recipient.

(85 Del. Laws, c. 452, § 4.)

§ 541. Certified registered nurse anesthetists [For application of this section, see 85 Del. Laws, c. 455, § 4].

(a) Carriers that provide coverage for a health service that a certified registered nurse anesthetist is licensed to perform under Title 24 shall provide reimbursement for the service provided by the certified registered nurse anesthetist at a reimbursement rate that is not less than the reimbursement rate paid to licensed physicians providing the same service.

(b) Nothing in this section shall be construed to prohibit a carrier from establishing variable reimbursement rates based on quality or performance measures.

(85 Del. Laws, c. 455, § 3.)

§ 542. Coverage for diagnostic services and treatment for menopause and perimenopause [For application of this section, see 85 Del. Laws, c. 482, § 5].

(a) As used in this section:

(1) "Hormone replacement therapy" means medical treatment, approved by the United States Food and Drug Administration, that replaces a hormone that an individual's body is no longer making or no longer making enough of, as determined by a licensed health-care professional. "Hormone replacement therapy" includes prescribing any of the following:

a. A cream.

b. An oral medication.

c. A vaginal device.

d. Another method approved by the United States Food and Drug Administration.

(2) "Medically necessary" means providing of health-care services or products that a prudent licensed health-care professional would provide to a patient for the purpose of diagnosing or treating an illness, injury, disease or its symptoms in a manner that is all of the following:

a. In accordance with generally accepted standards of medical practice.

b. Consistent with the symptoms or treatment of the condition.

c. Not solely for anyone's convenience.

d. Not including investigational or experimental health-care services.

(3) “Menopause” means the permanent end of menstruation due to loss of ovarian follicular function, characterized by the end of ovulation and a decline in estrogen and progesterone production.

(4) “Menopause and perimenopause symptoms” include any of the following:

a. Irregular menstrual periods.

b. Hot flashes.

c. Vaginal or bladder changes, including genitourinary syndrome of menopause.

d. Decreased fertility.

e. Loss of bone density, including osteoporosis.

f. Elevated low-density lipoprotein cholesterol levels.

g. Sleep disturbances, including night sweats.

(5) “Perimenopause” means the transitional period leading to menopause, marked by fluctuating hormone levels and changes in the menstrual cycle.

(b) (1) Carriers shall provide coverage for medically diagnostic services and necessary treatment for menopause, perimenopause, and menopause and perimenopause symptoms in all health benefit plans delivered or issued for delivery under § 505(3) of this title, including all of the following:

a. Consultation and diagnostic testing.

b. Hormonal therapies, including hormone replacement therapy and bioidentical hormone treatments, that are approved by the United States Food and Drug Administration.

c. Nonhormonal treatments, including selective serotonin reuptake inhibitors, serotonin-norepinephrine reuptake inhibitors, neurokinin B antagonists, and other medications to manage menopause and perimenopause symptoms.

d. All drugs, devices, and combination products approved by the United States Food and Drug Administration for the treatment of menopause and perimenopause symptoms.

e. Therapy to treat menopause induced by a hysterectomy.

f. Behavioral health care services.

g. Pelvic floor physical therapy.

h. Bone health treatments due to hormonal changes related to menopause and perimenopause, including screenings and medications.

i. Preventative services for early detection and treatment of health conditions related to menopause and perimenopause, including osteoporosis and cancer.

j. Counseling and education regarding menopause management.

(2) A carrier shall provide clear and accessible information to each recipient regarding covered diagnostic services and treatment for menopause, perimenopause, and menopause and perimenopause symptoms.

(3) Except as otherwise provided by federal law, coverage for medically necessary hormone replacement therapy provided under this section may not be any of the following:

a. Denied or limited, if the use of the hormone replacement therapy is supported by national clinical guidelines, national standards of care, or peer-reviewed medical literature for the treatment of menopause, perimenopause, or menopause and perimenopause symptoms.

b. Subject to prior authorization or step therapy requirements.

(4) Except as otherwise provided by paragraph (b)(3) of this section and federal law, assistance provided under this section must be provided to recipients to the same extent as other assistance for any other medical condition provided under § 505(3) of this title.

(85 Del. Laws, c. 482, § 4.)

§ 543. Biomarker testing [For application of this section, see 85 Del. Laws, c. 484, § 5].

(a) For purposes of this section:

(1) “Biomarker” means a characteristic that is objectively measured and evaluated as an indicator of normal biological processes, pathogenic processes, or pharmacologic responses to a specific therapeutic intervention, including known gene-drug interactions for medications being considered for use or already being administered. Biomarkers include gene mutations, characteristics of genes, and protein expression. A biomarker is not an assessment of how a covered person or enrollee feels, functions or survives.

(2) “Biomarker testing” means the analysis of an individual’s tissue, blood, or other biospecimen for the presence of a biomarker. Biomarker testing includes single-analyte tests, multi-plex panel tests, protein expression, and whole exome, whole genome, and whole transcriptome sequencing.

(3) “Investigatory and experimental biomarker tests” means biomarker tests that are subject to the United States food and drug administration’s investigational device exemption (C.F.R. Part 812).

(4) “Medically necessary” means as defined in § 3581 of this title.

(5) “Nationally recognized clinical practice guideline” means an evidence-based clinical practice guideline developed by independent organizations or medical professional societies using a transparent methodology and reporting structure and with a conflict-of-interest policy. A clinical practice guideline establishes a standard of care informed by a systematic review of evidence and an assessment of the benefits and risks of alternative care options and includes recommendations intended to optimize patient care.

(6) “Screening” means a medical procedure or test for a covered person who has yet to display symptoms of a particular disease or condition for the purpose of determining the person’s likelihood of having the disease or condition.

(b) All individual health insurance policies, contracts, or certificates that are delivered, issued for delivery, renewed, extended, or modified in this State shall provide coverage for biomarker testing to guide or inform treatment decisions for the purposes of diagnosis, treatment, appropriate management, or ongoing monitoring of a covered person’s disease or condition when the test is medically necessary as demonstrated by medical and scientific evidence, including any of the following:

(1) Labeled indications for an FDA-approved or FDA-cleared test.

(2) Indicated tests for an FDA-approved drug.

(3) Warnings and precautions on FDA-approved drug labels.

(4) Centers for Medicare and Medicaid Services (CMS) national coverage determinations or Medicare administrative contractor (MAC) local coverage determinations.

(5) Nationally recognized clinical practice guidelines.

(c) A biomarker test that meets one of the medical and scientific evidence outlined in paragraphs (b)(1) through (b)(5) of this section shall not be considered an investigational or experimental health-care service.

(d) Carriers must ensure that coverage for biomarker testing, as required by subsection (b) of this section, is provided in a manner that limits disruptions in care, including the need for multiple biopsies or biospecimen samples.

(e) Nothing in this section prevents the operation of a policy provision required by this section as a deductible, coinsurance, allowable charge limitation, coordination of benefits, or a provision restricting coverage to services by a licensed, certified, or carrier-approved provider or facility.

(f) Nothing in this section restricts the use of utilization management.

(g) Nothing in this section shall be construed to require coverage of biomarker testing for screening purposes or coverage of investigatory and experimental biomarker tests.

(85 Del. Laws, c. 484, § 4.)

Part I
In General
Chapter 6
Food Stamp Program
Subchapter I
General Provisions

§ 601. Department of Health and Social Services responsible for administration of program.

(a) The Department shall bear the responsibility of administering the food stamp program for the State in compliance with the provisions of the Federal Food Stamp Act of 1964 [7 U.S.C. §§ 2011 et seq.], as amended.

(b) The Secretary of the Department shall designate 1 staff member of the Secretary's Department to be the food stamp program administrator.

(c) The designated food stamp administrator shall, within 30 days of the administrator's appointment and after consultation with the United States Department of Agriculture, Food and Nutrition Service, submit a Delaware plan to the aforesaid United States Department for necessary approval. At the same time such plan shall be submitted to the sponsor, cosponsor and joint sponsors of this chapter, to the Secretary of the Department and to the Governor.

(d) The plan shall encompass the following areas:

(1) Statement of compliance with federal regulations;

(2) Proposed certification process;

(3) Proposed locations for food stamp distribution; and

(4) Explanation of all practices not mandated by federal regulations.

(31 Del. C. 1953, § 601; 59 Del. Laws, c. 67, § 2; 70 Del. Laws, c. 186, § 1.)

§ 602. Federal responsibilities for food stamp program.

The United States Department of Agriculture, through its Food and Nutrition Service, shall be responsible for:

(1) Program regulations and guidelines;

(2) Approval of grocer participation;

(3) Cost of printing and shipping coupons; and

(4) Partial cost of certification of program recipients.

(31 Del. C. 1953, § 602; 59 Del. Laws, c. 67, § 2.)

§ 603. State responsibilities for food stamp program.

The State, through the Department of Health and Social Services, shall budget and/or administer the following facets of the food stamp program:

(1) File plan of operation for USDA approval;

(2) Certify applicant, individuals and households;

(3) Accept, store and protect coupons after delivery to receiving points within the State;

(4) Provide for issuance of food stamps after certification of applicants; such methods and/or places of issuance may include United States Postal Service, county offices or branches of the Department of Health and Social Services, federal credit unions in this State, and any bank in the State;

(5) Control and account for stamps;

(6) Promulgate an outreach program for potentially eligible households or individuals;

(7) Cooperate with other state agencies, federal agencies or private agencies in nutritional education efforts.

(8) Develop and implement, to the extent permitted by applicable federal law, eligibility requirements and sanctions for the violation thereof for recipients of food stamps who are also recipients of assistance under the Temporary Assistance for Needy Families program, which are consistent with the eligibility requirements and sanctions established by the Department pursuant to §§ 503(d) and 512(1) of this title.

(31 Del. C. 1953, § 603; 59 Del. Laws, c. 67, § 2; 59 Del. Laws, c. 233, § 1; 60 Del. Laws, c. 80, § 1; 70 Del. Laws, c. 65, § 23; 81 Del. Laws, c. 367, § 2.)

§ 604. Misuse of food stamps [Repealed].

Repealed by 68 Del. Laws, c. 386, § 2, effective July 16, 1992.

§ 605. Eligibility for Food Stamp Program.

Pursuant to the option granted the State by 21 U.S.C. § 862a(d)(1), an individual convicted under federal or state law of a felony involving possession, distribution or use of a controlled substance shall be exempt from the prohibition contained in 21 U.S.C. § 862a(a) against eligibility for food stamp program benefits for such convictions.

(74 Del. Laws, c. 177, § 1; 78 Del. Laws, c. 54, § 1.)

Subchapter II

Food Stamp Trafficking Control Act

§ 610. Unauthorized use, transfer, acquisition, alteration or possession of food stamp coupons, Authorization to Participate Vouchers (ATPS), or access devices; penalties; disqualification from the food stamp program; forfeiture.

(a) Whoever knowingly uses, transfers, acquires, alters or possesses food stamp coupons, authorization cards, ATPs or access devices in any manner not authorized by the federal Food Stamp Act (7 U.S.C. § 2011 et seq.) or regulations issued pursuant to the Food Stamp Act; or who presents for payment or redemption coupons that have been illegally received, transferred, altered or used shall:

(1) If such food stamp coupons, authorization cards or ATPs are of a value of $500 or more or the item used, transferred, acquired, altered or possessed is an access device that has a value of $500 or more, be guilty of a class E felony.

(2) If such coupons, authorization cards or ATPs are of a value of less than $500 or if the item used, transferred, acquired, altered or possessed is an access device that has a value of less than $500, be guilty of a class A misdemeanor.

(3) In any prosecution under this section where there is a finding that the proceeds of the trafficking involves firearms ammunition, explosives or controlled substances as defined under 21 U.S.C. § 802 be guilty of a class B felony.

(b) In addition to the penalties set forth in subsection (a) of this section, any person convicted of a felony or misdemeanor under this section may be suspended by the court from participation in the food stamp program for an additional period of up to 18 months consecutive to that period of suspension mandated by the federal Food Stamp Act pursuant to 7 U.S.C. § 2015(b)(1).

(68 Del. Laws, c. 386, § 2.)

§ 611. Forfeiture of property involved in illegal food stamp transactions.

(a) The Secretary of the Department of Health and Social Services or the Secretary's designee may subject to forfeiture and denial of property rights any nonfood items, moneys, negotiable instruments, securities or other things of value that are furnished or intended to be furnished by any person in exchange for coupons, authorization cards, ATPs or anything of value obtained by the use of an access device, in any manner not authorized by the federal Food Stamp Act [7 U.S.C. § 2011 et seq.] or regulations issued pursuant to the Food Stamp Act.

(b) Any forfeiture and disposal of property under this section shall be conducted in accordance with procedures contained in regulations issued by the Secretary of the Department of Health and Social Services. Property forfeited under this section may be utilized by the Welfare Fraud Unit until such time as the forfeited property may be liquidated.

(c) Value received for liquidated property shall be appropriated to the Welfare Fraud Unit for its use at the discretion of the Secretary of the Department of Health and Social Services or the Secretary's designee.

(68 Del. Laws, c. 386, § 2; 70 Del. Laws, c. 186, § 1.)

§ 612. Definitions.

As used in this subchapter:

(1) "Access device" means any card, plate, code, account number or other means of access that can be used, alone or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods or other things of value, or that can be used to initiate a transfer of funds under the federal Food Stamp Act [7 U.S.C. § 2011 et seq.] or regulations issued pursuant to the Food Stamp Act.

(2) "Value" means the sum of the face value of all food stamp coupons, ATPs or access devices possessed, transferred or converted from 1 scheme or course of conduct, whether from 1 or several rightful possessors, at the same or different times and which may constitute a single criminal episode. The face values may be aggregated in determining the grade of offense.

(68 Del. Laws, c. 386, § 2.)

§ 613. Establishment of a State Law Enforcement Bureau (SLEB).

(a) The Department is designated as the State Law Enforcement Bureau (SLEB) for the purpose of coordinating food stamp trafficking interdiction activity in Delaware within the meaning of the United States Department of Agriculture (USDA), Food and Nutrition Service's (FNS) Regulations and Delaware's Food Stamp Trafficking Control Act.

(b) The Department shall delegate its responsibilities pursuant to subsection (a) of this section to the Department's Audit and Recovery Management Services (ARMS), and its successors.

(c) The Department's Audit and Recovery Management Services (ARMS), and its successors, are hereby declared a Criminal Justice Agency within the meaning of § 8602(10) of Title 11 for the sole purpose of accessing any and all criminal history records and files maintained by the State and any subdivision thereof.

(69 Del. Laws, c. 363, § 1; 80 Del. Laws, c. 169, § 2.)

Part I
In General

Chapter 9
Work Assignments for Recipients of Public Assistance

§ 901. Purpose

The purpose of this chapter is to provide a time-limited opportunity for employable adults of families who receive Temporary Assistance for Needy Families to earn their public assistance during the time they are receiving such assistance, obtain job skills, develop strong work ethics, and establish work histories so as to better enable them to obtain private sector employment and become self-sufficient.

(31 Del. C. 1953, § 901; 54 Del. Laws, c. 323, § 2; 70 Del. Laws, c. 65, § 24; 81 Del. Laws, c. 367, § 3.)

§ 902. Work requirements as to employable recipients of public assistance.

Employable persons receiving assistance from the Department of Public Welfare in the categories of general assistance or Temporary Assistance for Needy Families shall be required in accordance with this chapter to perform such work as shall be assigned to them by the Department of Public Welfare and/or shall be required to attend and participate in any training project designed to improve employability to which they may be assigned by said Department.

(31 Del. C. 1953, § 902; 54 Del. Laws, c. 323, § 2; 57 Del. Laws, c. 248; 81 Del. Laws, c. 367, § 3.)

§ 903. Application for assignment of assistance recipients.

Whenever the governing body of a county, city or town within this State, or the board or executive officer of any state agency or other public agency or public institution or private nonprofit organization, has any work to be done with the county, city, town, agency, institution or organization, or as a function of such agency, institution or organization, which it appears may be properly performed by 1 or more employable adults of families who receive assistance, the appropriate authority shall make application to the Department of Health and Social Services or the Department of Labor, in the form prescribed by the respective Department, for the establishment of a work project.

(31 Del. C. 1953, § 903; 54 Del. Laws, c. 323, § 2; 70 Del. Laws, c. 65, § 25.)

§ 904. Assignment of assistance recipients.

(a) Upon application as provided for in § 903 of this title, the Department of Public Welfare shall thereupon assign to such work project the required number of employable recipients of assistance according to their availability, provided it is satisfied that all requirements of this chapter are observed.

(b) The Department of Public Welfare shall also assign suitable assistance recipients to training projects designed to improve employability as such projects are established.

(31 Del. C. 1953, § 904; 54 Del. Laws, c. 323, § 2.)

§ 905. Requirements for work projects.

(a) Recipients shall be assigned to perform only such work under this chapter as they are able, in the judgment of the Department of Public Welfare, to perform. Such work must serve a useful public purpose.

(b) Recipients shall not perform work on projects which will result either in the displacement of regular workers or in the performance by such recipients of work that would otherwise be performed by employees of public or private agencies, institutions or organizations.

(c) Reasonable standards of health, safety and other conditions applicable to the performance of such work shall be established and maintained for all work projects.

(d) Recipients assigned to work projects shall be afforded reasonable opportunities to seek regular employment and to secure any appropriate training or retraining which may be available.

(e) Employable adults of families receiving assistance shall be assigned to work projects for a number of hours determined by the amount of the assistance grant to the family divided by the minimum wage provided in § 902 of Title 19. No employable adult shall be assigned for more hours than are necessary to work out the employable adult's grant as determined above.

(f) No assistance recipient shall be assigned to work for more than 8 hours in any 1 day or more than 40 hours in any 1 week.

(31 Del. C. 1953, § 905; 54 Del. Laws, c. 323, § 2; 70 Del. Laws, c. 65, § 26; 70 Del. Laws, c. 186, § 1.)

§ 906. Department to establish rules and regulations.

The Department of Health and Social Services shall establish such rules and regulations as it deems necessary for the efficient administration of this title and the achievement of the legislative intent expressed in § 901 of this title and § 501 of this title.

(31 Del. C. 1953, § 906; 54 Del. Laws, c. 323, § 2; 70 Del. Laws, c. 65, § 27.)

§ 907. Workers' compensation protection.

All project workers will be covered under the State Workers' Compensation Law with adequate protection through private insurance which provides for complete coverage for all workers on all projects, including disability by injury or occupational disease, prompt and complete medical care in case of accident or injury and adequate benefits for temporary or permanent disability and for survivors in case of death.

(31 Del. C. 1953, § 907; 54 Del. Laws, c. 323, § 2; 70 Del. Laws, c. 186, § 1.)

§ 908. Cooperative arrangements with Employment Security Commission of Delaware, State Board of Vocational Education and State Department of Education.

The Department of Public Welfare shall enter into cooperative arrangements with the Employment Security Commission of Delaware for the employment or occupational training of recipients performing work under this chapter, with the State Board of Vocational Education for the training or retraining of said recipients and assisting them in preparing for regular employment and with the State Department of Education for adult services in appropriate cases.

(31 Del. C. 1953, § 908; 54 Del. Laws, c. 323, § 2; 73 Del. Laws, c. 65, § 45.)

§ 909. Effect of refusal to work.

The Department, as part of its authority pursuant to §§ 503, 512(1), 509 and 518 of this title, may establish sanctions for any assistance recipient who refuses without good cause to report for or to perform that work to which the recipient has been assigned by the Department, or who refuses without good cause to report for and participate in any training project designed to improve employability to which the recipient has been referred.

(31 Del. C. 1953, § 909; 53 Del. Laws, c. 323, § 2; 70 Del. Laws, c. 65, § 28; 70 Del. Laws, c. 186, § 1.)

§ 910. Adjustments or recovery.

Any law to the contrary notwithstanding, no adjustment or recovery shall be made by the State or any political subdivision thereof on account of any payments which are correctly made for work performed under the terms of this chapter.

(31 Del. C. 1953, § 910; 54 Del. Laws, c. 323, § 2.)

§ 911. Job training and placement by nonprofit corporations

(a) The Department of Labor is authorized: (1) To refer welfare recipients to nonprofit corporations for training designed to improve employability and for job placement or job referral; and (2) to pay the sum of $500 to nonprofit corporations, which have an approved proposal by August 1 of the current fiscal year, for each welfare recipient placed in an unsubsidized job.

(b) "Placed" or "placement" as used in this section shall mean placement of a referral in an unsubsidized substantially full-time job of not less than 100 hours per month for a minimum of 30 days.

(59 Del. Laws, c. 523, § 11; 61 Del. Laws, c. 542, §§ 1, 2; 81 Del. Laws, c. 367, § 3.)

Part I
In General
Chapter 10
Fraudulent Acts

§ 1001. Legislative intent.

The General Assembly finds and declares it to be in the public interest and for the protection of the health and welfare of the residents of the State that proper provisions be instituted to regulate abuses in the payment of funds under the State's public assistance programs.

(65 Del. Laws, c. 345, § 2.)

§ 1002. Definitions.

When used in this chapter, the following words shall have the meaning herein defined. To the extent that the terms are not defined herein, the words are to have their commonly accepted meaning.

(1) "Department" shall mean the Department of Health and Social Services.

(2) "Facility" shall mean any facility required to be licensed under Chapters 10 and 11 of Title 16, including any such facility operated by or for the State.

(3) "Person" shall mean a human being and, where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

(4) "Provider" shall mean a person who is enrolled and who renders goods or services for which payment is made, in whole or in part, under a public assistance program.

(5) "Public assistance program" shall mean the medical assistance program of the State.

(65 Del. Laws, c. 345, § 2.)

§ 1003. Obtaining benefit under false representation.

It shall be unlawful for any provider, by means of a false statement or representation, or by concealment of, or failure to disclose any material fact, or by any other fraudulent scheme or device on behalf of the provider or others to obtain or attempt to obtain payments or any other property, under any public assistance program established by the State to which the provider is not entitled, in whole or in part.

(65 Del. Laws, c. 345, § 2; 70 Del. Laws, c. 186, § 1.)

§ 1004. Reports, statements and documents.

It shall be unlawful for any provider to:

(1) Falsify any report, statement or document required to be filed in connection with any public assistance program;

(2) Include in any cost report or reports for reimbursement any amount or item which the provider knew or should have known was not used in providing service to the recipient for which the amount is paid or to be paid;

(3) Make or cause to be made a statement or representation for use in qualifying as a provider of goods or service under any public assistance program, knowing that statement or representation to be false, in whole or in part by commission or omission; or

(4) Make or cause to be made a false statement or representation of a material fact with respect to the conditions or operation of a provider or facility in order that such provider or facility may qualify or remain qualified to provide assistance under any public assistance program.

(65 Del. Laws, c. 345, § 2; 70 Del. Laws, c. 186, § 1.)

§ 1005. Kickback schemes and solicitation.

(a) It shall be unlawful for any person to solicit or receive any remuneration (including kickback, bribe or rebate) directly or indirectly, overtly or covertly, in cash or in kind:

(1) In return for referring an individual to a provider for the furnishing or arranging for the furnishing of any medical care or medical assistance for which payment may be made in whole or in part under any public assistance program; or

(2) In return for purchasing, leasing, ordering or arranging for or recommending purchasing, leasing, or ordering any property, facility, service or item of medical care or medical assistance for which payment may be made in whole or in part under any public assistance program.

(b) It shall be unlawful for any person to offer or pay any remuneration (including any kickback, bribe or rebate) directly or indirectly, in cash or in kind to induce any other person:

(1) To refer an individual to a provider for the furnishing or arranging for the furnishing of any medical care or medical assistance for which payment may be made in whole or in part under any public assistance program; or

(2) To purchase, lease, order or arrange for or recommend purchasing, leasing or ordering any property, facility, service, or item of medical care or medical assistance for which payment may be made in whole or in part under any public assistance program.

(c) It shall be unlawful for any provider to:

(1) Charge, solicit, accept or receive for any service provided to a recipient, money or other consideration in addition to or at a rate in excess of the rates established by the State for such item or service; or

(2) Charge, solicit or receive, in addition to any amount otherwise required to be paid by the State, any gift, money, donation, or other consideration (other than a charitable, religious or philanthropic contribution from an organization or from a person unrelated to the patient) as a precondition to admitting a patient to a hospital, skilled nursing facility or intermediate care facility, or as a requirement for the patient's continued stay in such a facility, when the cost of services provided therein to the patient is paid for, in whole or in part, by the State.

(d) Subsections (a), (b) and (c) of this section shall not apply to:

(1) A discount or other reduction to price obtained by a provider under this chapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider; or

(2) Wages paid by an employer to an employee as part of a bona fide employment relationship; or

(3) Contracts between the State and a public or private agency where part of the agency's responsibility is referral of a person to a provider;

(4) Dividends based exclusively on a legitimate ownership interest;

(5) Fees for services actually rendered, provided that the fees are not made to induce referrals to the provider.

(65 Del. Laws, c. 345, § 2.)

§ 1006. Conversion of payment.

It shall be unlawful for any provider to convert any benefit or payment received from any public assistance program for use other than the use and benefit for the person named in the application for assistance.

(65 Del. Laws, c. 345, § 2.)

§ 1007. Penalties.

(a) Whoever knowingly violates §§ 1003, 1004(2) and 1006 of this title shall be guilty of a class A misdemeanor; provided, that, where the value of assistance benefits, payments or other property is $500 or more, but less than $10,000, the violator shall be guilty of a class E felony; further provided, that, where the value of assistance, benefits, payments or other property is $10,000 or more, the violator shall be guilty of a class C felony.

(b) Whoever violates § 1004(1) of this title, shall be guilty of a class A misdemeanor.

(c) Whoever violates §§ 1004(3) and (4) and 1005 of this title, shall be guilty of a class E felony.

(d) In addition to the penalties provided herein, every provider convicted under this chapter shall make full restitution of the money, goods or services or the value of those goods or services unlawfully received, plus interest on that amount at the rate of 1.5% per month, for the period from the date upon which payment was made to the date upon which repayment is made to the State.

(e) Upon conviction under this chapter, such provider shall not be eligible for any further participation in the Delaware Public Assistance Program; provided, however, that where the community interest would be adversely affected, the Secretary of the Department of Health and Social Services, or the Secretary's designee, shall, upon petition of the provider, conduct a hearing on the record, to determine the need for a comparable provider to render the needed services to the community, and whether this provider's continued participation in the program is in the best interest of the State. Where this is established, the provider may continue in the program under such conditions as the Secretary may impose.

(65 Del. Laws, c. 345, § 2; 70 Del. Laws, c. 186, § 1.)

§ 1008. Civil assessments.

(a) Any provider who violates this chapter, in addition to any other penalties provided by law, shall be liable for the following civil penalties:

(1) Payment of an amount equal to 3 times the amount of excess payments; and

(2) Payment of a civil penalty of up to the sum of $2,000 for each deceptive claim or falsification; and

(3) All reasonable expenses which the court determines may have been incurred by the State in the enforcement of this section.

(b) No criminal action or indictment need be brought against any provider as a condition for establishing civil liability hereunder.

(c) Any provider, who, without intent to violate this chapter, obtains benefits or payments in excess of the amount to which the provider is entitled, shall be liable for the payment of a civil assessment as provided in subsection (a) of this section which may be sought and recovered in an administrative proceeding by the Department to which the claim was submitted, or by the Attorney General.

(65 Del. Laws, c. 345, § 2; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 358, § 1.)

§ 1009. Jurisdiction.

The Superior Court shall have original and exclusive jurisdiction over violations of this chapter.

(65 Del. Laws, c. 345, § 2.)

Part I
In General

Chapter 11
Welfare Agencies and Recipients of Assistance

§ 1101. Confidential character of public assistance records; penalties for violations.

(a) The several departments, bureaus, commissions and agencies of the State may establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications of such departments, bureaus, commissions and agencies. Wherever, under provisions of law, names and addresses of recipients of public assistance are furnished to or held by any other agency or department of government, such agency or department of government shall be required to adopt regulations necessary to prevent the publication of lists thereof or their use for purposes not directly connected with the administration of public assistance.

(b) It shall be unlawful for any person to solicit, receive or make use of, disclose, or authorize, knowingly permit, or participate in the use of any information relating to any person who has applied for or who receives Temporary Assistance for Needy Families, general assistance, food stamps, aid to the blind or medical assistance where such information is derived directly or indirectly from the communications or records of the agency administering such aid or assistance or is acquired in the course of the performance of official duties; provided, however, that such conduct shall not be unlawful:

(1) When engaged in for purposes directly connected with the administration of such aid and assistance;

(2) When engaged in for purposes directly connected with the administration of public social services;

(3) Where the person who has applied for or who receives such aid or assistance, or a person authorized to act for such person, consents to such conduct; or

(4) Where a court of competent jurisdiction orders such conduct after a finding that the need for such conduct outweighs any injury that such conduct may cause the applicant or recipient.

(c) Whoever violates subsection (b) of this section shall be fined not more than $500, or imprisoned not more than 6 months, or both.

(d) The provisions of this section shall be operative only to the extent permitted by federal law.

(43 Del. Laws, c. 83, §§ 1, 2; 31 Del. C. 1953, § 1101; 67 Del. Laws, c. 186, §§ 1, 2; 81 Del. Laws, c. 367, § 4.)

§ 1102. Prohibition against expenditure of moneys or contracting indebtedness above appropriations.

No state welfare agency shall expend any state moneys except such moneys as have been appropriated by the General Assembly, nor shall such agencies contract any indebtedness beyond the moneys so appropriated pledging the credit of the State.

(46 Del. Laws, c. 227; 31 Del. C. 1953, § 1102.)

§ 1103. Penalties for disposal of goods received from relief units for cash or barter.

No person who has received any clothing, food, goods or other merchandise from any welfare agency in this State shall dispose of the same for cash or barter or for any other consideration.

Whoever violates this section shall be fined not less than $25 nor more than $300, or imprisoned not less than 30 days nor more than 6 months, or both.

(44 Del. Laws, c. 180, §§ 1, 2; 31 Del. C. 1953, § 1103.)

§ 1104. Relief or assistance not to be charged against real estate.

No agency in this State furnishing relief or assistance to any ill or needy persons in this State shall charge the real estate of such persons with the cost of such relief or assistance so furnished.

(48 Del. Laws, c. 282; 31 Del. C. 1953, § 1104.)

Part I
In General

Chapter 13
Displaced Homemakers [Repealed]

§ 1301. Definitions [Repealed].

(61 Del. Laws, c. 218, § 1; repealed by 83 Del. Laws, c. 283, § 48, effective Feb. 16, 2022.)

§ 1302. Assistance to displaced homemakers [Repealed].

(61 Del. Laws, c. 218, § 1; repealed by 83 Del. Laws, c. 283, § 48, effective Feb. 16, 2022.)

§ 1303. Duties of Coordinator [Repealed].

(61 Del. Laws, c. 218, § 1; 75 Del. Laws, c. 88, § 20(7); 81 Del. Laws, c. 66, § 63; repealed by 83 Del. Laws, c. 283, § 48, effective Feb. 16, 2022.)

§ 1304. State-federal programs [Repealed].

(61 Del. Laws, c. 218, § 1; repealed by 83 Del. Laws, c. 283, § 48, effective Feb. 16, 2022.)

Part I
In General

Chapter 15
Delaware Welfare Employment Program

§ 1501. Statement of purpose.

It is the purpose of the Delaware Welfare Employment Program to:

(a) Create expanded opportunity for increased personal responsibility and advancement toward economic independence and self-sufficiency by Delaware's welfare recipients through the acquisition of useful work skills and performance in productive employment which will end their dependence on public assistance; and

(b) Enlist Delaware's private businesses in an expanded effort to provide job opportunities and reduce dependency, and to enhance their work forces and increase their competitiveness; and

(c) Complement and strengthen other important state incentives designed to move welfare recipients into private sector jobs, including child care, medical care, and job training and placement; and

(d) Authorize the creation of personal advancement accounts as an additional incentive for workers to achieve self-sufficiency and increased skills; and

(e) Achieve the foregoing purposes in a cost-effective manner.

(70 Del. Laws, c. 66, § 2.)

§ 1502. Establishment of program.

(a) The Delaware Welfare Employment Program (the "Program") is created within the Department of Health and Social Services (the "Department") as a critical component of the State's welfare-to-work strategy; provided, however, that the Program shall, as with the State's other welfare-to-work strategies, be administered by the Department in cooperation with the Department of Labor ("DOL"), and the Delaware Workforce Development Board ("WDB"). To the extent necessary to enable the Department to make use of the Program for appropriate cases, the Department shall amend the state plans for the Temporary Assistance for Needy Families ("TANF") program and shall seek federal approval for plan amendments and any waivers from federal law. The Department shall implement the Program with maximum federal financial participation.

(b) In lieu of receiving cash payments from the TANF program during a placement, participants in the Program shall be provided with productive jobs and paid in a way that promotes self-sufficiency and the opportunity for advancement in the workforce.

(c) Job placement services shall be used by the State to the maximum extent possible to assist participants to take unsubsidized private sector jobs. Only if no suitable unsubsidized job or more cost-effective job can be found within a reasonable time may participants be assigned to jobs under the Program.

(70 Del. Laws, c. 66, § 2; 81 Del. Laws, c. 49, § 20; 81 Del. Laws, c. 367, § 5; 81 Del. Laws, c. 374, § 55.)

§ 1503. Individual participation in the program.

(a) Unless otherwise exempted, the following persons may be required by the Department to participate in the program:

(1) Adult and caretaker relatives of children who are receiving TANF program benefits; and

(2) Unemployed non-caretaker parents of children who are receiving TANF program benefits.

(b) The following recipients of public assistance may not be required by the Department to participate but may elect, to the extent resources are available, to participate in the Program:

(1) Any person who is receiving Supplemental Security Income ("SSI") benefits or other continuing State or federal maintenance benefits based on age or disability;

(2) A parent who is the sole caretaker of a child who is incapacitated as determined by receipt of social security disability benefits or benefits under the SSI Program;

(3) Any individual, including caretakers, under 16 years of age;

(4) Any individual unable to participate because of a temporary medical condition preventing employment and training, as certified by a written statement from a physician, such exemption to be reevaluated every 60 days; and

(5) Any individual 62 years of age or older.

(c) Parents under the age of 20 who are enrolled full-time in a secondary school shall be exempt from participation in the Program.

(d) Any person enrolled full-time in an accredited post-secondary degree program who demonstrates adequate progress toward completion of such program shall be exempt from participation in the Program for a period not to exceed 2 years and may be permitted an extension to continue person's studies for an additional 2 years; provided, that such person works sufficient hours to earn such person's TANF program grant during such period.

(e) Notwithstanding subsection (a) of this section, any TANF recipient working full time in a job not subsidized under the Program shall be exempt from participation in the Program.

(70 Del. Laws, c. 66, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 367, § 5.)

§ 1504. Financing

Within the limit of its appropriations, the Department may expend such portion of the moneys appropriated to it for expenditure by or apportioned to the State for operation of TANF as the Department deems necessary to make maximum advantage of the Program. The Department may also expend such moneys as are received from grants and contributions from individuals, corporations, trusts, foundations and the federal government for growth of the Program.

Not less than once a year, the Department shall review the cost-effectiveness of the Program and shall take necessary action to modify or suspend the Program to ensure the Program is a cost-effective use of the appropriations available to it for the TANF program.

(70 Del. Laws, c. 66, § 2; 81 Del. Laws, c. 367, § 5.)

§ 1505. Participating employers.

(a) Any employer subject to the State unemployment insurance tax, or reimbursement in lieu thereof pursuant to § 3345 of Title 19, shall be eligible for assignment of Program participants as temporary employees, but no employer shall be required to participate in the Program.

(b) As part of the State's overall effort to place employable recipients in unsubsidized private sector jobs, the Department, DOL, and the WDB, in cooperation with the Committee on Employment and Social Services, shall recruit participating employers from among those employers subject to the unemployment insurance tax, through public invitation and through cooperative efforts with business associations, chambers of commerce, local governments and other such organizations.

(c) Each participating employer shall enter into an agreement with the Department to abide by all requirements of the Program, and to repay reimbursements in the event that the employer violates program rules. If the Department finds that a participating employer has violated the rules of the Program, the Department shall withhold any amounts due to the employer under this chapter, and may seek repayment of any amounts paid to employers under this chapter.

(d) The maximum number of program participants that any employer may utilize at one time shall not exceed 10 percent of the total number of the employer's employees in the State, but any employer may utilize one participant. The Secretary may waive this limitation in special circumstances.

(e) The Department shall assign available jobs on the basis of a preference schedule developed by the Department. In consultation with the participant, the Department shall try to match the prior training and education, work profile and desires of the participant with the needs of an employer when making a placement; provided, however, that non-cooperation by the participant shall give rise to sanctions pursuant to §§ 512, 518, and 1508 of this title.

(f) Either the employer or the participant may terminate a placement by contacting the appropriate Department office. If a participant terminates a placement with good cause, the Department shall reassess the needs and skills of the participant and determine an appropriate course of action, such as whether to place the participant in another private sector job, another Program placement, a work force job, or a job training or educational program. If a participant terminates a placement without good cause, the participant shall be subject to sanctions established pursuant to §§ 512, 518, and 1508 of this title. If an employer terminates a placement with good cause, the Department may, at the employer's request, provide the employer with another participant. If an employer terminates a placement without good cause, such employer may be precluded from further participation in the Program and shall be permitted to participate subsequently only upon application to the Department and a determination by the Department that the employer is likely to comply with the Program's rules and regulations.

(g) The Department shall establish criteria for excluding employers from participation for failure to abide by Program requirements or other demonstrated unwillingness to comply with the stated intent of the Program.

(h) Employers making jobs available to Program participants shall:

(1) Endeavor to make placements positive learning, training and employment experiences for Program participants:

(2) Maintain health, safety and working conditions for participants at or above levels comparable to those of other employees of the employer;

(3) Offer such on-the-job training, including workplace monitoring, as may be necessary to enable the participants to perform their duties;

(4) Conform to § 3304(a)(5) of the Federal Unemployment Tax Act [26 U.S.C. § 3304(a)(5)], which requires that the job offered cannot be available as a result of a strike or labor dispute, that the job cannot require the employee to join or prohibit the employee from joining a labor organization, and that program participants are not used to displace regular workers;

(5) Pay a wage that is substantially equal to the wage paid for similar jobs in the local economy, with appropriate adjustments for experience and training, and including provision for advance receipt of the federal Earned Income Tax Credit ("EITC"), but in no case lower than the state minimum wage provided in § 902 of Title 19;

(6) Withhold from each participant's paycheck, and pay as required by federal and state law, federal and State income taxes, and social security contributions;

(7) Provide workers' compensation coverage as required by state law;

(8) Allow sick leave, holiday and vacation absences in conformity to the individual employer's policy for temporary employees;

(9) Offer group health insurance benefits if, and to the extent that, state or federal law requires the employer to provide such benefits;

(10) Make an additional contribution to the participant's Personal Advancement Account, as provided in § 1507 of this title.

(i) For a maximum of 6 months, the Department shall reimburse the employer for each participant hour worked in the amount of the state minimum wage. The employer shall be responsible for each participant's unemployment insurance taxes and workers' compensation insurance premiums, and the employer's share of the Federal Insurance Contributors Act.

(j) If after 4 months in a placement, a participant has not been hired for an unsubsidized position, the employer shall allow the worker to undertake 8 hours of job search per week. Participating employers shall consider such time as hours worked for the purpose of paying wages.

(k) If after 6 months in a placement a participant has not been hired for an unsubsidized position, the placement shall be terminated and the employer shall file a statement with the Department explaining its reason for not hiring the participant in an unsubsidized position. At that time, the Department, DOL, or the WDB as the case may be, shall reassess the participant's employability and determine an appropriate course of action such as whether to place the participant in another private sector job, a workfare job, or a job training or educational program, another Program placement, or to sanction the participant pursuant to its authority under § 1508 of this title and §§ 512 and 518 of this title.

(*l*) The Department, DOL, or the WDB may provide the following types of services: Job readiness, job development, job training and placement, job support, program evaluation, and other services incident to the operation of the Program, and to that end, shall, to the extent such services may be provided more cost-effectively in such manner, subcontract for such services with qualified public and private organizations.

(70 Del. Laws, c. 66, § 2; 81 Del. Laws, c. 367, § 5.)

§ 1506. Participant compensation and benefits.

(a) Participants shall receive the following benefits so long as they satisfactorily participate in the Program:

(1) Compensation for their work effort substantially equal to the wage paid for similar jobs in the local economy, with appropriate adjustments for experience, training and productive effort;

(2) The EITC, with any advanced portions paid as a part of the wage payment;

(3) Continuation of federal and state medical assistance benefits for which the participants was eligible at the time of entering the Program;

(4) Child care benefits as may be necessary to permit participation in the Program;

(5) Job training and job search counseling as otherwise available under the TANF program;

(6) Such portion of the child support payments collected by the Department as the Department determines, in addition to, and not in lieu of, the payments for work provided in the Program;

(7) Accumulation of an earned Personal Advancement Account as provided for in § 1507 of this title.

(b) TANF benefits shall be suspended for the duration of the placement at the end of the first calendar month in which an employer makes the first wage payment to a participant who is a custodial parent in a family that receives TANF program benefits.

(c) The Department shall also make supplemental payments to families for which the participant's wages, together with the EITC, represent less spendable income than the value of the TANF program benefits that the family would otherwise receive. The supplemental payments shall be in amounts which when added to the amount of participant wages together with the EITC will be equal to the value of the TANF program benefits that the family would otherwise receive. The Department shall determine and pay in advance supplemental payments to participants on a monthly basis as necessary to ensure equivalent net program wages. Such supplemental payments shall not be subject to federal income taxes and social security contributions.

(d) The Department may provide life skills classes and opportunities for participants to achieve high school graduation equivalency diplomas in conjunction with participation in the Program.

(70 Del. Laws, c. 66, § 2; 81 Del. Laws, c. 367, § 5.)

§ 1507. Personal Advancement Account.

(a) In accordance with rules adopted by the Department, each participant in the Program shall create a Personal Advancement Account in the participant's name. The account may be held by the employer, by a bank, savings and loan association, or credit union, or by another suitable organization approved by the Secretary. The account may be designed to take advantage of any relevant federal or state tax exemption or tax deferral privileges. The account shall be the property of the participant but shall not be subject attachment for judgments arising from causes antedating the establishment of the account, other than obligations for child support.

(b) Beginning with the thirtieth day of each participant's employment with an employer and ending 6 months thereafter, in addition to the participant's wage as defined in § 1506 of this title and at the same time that such wages are paid, the employer shall pay into the participant's Personal Advancement Account, $1.00 for each participant hour worked, less any required deductions for income tax withholding, FICA, and the Federal Unemployment Tax Act [26 U.S.C. § 3301 et seq.].

(c) During the period specified in subsection (b) of this section, the participant may make withdrawals from the Account, in accordance with rules adopted by the Department, for the following purposes:

(1) Tuition and charges for qualified education and training programs;

(2) Participation in a contributory benefit program offered by the employer, including but not limited to a medical savings account;

(3) The purchase of tools, vehicles or equipment necessary to start the participant's business;

(4) The payment of medical expenses of the participant's family, not covered by insurance;

(5) Other approved expenditures made in response to emergencies or severe hardships.

(d) At the end of period specified in subsection (b) of this section, any balance in the Account shall inure to the participant's benefit.

(70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 66, § 2.)

§ 1508. Sanctions for refusal to participate.

Pursuant to its authority under §§ 512 and 518 of this title, the Department shall establish sanctions for participants who fail to comply with the requirements of the Program.

(70 Del. Laws, c. 66, § 2.)

§ 1509. Committee on Employment and Social Services

(a) *Duties and responsibilities. —*

(1) The Committee on Employment and Social Services (the "Committee") is established to assist the Department, DOL, and the WDB to place TANF recipients in unsubsidized private sector jobs, and to advise them on the policy, direction and implementation of all of Delaware's welfare-to-work efforts, including the Program. The Committee shall operate in close cooperation with the Delaware Workforce Development Board and shall provide the Board with its advice with respect to the allocation of job training and placement funds for implementation of the State's welfare-to-work efforts.

(2) The Committee shall serve in an advisory capacity and consider matters related to child support and social services as referred by the Governor, Secretaries of the Department and DOL. The Committee may study and research matters effecting employment and program service delivery efforts of the Divisions' of Child Support and Social Services as deemed appropriate.

(b) *Appointments, term, vacancy, and removal. —*

(1) The Committee shall consist of 9 members appointed by the Governor which shall include no less than 3 employers and reflect diversity.

(2) Members shall be appointed for a term of up to 3 years in order to continue on a staggered basis so that no more than 3 members' terms expire in a year.

(3) A Chair and Vice Chair will be elected annually by the Committee.

(4) Members who fail to attend 3 consecutive meetings may be assumed to have resigned and the Governor may accept their resignation.

(5) The Division Directors of the Division of Social Services and Division of Child Support Services or their designees will attend the meetings and staffing will be provided by the Division of Social Services.

(6) The Committee must recruit employers for the purpose of assisting the State in the hiring and placement of TANF recipients in private sector jobs. The Committee may hold public meetings to explore ways to remove barriers that would prevent TANF recipients from finding sustainable employment opportunities.

(81 Del. Laws, c. 367, § 5.)

§ 1510. Annual report

The Committee shall complete an annual report outlining activities, status and implementation of the State's efforts to place TANF recipients in private sector jobs, including the Committee's recommendations for improvements in such efforts. The annual report will also include recommended areas to improve the efficiencies of service delivery efforts and suggest ways to reduce fraud and waste at the Divisions of Child Support and Social Services.

(70 Del. Laws, c. 66, § 2; 81 Del. Laws, c. 367, § 5.)

Part II
Welfare Agencies
Chapter 21
Division for the Visually Impaired

(83 Del. Laws, c. 455, § 5.)

§ 2101. Definitions.

As used in this chapter:

(1) "Department" means the Department of Health and Social Services.

(2) "Division" means the Division for the Visually Impaired under § 7929 of Title 29, a division of the Department of Health and Social Services.

(3) "Person with blindness" means an individual with total blindness or visual acuity of not more than 20/200 in the better-seeing eye with best conventional correction or whose vision is limited in field so that the widest diameter subtends an angle no greater than 20 degrees.

(4) "Person with visual impairment" means an individual who has a visual acuity of not more than 20/70 to 20/200 in the better-seeing eye with the best conventional correction.

(Code 1935, § 3050A; 46 Del. Laws, c. 88; 31 Del. C. 1953, § 2101; 57 Del. Laws, c. 591, § 37; 78 Del. Laws, c. 179, § 326; 83 Del. Laws, c. 455, § 6.)

§ 2102. Supervision of training.

The Division, through the Department, has supervision of the training of a person with blindness or a person with visual impairment.

(31 Del. C. 1953, § 2102; 57 Del. Laws, c. 591, § 38; 78 Del. Laws, c. 179, §§ 327, 328; 83 Del. Laws, c. 455, § 7.)

§ 2103. Division authority; instructors of persons with blindness or visual impairment.

The Division has sole authority over the selection, appointment, employment terms, and performance of an instructor of persons with blindness or persons with visual impairment.

(25 Del. Laws, c. 73, § 3; Code 1915, § 2576; Code 1935, § 3049; 31 Del. C. 1953, § 2104; 78 Del. Laws, c. 179, §§ 329-331; 83 Del. Laws, c. 455, § 8.)

§ 2104. Acquisition and disposal of property; exemption of property from taxation.

(a) The Division may do all of the following:

(1) Solicit, purchase, or otherwise acquire, hold, own, mortgage, sell, or assign real or personal property.

(2) Solicit, accept, or receive a private fund, bequest, legacy, or gift of property real or personal to be used for the education and training of persons with blindness or persons with visual impairment.

(3) In accordance with the directions of a party who devises or donates property under this section, the Division may do all of the following:

a. Hold, manage, or invest the property or collect and disburse the income or principal of the property.

b. Hold, own, sell, or dispose of the property and reinvest the proceeds from the sale of the property or collect or disburse the income and principal from the property.

(b) If a party who devises or donates property under this section does not leave direction for the Division to follow under paragraph (a)(3) of this section, the Division shall accept, hold, manage, or dispose of the property or disburse the income of the property in a manner in which the Division deems best to promote the training of a person with blindness or a person with visual impairment.

(c) The property of the Division is exempt from taxation.

(25 Del. Laws, c. 73, § 8; 27 Del. Laws, c. 101; Code 1915, § 2580; Code 1935, § 3053; 31 Del. C. 1953, § 2105; 75 Del. Laws, c. 385, § 2; 78 Del. Laws, c. 179, § 332; 83 Del. Laws, c. 455, § 9.)

§ 2105. Division expenditures.

The Division may expend the sums of money it deems proper and necessary for effectuating the objects of this chapter. The sums of money may not in the aggregate in any 1 year exceed the sum of money appropriated to the Division for these purposes.

(25 Del. Laws, c. 73, § 3; Code 1915, § 2576; Code 1935, § 3049; 31 Del. C. 1953, § 2106; 83 Del. Laws, c. 455, § 10.)

§ 2106. Payment of Division expenses.

The State Treasurer shall pay out of funds appropriated by the General Assembly the Division's expenses for salaries and wages, office expenses, operation, working capital, materials, repairs and replacements, travel, or other expenses in connection with carrying out the Division's duties, on vouchers that the appropriate Division officer issues.

(32 Del. Laws, c. 26, § 16; 37 Del. Laws, c. 81; Code 1935, §§ 3050, 3054; 31 Del. C. 1953, § 2107; 83 Del. Laws, c. 455, § 11.)

§ 2107. Eligibility and applications for services.

An adult who is either a person with blindness or a person with visual impairment may make application to the Division to receive services from the instructors provided under § 2103 of this title. The Division may grant or refuse an application based on eligibility and availability of funds.

(25 Del. Laws, c. 73, § 4; Code 1915, § 2577; Code 1935, § 3050; 45 Del. Laws, c. 217, § 1; 31 Del. C. 1953, § 2108; 78 Del. Laws, c. 179, § 333; 83 Del. Laws, c. 455, § 12.)

§ 2108. Duty of agencies, physicians, and nurses to report persons with blindness and persons with visual impairment.

Each health or social agency, attending or consulting physician, or attending or consulting nurse shall report, in writing, to the Division the name, age, and residence of each person with blindness or person with visual impairment to whom the agency, physician, or nurse provides service, and furnish additional information that the Division requests for the registration or prevention of blindness or visual impairment.

(Code 1935, § 3050A; 46 Del. Laws, c. 88; 31 Del. C. 1953, § 2109; 78 Del. Laws, c. 179, § 334; 83 Del. Laws, c. 455, § 13.)

§ 2109. Duty of parents and guardians to obtain instruction for children with blindness; powers of Commission and Governor [Repealed].

(Code 1915, § 2578; Code 1935, § 3051; 45 Del. Laws, c. 217, § 1; 31 Del. C. 1953, § 2110; 49 Del. Laws, c. 189, §§ 1, 2; 78 Del. Laws, c. 179, §§ 335-338; repealed by 83 Del. Laws, c. 455, § 14, effective Oct. 10, 2022.)

§ 2110. Visitation of institutions outside of State [Repealed].

(26 Del. Laws, c. 144; Code 1915, § 2583; Code 1935, § 3056; 45 Del. Laws, c. 217, § 1; 31 Del. C. 1953, § 2111; 49 Del. Laws, c. 189, § 3; 50 Del. Laws, c. 142, § 1; 78 Del. Laws, c. 179, § 339; repealed by 83 Del. Laws, c. 455, § 15, effective Oct. 10, 2022.)

§ 2111. Payments for vocational rehabilitation.

(a) The Division is the authorized agency for vocational rehabilitation of a person with blindness or a person with visual impairment. The Division may pay for training, maintenance, or physical restoration of a person with blindness or a person with visual impairment, and whom the Division finds is eligible for vocational rehabilitation.

(b) On receiving an appropriate voucher, the State Treasurer shall make a payment authorized under this section.

(27 Del. Laws, c. 102, §§ 1-3; Code 1915, § 2584; Code 1935, § 3057; 45 Del. Laws, c. 217, § 1; 31 Del. C. 1953, § 2112; 49 Del. Laws, c. 189, § 4; 78 Del. Laws, c. 179, §§ 340, 341; 83 Del. Laws, c. 455, § 16.)

§ 2112. Penalties [Repealed].

(25 Del. Laws, c. 73, § 6; Code 1915, § 2579; Code 1935, § 3052; 31 Del. C. 1953, § 2113; 69 Del. Laws, c. 423, § 25; 78 Del. Laws, c. 179, § 342; repealed by 83 Del. Laws, c. 455, § 17, effective Oct. 10, 2022.)

§ 2113. Limitations on applicability of chapter.

This chapter does not apply to a child who is either a person with blindness or a person with visual impairment and who is being otherwise instructed and educated in a manner that the Division determines is satisfactory.

(25 Del. Laws, c. 73, § 7; Code 1915, § 2582; Code 1935, § 3055; 31 Del. C. 1953, § 2114; 78 Del. Laws, c. 179, § 343; 83 Del. Laws, c. 455, § 18.)

§ 2114. Use of products and services of persons with blindness or persons with visual impairment by state agencies; exceptions; penalty [Repealed].

(31 Del. C. 1953, § 2115; 49 Del. Laws, c. 146, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, § 344; repealed by 83 Del. Laws, c. 455, § 19, effective Oct. 10, 2022.)

§ 2115. Soliciting public donations for the blind; registration; violations [Repealed].

Repealed by 59 Del. Laws, c. 566, § 2, effective July 29, 1974.

§ 2116. Contracts for library services.

The Division may contract with a public library for that library to render library service throughout this State to a person with blindness or a person with visual impairment. The Division may reasonably compensate the public library for the cost of the service it renders under the contract.

(31 Del. C. 1953, § 2117; 53 Del. Laws, c. 367; 78 Del. Laws, c. 179, § 345; 83 Del. Laws, c. 455, § 20.)

§ 2117. Relating to persons who are blind and “seeing eye dogs”; penalties [Repealed].

(31 Del. C. 1953, § 2118; 57 Del. Laws, c. 162; 64 Del. Laws, c. 389, §§ 4, 5; 78 Del. Laws, c. 179, § 346; repealed by 83 Del. Laws, c. 460, § 1, effective Oct. 14, 2022.)

Part II
Welfare Agencies

Chapter 23
Aid to Persons with Blindness

§ 2301. Definitions [Repealed].

(45 Del. Laws, c. 83, §§ 1-3; 31 Del. C. 1953, § 2301; 50 Del. Laws, c. 144, § 1; 78 Del. Laws, c. 179, §§ 348, 349; repealed by 83 Del. Laws, c. 455, § 22, effective Oct. 10, 2022.)

§ 2302. Duties of the Commission [Repealed].

(45 Del. Laws, c. 83, § 5; 46 Del. Laws, c. 288, § 2; 31 Del. C. 1953, § 2302; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, §§ 350-352; repealed by 83 Del. Laws, c. 455, § 23, effective Oct. 10, 2022.)

§ 2303. Eligibility for assistance of persons with blindness [Repealed].

(45 Del. Laws, c. 83, § 3; 47 Del. Laws, c. 50; 31 Del. C. 1953, § 2303; 49 Del. Laws, c. 76, § 1; 54 Del. Laws, c. 20; 55 Del. Laws, c. 299, § 3; 57 Del. Laws, c. 163; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, §§ 353, 354; repealed by 83 Del. Laws, c. 455, § 24, effective Oct. 10, 2022.)

§ 2304. Application for assistance [Repealed].

(45 Del. Laws, c. 83, § 6; 31 Del. C. 1953, § 2304; 70 Del. Laws, c. 186, § 1; repealed by 83 Del. Laws, c. 455, § 25, effective Oct. 10, 2022.)

§ 2305. Investigation of applications [Repealed].

(45 Del. Laws, c. 83, § 7; 31 Del. C. 1953, § 2305; repealed by 83 Del. Laws, c. 455, § 26, effective Oct. 10, 2022.)

§ 2306. Eye examination for eligibility [Repealed].

(45 Del. Laws, c. 83, § 8; 46 Del. Laws, c. 288, § 3; 48 Del. Laws, c. 68, § 1; 31 Del. C. 1953, § 2306; repealed by 83 Del. Laws, c. 455, § 27, effective Oct. 10, 2022.)

§ 2307. Grant of assistance; notice; payments [Repealed].

(45 Del. Laws, c. 83, § 9; 31 Del. C. 1953, § 2307; repealed by 83 Del. Laws, c. 455, § 28, effective Oct. 10, 2022.)

§ 2308. Amount of assistance [Repealed].

(45 Del. Laws, c. 83, § 4; 46 Del. Laws, c. 288, § 1; 47 Del. Laws, c. 109; 48 Del. Laws, c. 68, § 2; 31 Del. C. 1953, § 2308; 49 Del. Laws, c. 76, § 2; 51 Del. Laws, c. 60; 53 Del. Laws, c. 80; 54 Del. Laws, c. 393; 78 Del. Laws, c. 179, § 355; repealed by 83 Del. Laws, c. 455, § 29, effective Oct. 10, 2022.)

§ 2309. Assistance not assignable [Repealed].

(45 Del. Laws, c. 83, § 10; 31 Del. C. 1953, § 2309; repealed by 83 Del. Laws, c. 455, § 30, effective Oct. 10, 2022.)

§ 2310. Appeal to Commission; hearing [Repealed].

(45 Del. Laws, c. 83, § 11; 31 Del. C. 1953, § 2310; 49 Del. Laws, c. 220, § 31; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, §§ 356, 357; repealed by 83 Del. Laws, c. 455, § 31, effective Oct. 10, 2022.)

§ 2311. Periodic reconsideration and changes in amount of assistance [Repealed].

(45 Del. Laws, c. 83, § 12; 31 Del. C. 1953, § 2311; repealed by 83 Del. Laws, c. 455, § 32, effective Oct. 10, 2022.)

§ 2312. Reexamination as to eyesight [Repealed].

(45 Del. Laws, c. 83, § 13; 31 Del. C. 1953, § 2312; 70 Del. Laws, c. 186, § 1; repealed by 83 Del. Laws, c. 455, § 33, effective Oct. 10, 2022.)

§ 2313. Supplementary services [Repealed].

(45 Del. Laws, c. 83, §§ 14, 15; 46 Del. Laws, c. 288, § 4; 31 Del. C. 1953, § 2313; 70 Del. Laws, c. 186, § 1; repealed by 83 Del. Laws, c. 455, § 34, effective Oct. 10, 2022.)

§ 2314. Recipient not deemed a pauper [Repealed].

(45 Del. Laws, c. 83, § 15; 31 Del. C. 1953, § 2314; 78 Del. Laws, c. 179, § 358; repealed by 83 Del. Laws, c. 455, § 35, effective Oct. 10, 2022.)

§ 2315. Duty of recipient to report property or income; actions by the Commission to recover assistance in excess of need [Repealed].

(45 Del. Laws, c. 83, § 16; 31 Del. C. 1953, § 2315; 70 Del. Laws, c. 186, § 1; repealed by 83 Del. Laws, c. 455, § 36, effective Oct. 10, 2022.)

§ 2316. Federal financial participation [Repealed].

(45 Del. Laws, c. 83, § 18; 31 Del. C. 1953, § 2316; 49 Del. Laws, c. 220, § 32; repealed by 83 Del. Laws, c. 455, § 37, effective Oct. 10, 2022.)

§ 2317. Penalties for fraud [Repealed].

(45 Del. Laws, c. 83, § 19; 31 Del. C. 1953, § 2317; 70 Del. Laws, c. 186, § 1; repealed by 83 Del. Laws, c. 455, § 38, effective Oct. 10, 2022.)

§ 2318. Effect of change of law on assistance granted [Repealed].

(45 Del. Laws, c. 83, § 20; 31 Del. C. 1953, § 2318; 70 Del. Laws, c. 186, § 1; repealed by 83 Del. Laws, c. 455, § 39, effective Oct. 10, 2022.)

Part II
Welfare Agencies

Chapter 25
State Board of Education; Duties in Regard to Persons Who Are Blind

§ 2501. Jurisdiction of State Board of Education.

The State Board of Education may provide for the suitable care, maintenance and instruction of babies who are blind of the State and children who are blind and too young or otherwise unable to enter schools for persons who are blind.

(41 Del. Laws, c. 30, § 1; 31 Del. C. 1953, § 2501; 78 Del. Laws, c. 179, §§ 360, 361.)

§ 2502. Power to contract with institutions to provide maintenance and instruction.

For the purpose of providing the care, maintenance and instruction referred to in § 2501 of this title the Board of Education may contract with any institution having or furnishing facilities for such care, maintenance and instruction in this or any other state at a contract price and to pay transportation to and from the institution. The contract shall be made by and with the written consent of the parents or the surviving parent of any such child who is blind, or other relatives, or guardians, if such parents are both dead, or with the Department of Public Welfare, if there are no parents or other relatives.

(41 Del. Laws, c. 30, § 2; 31 Del. C. 1953, § 2502; 78 Del. Laws, c. 179, § 362.)

§ 2503. Age limitation in contracts; power of Board to cancel contract and remove children.

A contract under this chapter shall continue in force and the care, maintenance and education provided therein shall continue until such child who is blind attains the age of 8 years. The State Board of Education may, however, cancel such contract and remove such child who is blind from the institution or school if, in its judgment, such child who is blind does not improve in such a way as to warrant its continuing in the same, or extend the time if the progress of the child requires a longer stay.

(41 Del. Laws, c. 30, § 3; 31 Del. C. 1953, § 2503; 78 Del. Laws, c. 179, § 363.)

Part II
Welfare Agencies

Chapter 27
Facilities and Services for Children and Youth

§ 2701. Purposes.

The purposes of the Department of Health and Social Services shall be to:

(1) Study and evaluate existing facilities and services for children and youth in this State;

(2) Determine unmet needs in services and facilities for children and youth in this State;

(3) Formulate plans and courses of action covering the unmet needs of children and youth;

(4) Make recommendations to the Governor, to the General Assembly and to governmental and voluntary agencies, organizations and institutions, on all matters affecting children and youth; and

(5) Study the findings and recommendations of the Mid-Century White House Conference on Children and Youth, and of the Delaware Committee thereof, and subsequent conferences, to stimulate interest in those findings and recommendations and to promote and encourage appropriate follow-up action on the part of governmental and voluntary agencies, organizations and institutions at state and local levels.

(48 Del. Laws, c. 275, § 2; 31 Del. C. 1953, § 2706.)

§ 2702. Assistance from other organizations.

(a) The Department of Health and Social Services may call on appropriate agencies, departments and institutions of the State and other political subdivisions to provide it with advice, information, consultation and assistance.

(b) The Department of Health and Social Services may call on appropriate voluntary agencies and organizations for advice, information, consultation and assistance.

(48 Del. Laws, c. 275, §§ 9, 10; 31 Del. C. 1953, § 2707; 57 Del. Laws, c. 591, § 43.)

§ 2703. Powers.

(a) The Department of Health and Social Services may do whatever is necessary and proper to carry out the purposes of this chapter.

(b) The Department of Health and Social Services may receive funds from any source whatsoever and may expend such funds in accordance with law.

(c) The Department of Health and Social Services, in addition to its other powers and duties, may conduct studies directly or indirectly affecting children and youth, including their physical and mental health and well-being, and may determine what action is needed to combat physical and mental disabilities generally.

(31 Del. C. 1953, § 2708; 54 Del. Laws, c. 287; 57 Del. Laws, c. 591, § 43.)

Part II
Welfare Agencies

Chapter 28
Eleanor Cain Center

§ 2801. Definitions.

As used in this chapter:

(1) "Center" means the Eleanor Cain Center, a skilled nursing care facility operated by the Department of Health and Social Services and located on the premises of the Eleanor Cain Campus, a 62-acre campus located in Smyrna, Delaware.

(2) "CMS" means Centers for Medicaid and Medicare Services.

(3) "Department" means Department of Health and Social Services.

(85 Del. Laws, c. 519, § 1.)

§ 2802. Organization and operation of the Eleanor Cain Center.

(a) The Center shall:

(1) Operate in accordance with federal and state laws and regulations, including CMS regulations, 42 C.F.R. Part 483.

(2) Care for all residents in a manner and in an environment that promotes maintenance or enhancement of each resident's dignity, respect, and quality of life.

(3) Provide an ongoing program to support residents in their choice of activities, designed to meet the interests of and support the physical, mental, and psychosocial wellbeing of each resident.

(b) Each resident of the Center shall be entitled to the rights of residents set forth in subchapter II of Chapter 11 of Title 16, and all sections in that subchapter shall apply to the residents of the Center.

(c) The cost of the operation and maintenance of the Center and the care and support of residents shall be paid by the State Treasurer.

(31 Del. C. 1953, § 2821; 49 Del. Laws, c. 144, § 2; 57 Del. Laws, c. 591, § 20; 58 Del. Laws, c. 499, § 1; 60 Del. Laws, c. 207, § 3; 61 Del. Laws, c. 373, § 5; 70 Del. Laws, c. 149, § 222; 85 Del. Laws, c. 519, § 1.)

§ 2803. Department duties.

The Department shall:

(1) Maintain operation and have full jurisdiction over the Center.

(2) Enter contracts for the erection of additional buildings and facilities for their appointment and equipment.

(3) Establish policies and procedures regarding the referral, review, and admission of applicants to the Center that include the following requirements for admission:

a. The applicant has been determined to have a skilled nursing facility level of care.

b. The applicant chooses to receive services in a long-term care facility after being informed of available community options.

c. The applicant has completed a Medicaid financial interview within the Division of Medicaid and Medical Assistance and eligibility has been determined.

(4) Set aside and maintain a suitable area upon the premises of Eleanor Cain Campus for the burial of bodies in any case where it is incumbent to bury a person found dead within the meaning of § 4711 of Title 29.

(31 Del. C. 1953, §§ 2806, 2820; 49 Del. Laws, c. 144, § 2; 50 Del. Laws, c. 85, § 1; 57 Del. Laws, c. 591, §§ 19, 20; 58 Del. Laws, c. 499, § 7; 60 Del. Laws, c. 207, § 3; 70 Del. Laws, c. 149, § 221; 85 Del. Laws, c. 519, § 1.)

§ 2804. Financial liability of residents.

The Department shall determine the financial liability of residents in payment for services under § 7940 of Title 29.

(31 Del. C. 1953, § 2830; 49 Del. Laws, c. 144, § 2; 57 Del. Laws, c. 591, § 20; 58 Del. Laws, c. 499, §§ 4, 5; 60 Del. Laws, c. 207, § 3; 70 Del. Laws, c. 186, § 1; 85 Del. Laws, c. 519, § 1.)

Part II
Welfare Agencies

Chapter 29
Delaware Commission for the Aging [Repealed].

§§ 2901-2904. Definitions; functions of the Delaware Commission for the Aging; powers and duties of the Commission; payment of accounts [Repealed].

Repealed by 69 Del. Laws, c. 345, § 8, effective July 8, 1994.

Part II
Welfare Agencies

Chapter 30
Delaware Human and Civil Rights Commission

(83 Del. Laws, c. 305, § 12.)

§ 3001. Delaware Human and Civil Rights Commission composition; vacancies; compensation; removal; quorum.

(a) The Delaware Human and Civil Rights Commission ("Commission") consists of 18 members, all of whom are appointed by the Governor and, collectively, meet all of the following criteria:

(1) Broadly represent the various racial and cultural groups of this State.

(2) All reasonable efforts must be made to ensure that each county is represented by at least 5 members.

(b) Commission appointments are for 4-year terms. The Governor may appoint a member for a term of less than 4 years to ensure that no more than 5 members' terms expire in 1 year.

(c) A Commission member serves without compensation but is reimbursed for actual and necessary expenses, except that a member designated by the Chair to serve on hearing panels is compensated the sum of $50 per day, up to a maximum of $1,500 in a calendar year, for each day spent attending a hearing.

(d) A Commission member may be removed at any time for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(1) A member is deemed in neglect of duty if the member, without good cause, is absent from 3 consecutive meetings or attends less than 50% of meetings in a calendar year.

(2) A member deemed in neglect of duty is considered to have resigned. The Commission Chair shall immediately notify the Governor of the resignation.

(e) The Commission shall adopt bylaws that provide for operating procedures, such as election of officers, appointment of committees, conducting of meetings, and other matters that promote the Commission's efficient operation.

(f) A majority of appointed members must be present at a meeting in order to have a quorum and conduct official business.

(31 Del. C. 1953, § 3001; 53 Del. Laws, c. 261, § 1; 65 Del. Laws, c. 377, §§ 7, 8; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 356, §§ 3, 4; 81 Del. Laws, c. 171, § 1; 83 Del. Laws, c. 305, § 13.)

§ 3002. Chair and executive committee; meetings.

(a) The Commission shall elect a Chair from among the members of the Commission.

(b) An executive committee of the Commission consists of 7 members. The Commission Chair shall serve as Chair of the executive committee. The Chair may appoint the remaining 6 executive committee members after consultation with the Commission regarding which members to appoint.

(c) The executive committee or Commission shall meet at least once a month.

(31 Del. C. 1953, § 3002; 53 Del. Laws, c. 261, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 171, § 2.)

§ 3003. Responsibilities.

The Commission is responsible for carrying out public information and education programs, preparing reports and recommendations, and making surveys and studies necessary for the performance of its duties under this chapter. The Commission may delegate 1 or more of its responsibilities under this section to the Division of Human and Civil Rights ("Division"), but the delegation must specifically state the responsibility the Division must undertake.

(31 Del. C. 1953, § 3003; 57 Del. Laws, c. 679, § 1; 75 Del. Laws, c. 356, § 5; 81 Del. Laws, c. 171, § 3; 83 Del. Laws, c. 305, § 14.)

§ 3004. Powers and duties.

The Commission shall cooperate with the Governor, the General Assembly, public agencies, officials, firms, corporations, civic groups, and individuals in promoting amicable relationships among the various racial and cultural groups within the State. To this end the Commission may do any of the following:

(1) Act as conciliator in matters involving members of groups protected under the laws enforced by the Commission. The provisions of the Freedom of Information Act in Chapter 100 of Title 29 do not apply to meetings that involve conciliation or mediation.

(2) Complete investigations, surveys, and studies as are pertinent to the performance of its duties.

(3) Make recommendations to the Governor and General Assembly concerning needed legislation.

(4) Perform duties assigned to the Commission under Chapter 45 and 46 of Title 6.

(31 Del. C. 1953, § 3004; 53 Del. Laws, c. 261, § 1; 62 Del. Laws, c. 122, § 1; 62 Del. Laws, c. 330, § 1; 75 Del. Laws, c. 356, § 6; 81 Del. Laws, c. 171, § 5.)

§ 3005. Special Administration Fund.

(a) *Creation. —*

A special fund in the State Treasury, to be known as the Special Administration Fund of the Delaware Human and Civil Rights Commission and referred to as "the Fund" throughout this section, consists of:

(1) All civil penalties assessed and collected under Chapter 45 or 46 of Title 6.

(2) Costs, attorneys' fees, and expenses awarded to the Commission under Chapter 45 or 46 of Title 6.

(3) All Community Development Block Grant moneys designated for the administration and enforcement of Chapter 46 of Title 6.

(4) All other moneys specifically designated for the Fund.

(5) All interest on or profits earned by the Fund.

(b) *Administration. —*

(1) All moneys collected under this section must be deposited or paid into the Fund, are continuously available to the Commission for expenditure in accordance with this section, do not lapse at any time, and may not be transferred to any other fund, except as provided in subsection (d) of this section. All moneys in the Fund must be prudently invested to the credit of the Fund, administered and disbursed in the same manner as is provided by law for other special funds in the State Treasury, and maintained in a separate ledger account on the books of the Secretary of Finance.

(2) All moneys in the Fund which are received from the federal government, or any of its agencies, or appropriated by this State for purposes described in this chapter or Chapters 45 or 46 of Title 6, may be expended solely for the proper and efficient administration of this chapter.

(3) The State Treasurer is the custodian of and liable on the State Treasurer's official bond for the faithful performance of duties in connection with the Fund. Such liability on the official bond exists in addition to the liability on any separate bond which the State Treasurer may give. All sums recovered on any such official bond for losses sustained by the Fund must be deposited in the Fund.

(c) *Use. —*

The Commission may use moneys in the Fund for any of the following purposes:

(1) The payment of litigation expenses, costs, and attorneys' fees in connection with the enforcement provisions of Chapters 45 and 46 of Title 6.

(2) The payment of the expenses of investigations conducted under Chapters 45 and 46 of Title 6, and this chapter.

(3) The payment of studies and surveys conducted under this chapter.

(d) *Transfer. —*

If the Commission determines that the money in the Fund is more than adequate to pay for all foreseeable needs for which this Fund is created, it may authorize the transfer money from the Fund to the General Fund in an amount the Commission deems proper.

(68 Del. Laws, c. 311, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 350, §§ 2, 3; 81 Del. Laws, c. 171, § 7; 83 Del. Laws, c. 305, § 15.)

§ 3006. Subpoenas; compelling testimony.

(a) The Commission may issue subpoenas and order discovery in aid of the investigations, surveys, and studies authorized under § 3004 of this title when the Attorney General has reason to believe that such subpoenas and discovery will enable the Commission to perform the duties imposed by this chapter.

(b) Any subpoena, process, order of the Commission, or other paper requiring service may be served by any sheriff, deputy sheriff, constable, or employee of the Division.

(c) If a witness refuses to obey a subpoena that the Commission lawfully issued or give evidence the Commission properly requested, the Commission may petition the Superior Court to compel the witness to obey the subpoena or give the evidence. The Court shall immediately issue process to the witness and hold a hearing on the petition as soon as possible. If the witness refuses, without reasonable cause or legal grounds, to obey the subpoena or give the evidence, the Court shall punish the witness for contempt.

(75 Del. Laws, c. 356, § 7; 81 Del. Laws, c. 171, § 8; 83 Del. Laws, c. 305, § 16.)

Part II
Welfare Agencies

Chapter 35
Delaware Aging and Disability Resource Center

§ 3501. Declaration of policy.

(a) The General Assembly recognizes that supporting the elderly and adults with physical disabilities in a community setting is a priority for Delaware families. While it is an objective of the Division of Services for Aging and Adults with Physical Disabilities to provide services that help older people and adults with physical disabilities remain independent in their homes or in their community, assistance identifying and accessing these services is often needed.

(b) By establishing the Delaware Aging and Disability Resource Center, the General Assembly intends to assist Delaware families by providing a one-stop access point for long-term care services and support for the elderly and adults with physical disabilities in this State.

(67 Del. Laws, c. 362, § 1; 69 Del. Laws, c. 345, § 5; 77 Del. Laws, c. 260, § 2.)

§ 3502. Establishment of Delaware Aging and Disability Resource Center.

There is hereby established a Delaware Aging and Disability Resource Center within the Division of Services for Aging and Adults with Physical Disabilities of the Department of Health and Social Services.

(67 Del. Laws, c. 362, § 1; 69 Del. Laws, c. 345, § 5; 77 Del. Laws, c. 260, § 2.)

§ 3503. Responsibilities of the Delaware Aging and Disability Resource Center.

The Elder Care Information and Support System shall have the following responsibilities:

(1) Develop a statewide information and support system for Delaware families who are caring for elders locally or providing long-distance care giving;

(2) Establish an Alzheimer's Family Support Center to assist families confronting the devastation of Alzheimer's disease;

(3) Network with the Delaware business community to encourage their active role in providing assistance to their own employees;

(4) Network with other states and national organizations, such as the Washington Business Group on Health, to provide additional assistance to Delaware families; and

(5) Engage in such other activities as shall be deemed beneficial to further assist Delaware families in meeting their elder care responsibilities.

(67 Del. Laws, c. 362, § 1; 77 Del. Laws, c. 260, § 2.)

Part II
Welfare Agencies

Chapter 36
Court-Appointed Special Advocate Program [Repealed].

§ 3601. Purpose and construction of chapter [Repealed].

(65 Del. Laws, c. 95, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 451, § 11; repealed by 80 Del. Laws, c. 417, § 1, effective Mar. 5, 2017.)

§ 3602. Definitions [Repealed].

(65 Del. Laws, c. 95, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 451, §§ 12, 13; 76 Del. Laws, c. 136, §§ 24-27; repealed by 80 Del. Laws, c. 417, § 1, effective Mar. 5, 2017.)

§ 3603. Established; composition [Repealed].

(65 Del. Laws, c. 95, § 1; 72 Del. Laws, c. 451, § 14; repealed by 80 Del. Laws, c. 417, § 1, effective Mar. 5, 2017.)

§ 3604. Court-Appointed Special Advocates — Qualifications [Repealed].

(65 Del. Laws, c. 95, § 1; 72 Del. Laws, c. 451, § 15; repealed by 80 Del. Laws, c. 417, § 1, effective Mar. 5, 2017.)

§ 3605. Court-appointed special advocates — Appointment [Repealed].

(65 Del. Laws, c. 95, § 1; 72 Del. Laws, c. 451, § 16; 76 Del. Laws, c. 213, § 58; repealed by 80 Del. Laws, c. 417, § 1, effective Mar. 5, 2017.)

§ 3606. Court-Appointed Special Advocates — Duties and rights [Repealed].

(65 Del. Laws, c. 95, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 451, § 17; repealed by 80 Del. Laws, c. 417, § 1, effective Mar. 5, 2017.)

§ 3607. Court-Appointed Special Advocates — Status [Repealed].

(65 Del. Laws, c. 95, § 1; 72 Del. Laws, c. 451, §§ 18, 19; repealed by 80 Del. Laws, c. 417, § 1, effective Mar. 5, 2017.)

§ 3608. Confidentiality [Repealed].

(65 Del. Laws, c. 95, § 1; repealed by 80 Del. Laws, c. 417, § 1, effective Mar. 5, 2017.)

§ 3609. Notice of hearings [Repealed].

(65 Del. Laws, c. 95, § 1; 72 Del. Laws, c. 451, § 20; repealed by 80 Del. Laws, c. 417, § 1, effective Mar. 5, 2017.)

§ 3610. Acquisition of information by Court-Appointed Special Advocate [Repealed].

(65 Del. Laws, c. 95, § 1; 72 Del. Laws, c. 451, § 21; repealed by 80 Del. Laws, c. 417, § 1, effective Mar. 5, 2017.)

§ 3611. Civil liability of participants [Repealed].

(65 Del. Laws, c. 95, § 1; 72 Del. Laws, c. 451, § 22; repealed by 80 Del. Laws, c. 417, § 1, effective Mar. 5, 2017.)

§ 3612. Federal funding [Repealed].

(65 Del. Laws, c. 95, § 1; 72 Del. Laws, c. 451, § 22; repealed by 80 Del. Laws, c. 417, § 1, effective Mar. 5, 2017.)

§ 3613. Extended jurisdiction — Child abuse, dependency and neglect [Repealed].

(77 Del. Laws, c. 385, § 4; repealed by 80 Del. Laws, c. 417, § 1, effective Mar. 5, 2017.)

Part II
Welfare Agencies
Chapter 37
Elderly Housing Counseling Program

§ 3701. Declaration of policy.

The General Assembly of the State recognizes that the quality of housing affects every aspect of an older individual's life, from the physical to the psychological. For many older Delawareans, maintaining themselves in a suitable environment is an ongoing battle. Some are unnecessarily forced into nursing homes because of the unavailability of housing that matches their physical needs or financial resources. In other cases, housing and/or relocation decisions are made without knowledge of the resources or alternatives available. The General Assembly, therefore, intends through this chapter to address this situation by establishing a Housing Counseling Program within the Division of Services for Aging and Adults with Physical Disabilities whose responsibility it will be to develop and coordinate a continuum of housing options for older Delawareans.

(65 Del. Laws, c. 126, § 1; 66 Del. Laws, c. 48, § 2; 69 Del. Laws, c. 345, § 5.)

§ 3702. Establishment.

There is hereby established an Elderly Housing Counseling Program within the Division of Services for Aging and Adults with Physical Disabilities, Department of Health and Social Services.

(65 Del. Laws, c. 126, § 1; 66 Del. Laws, c. 48, § 2; 69 Del. Laws, c. 345, § 5.)

§ 3703. Definitions.

As used in this chapter:

(1) "Department" shall mean the Department of Health and Social Services.

(2) "Division" shall mean the Division of Services for Aging and Adults with Physical Disabilities.

(3) "Matched Housing Program" shall mean shared housing arrangements.

(4) "Program" shall mean the Housing Counseling Program.

(5) "Senior citizen" shall mean any Delaware resident 60 years of age or older.

(6) "Task Force" shall mean the Task Force on Housing for Senior Citizens.

(65 Del. Laws, c. 126, § 1; 66 Del. Laws, c. 48, § 2; 69 Del. Laws, c. 345, § 5.)

§ 3704. Duties and functions.

The Housing Counseling Program shall have the following duties and functions:

(1) Conduct ongoing research to keep abreast of the existing housing options available to senior citizens including research into ways senior citizens can finance said housing options;

(2) Facilitate the establishment of a matched housing program with the counties;

(3) Advocate for the establishment of additional housing alternatives, including home equity conversion, and work with senior citizen organizations on the removal of those barriers which include, but are not limited to, financial, regulatory and legislative that inhibit the development of other alternatives;

(4) Serve as an educational clearinghouse for information on housing options for senior citizens, including publication and dissemination of information on laws and regulations pertaining to housing, including, but not limited to, rent control and condominium conversion;

(5) Operate a housing counseling service that will counsel senior citizens on available housing options and financial/legal matters that may apply to their housing situation, including, but not limited to, laws and regulations, utilization of financial options such as home equity conversion, passbook accounts and insurance annuities;

(6) Coordinate with existing county, city and private housing programs to enhance communication of new concepts and developments in housing and to ensure sensitivity to the unique housing needs of senior citizens;

(7) Network with banks, lending and investment institutions to explore ways in which senior citizens could more effectively invest their money in order to provide adequate housing;

(8) Develop, coordinate and train a cadre of senior citizen volunteers to perform peer counseling in housing options and related financial/legal matters, thereby reaching a greater number of senior citizens in need of counseling at minimal cost;

(9) Evaluate the Program and report annually to the Secretary of the Department of Health and Social Services, who shall make the report available to the General Assembly. The evaluation should include the systematic collection and analysis of client utilization data including, but not limited to, number of clients counseled, number of clients who are participating in various residential alternatives as a result of this Program and the cost effectiveness of the Program;

(10) Promote accessory apartments and other innovative housing options for elderly citizens, both as renters and rentees by:

a. Making information available to elderly citizens and the community;

b. Bringing together realtors, local government zoning agencies, non-profit organizations, lenders, home health care agencies, etc., to promote and facilitate accessory apartments;

c. Counseling senior citizens, their families, and potential renters; and

d. Other activities that will support the establishment of accessory apartments and other innovative housing options to benefit elderly citizens in Delaware.

(65 Del. Laws, c. 126, § 1; 66 Del. Laws, c. 48, §§ 2, 3; 67 Del. Laws, c. 164, § 1.)

§ 3705. Task Force on Housing for Senior Citizens.

(a) There is established a Task Force on Housing for Senior Citizens.

(b) The Task Force shall be composed of at least 9 members who shall be appointed by the Secretary of the Department of Health and Social Services.

(c) The duties of the Task Force shall include, but not be limited to, the following:

(1) To study, research, plan and advise the staff of the Program and the Division Director on matters it deems appropriate to enable the Program to function in the best possible manner;

(2) To review and advise the staff and the Division Director regarding the annual proposed budget for the Program.

(d) The terms of the new members shall be staggered. The first 3 appointees shall serve for a term of 1 year. The next 3 appointees shall serve for a term of 2 years, and the next 3 appointees shall serve for a term of 3 years. Appointees, including reappointees, after the initial 9, shall serve 3-year terms. No person shall serve for more than 2 consecutive terms. Persons serving 2 consecutive terms are eligible for reappointment after a 1-year absence.

(e) The members shall include at least 1 representative from each of the following: A private housing program, a public housing agency, the appropriate county government housing agency, a senior citizen organization, the business community and private citizens.

(f) The membership of the Task Force may be expanded to a maximum of 13 members if the program is expanded statewide. The Task Force may form subcommittees.

(g) The Chairperson of the Task Force shall be chosen by the Task Force from among its members and shall serve in that capacity for a term of 1 year and shall be eligible for reelection.

(65 Del. Laws, c. 126, § 1; 66 Del. Laws, c. 48, § 2; 70 Del. Laws, c. 186, § 1.)

Part II
Welfare Agencies

Chapter 38
Child Placement Review Act [Repealed].

(Repealed by 81 Del. Laws, c. 280, § 48, effective July 18, 2018.)

§ 3801. Objectives [Repealed].

(62 Del. Laws, c. 170, § 1; 64 Del. Laws, c. 47, § 1; 72 Del. Laws, c. 338, § 1; 78 Del. Laws, c. 108, § 1; 79 Del. Laws, c. 284, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3802. Definitions [Repealed].

(62 Del. Laws, c. 170, § 1; 64 Del. Laws, c. 47, § 1; 64 Del. Laws, c. 447, §§ 1, 2; 71 Del. Laws, c. 296, § 1; 72 Del. Laws, c. 338, § 1; 79 Del. Laws, c. 284, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3803. Child Placement Review Board: composition; terms; appointment; removal; vacancies [Repealed].

(62 Del. Laws, c. 170, § 1; 64 Del. Laws, c. 47, § 1; 65 Del. Laws, c. 294, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 296, §§ 2, 3; 72 Del. Laws, c. 338, § 1; 74 Del. Laws, c. 107, § 1; 79 Del. Laws, c. 284, § 1; 80 Del. Laws, c. 319, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3804. Qualifications of board members [Repealed].

(62 Del. Laws, c. 170, § 1; 64 Del. Laws, c. 47, § 1; 71 Del. Laws, c. 296, § 4; 72 Del. Laws, c. 338, § 1; 78 Del. Laws, c. 179, § 366; 79 Del. Laws, c. 284, § 1; 80 Del. Laws, c. 319, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3805. Powers and duties of the Board [Repealed].

(62 Del. Laws, c. 170, § 1; 64 Del. Laws, c. 47, § 1; 65 Del. Laws, c. 294, § 3; 71 Del. Laws, c. 296, §§ 7-9; 72 Del. Laws, c. 338, § 1; 78 Del. Laws, c. 108, §§ 2, 3; 80 Del. Laws, c. 319, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3806. Compensation and expenses for Board members [Repealed].

(62 Del. Laws, c. 170, § 1; 64 Del. Laws, c. 47, § 1; 68 Del. Laws, c. 131, § 1; 71 Del. Laws, c. 296, § 6; 72 Del. Laws, c. 338, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3807. Meetings of the Executive Committee and Board [Repealed].

(62 Del. Laws, c. 170, § 1; 64 Del. Laws, c. 47, § 1; 71 Del. Laws, c. 296, § 5; 72 Del. Laws, c. 338, § 1; 79 Del. Laws, c. 284, § 1; 80 Del. Laws, c. 319, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3808. Duties of the Executive Committee [Repealed].

(64 Del. Laws, c. 47, § 1; 65 Del. Laws, c. 294, §§ 4, 5; 71 Del. Laws, c. 296, § 10; 72 Del. Laws, c. 338, § 1; 78 Del. Laws, c. 108, §§ 4-6; 79 Del. Laws, c. 284, § 1; 80 Del. Laws, c. 319, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3809. Duties of the Executive Director [Repealed].

(62 Del. Laws, c. 170, § 1; 64 Del. Laws, c. 47, § 1; 72 Del. Laws, c. 338, § 1; 78 Del. Laws, c. 108, § 7; 79 Del. Laws, c. 284, § 1; 80 Del. Laws, c. 319, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3810. Administrative review: Purposes [Repealed].

(62 Del. Laws, c. 170, § 1; 64 Del. Laws, c. 47, § 1; 65 Del. Laws, c. 294, §§ 6, 7; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 296, § 11; 72 Del. Laws, c. 338, § 1; 78 Del. Laws, c. 108, §§ 8, 9; 79 Del. Laws, c. 284, § 1; 80 Del. Laws, c. 319, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3811. Administrative Review: General responsibilities of the Review Panel [Repealed].

(62 Del. Laws, c. 170, § 1; 64 Del. Laws, c. 47, § 1; 65 Del. Laws, c. 294, §§ 6, 7; 71 Del. Laws, c. 296, § 11; 72 Del. Laws, c. 338, § 1; 79 Del. Laws, c. 284, § 1; 80 Del. Laws, c. 319, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3812. Administrative review: Notice [Repealed].

(62 Del. Laws, c. 170, § 1; 64 Del. Laws, c. 47, § 1; 64 Del. Laws, c. 447, § 3; 68 Del. Laws, c. 102, § 1; 71 Del. Laws, c. 296, § 12; 72 Del. Laws, c. 338, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3813. Administrative review: Documents required for the review [Repealed].

(62 Del. Laws, c. 170, § 1; 64 Del. Laws, c. 47, § 1; 72 Del. Laws, c. 338, § 1; 80 Del. Laws, c. 319, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3814. Administrative review: Procedures [Repealed].

(62 Del. Laws, c. 1; 70, § 1; 64 Del. Laws, c. 47, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 338, § 1; 79 Del. Laws, c. 284, § 1; 80 Del. Laws, c. 319, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3815. Administrative review: Findings and recommendations report [Repealed].

(62 Del. Laws, c. 170, § 1; 64 Del. Laws, c. 47, § 1; 71 Del. Laws, c. 296 §§ 14, 15; 72 Del. Laws, c. 338 § 1; 79 Del. Laws, c. 284 § 180 Del. Laws, c. 319 § 1; 80 Del. Laws, c. 319, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3816. Confidentiality of records [Repealed].

(62 Del. Laws, c. 170, § 1; 64 Del. Laws, c. 47, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 296, § 13; 72 Del. Laws, c. 338, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3817. Notice of judicial hearing [Repealed].

(62 Del. Laws, c. 170, § 1; 64 Del. Laws, c. 47, § 1; 72 Del. Laws, c. 338, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3818. Participation in judicial reviews or hearings [Repealed].

(72 Del. Laws, c. 338, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3819. Intervention as a party in an action [Repealed].

(72 Del. Laws, c. 338, § 1; 74 Del. Laws, c. 107, § 2; repealed by 81 Del. Laws, c. 208, § 48, effective July 1, 2018.)

§ 3820. Petition for judicial review [Repealed].

(62 Del. Laws, c. 170, § 1; 64 Del. Laws, c. 47, § 1; 71 Del. Laws, c. 296, § 16; 72 Del. Laws, c. 338, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3821. Construction of chapter [Repealed].

(62 Del. Laws, c. 170, § 1; 64 Del. Laws, c. 47, § 1; 71 Del. Laws, c. 296, § 17; 72 Del. Laws, c. 338, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3822. Conflict with existing laws [Repealed].

(62 Del. Laws, c. 170, § 1; 64 Del. Laws, c. 47, § 1; 71 Del. Laws, c. 296, § 17; 72 Del. Laws, c. 338, § 1; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3823. Continuation of service by present Foster Care Review Board members [Repealed].

(64 Del. Laws, c. 47, § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 296 § 17; repealed by 80 Del. Laws, c. 319, § 1, effective July 19, 2016; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

§ 3824. Child Placement Review Board notification [Repealed].

(76 Del. Laws, c. 280, § 221; repealed by 81 Del. Laws, c. 280, § 48, effective July 1, 2018.)

Part II
Welfare Agencies

Chapter 39
Adult Protective Services

§ 3901. Legislative intent.

The General Assembly recognizes that many adult citizens of this State are subject to psychological or physical injury or exploitation because of physical or mental disability, impairment, illness or condition, or other causes which render them incapable of providing for their basic daily living needs. The General Assembly, therefore, intends through this chapter to establish a system of services for impaired or incapacitated adults designed to protect their health, safety, and welfare. The intent is to authorize only the least possible restrictions on the exercise of personal and civil rights, and that restrictions are permitted only when consistent with proven need for services.

(63 Del. Laws, c. 384, § 1; 78 Del. Laws, c. 179, § 367; 84 Del. Laws, c. 529, § 1.)

§ 3902. Definitions.

As used in this chapter:

(1) "Abuse" means any of the following:

a. Physical abuse by unnecessarily inflicting pain or injury on an adult who is impaired or an adult who is incapacitated.

b. A pattern of emotional abuse of an adult who is impaired or an adult who is incapacitated, including ridiculing or demeaning the adult, making derogatory remarks to adult, or cursing or threatening to inflict physical or emotional harm on the adult.

c. Sexual abuse of an adult who is impaired or an adult who is incapacitated.

(2) "Adult Protective Services" means the adult protective services unit under the Division of Services for Aging and Adults with Physical Disabilities.

(3) "Adult who is impaired" means an individual 18 years or older who, because of physical or mental disability, is substantially impaired in the ability to provide adequately for the individual's own care and custody.

(4) "Adult who is incapacitated" includes an individual for whom a guardian of the individual's physical body or property, or both, is appointed under § 3901 of Title 12.

(5) "Alleged victim" means an adult who is impaired, an adult who is incapacitated, an elderly person, or a vulnerable adult, and may have been subject to abuse, neglect, self-neglect, or exploitation, based on a report to Adult Protective Services.

(6) "Caregiver" means an adult who has assumed the permanent or temporary care, custody, or responsibility for the supervision of an adult who is impaired or an adult who is incapacitated.

(7) "Court" means the Court of Chancery.

(8) "Department" means the Department of Health and Social Services.

(9) "Elderly person" means as defined in § 222 of Title 11.

(10) "Emergency" means that an individual is living in conditions which present a substantial risk of serious harm and includes problems which cannot be managed by an adult who is impaired or an adult who is incapacitated, such as insufficient food supply, inadequate shelter, threatened or actual abuse, or utility shut-off. Emergency does not mean psychiatric emergency under Chapter 50 of Title 16.

(11) "Emergency services" means protective services furnished to an individual in an emergency.

(12) "Essential services" means the physical, medical, social, psychiatric, or legal services necessary to safeguard physical body, rights, or resources of an adult who is impaired or an adult who is incapacitated and to maintain the adult's physical or mental well-being. "Essential services" includes adequate food and clothing, heated and sanitary shelter, medical care for physical and mental health needs, assistance in personal hygiene, protection from health and safety hazards, or protection from physical or mental injury or exploitation.

(13) "Exploitation" means at least 1 of the following:

a. An act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior.

b. Causing a vulnerable adult to perform services for the benefit of another.

(14) "Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of an elderly person or a vulnerable adult by an individual or entity for an individual's or entity's profit or advantage other than for the elderly person's or the vulnerable adult's profit or advantage. "Financial exploitation" includes any of the following:

a. The use of deception, intimidation, or undue influence by an individual or entity in a position of trust and confidence with an elderly person or a vulnerable adult to obtain or use the property, income, resources, or trust funds of the elderly person or the vulnerable adult for the benefit of an individual or entity other than the elderly person or the vulnerable adult.

b. The breach of a fiduciary duty, including the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the elderly person or the vulnerable adult for the benefit of an individual or entity other than the elderly person or the vulnerable adult.

c. Obtaining or using an elderly person's or a vulnerable adult's property, income, resources, or trust funds without lawful authority, by an individual or entity who knows or clearly should know that the elderly person or the vulnerable adult lacks the capacity to consent to the release or use of the property, income, resources, or trust funds.

(15) "Financial institution" means any of the following:

a. A "depository institution," as defined in § 3(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1813(c)).

b. A "federal credit union" or "state credit union," as defined in § 101 of the Federal Credit Union Act (12 U.S.C. § 1752), including an institution-affiliated party of a credit union, as defined in § 206(r) of the Federal Credit Union Act (12 U.S.C. § 1786(r)).

c. An "institution-affiliated party," as defined in § 3(u) of the Federal Deposit Insurance Act (12 U.S.C. § 1813(u)).

(16) "Independent living arrangement" means a mode of life pursued by an individual capable of providing for the individual's own care or who, while impaired, nevertheless is able to live outside an institution with assistance in obtaining essential services.

(17) "Interested person" means any of the following:

a. An adult relative or friend of an adult who is impaired or an adult who is incapacitated.

b. An official or representative of Adult Protective Services or a public or nonpublic private agency that provides protective services.

c. A corporation, board, organization, or individual that the Court designates to act in the interest of the adult who is impaired.

(18) "Mistreatment" means the failure to provide appropriate physical or emotional care to an adult who is impaired or an adult who is incapacitated, including the inappropriate use of medications, isolation, or physical or chemical restraints on or of an adult who is impaired or an adult who is incapacitated.

(19) "Neglect" means any of the following:

a. A caregiver's lack of attention to physical needs of an adult who is impaired or an adult who is incapacitated, including toileting, bathing, meals, and safety.

b. A caregiver's failure to carry out a treatment plan prescribed by a health-care professional for an adult who is impaired or an adult who is incapacitated.

c. A caregiver's intentional and permanent abandonment or desertion of an adult who is impaired or an adult or is incapacitated because the caregiver does not make reasonable efforts to ensure that essential services are provided for the adult.

(20) "Physical or mental disability" includes a disability, including intellectual and developmental disabilities, brain damage, physical degeneration, deterioration, senility, disease, or substance use disorder.

(21) "Protective services" means services that are furnished in an emergency to an alleged victim. "Protective services" includes any of the following:

a. Preliminary investigation and evaluation of reports of the alleged victim needing protective services, including a comprehensive social evaluation.

b. Medical and psychiatric evaluation, if necessary.

c. Social casework for the purpose of planning and providing services that the alleged victim needs.

d. Maintenance of the alleged victim in the alleged victim's own home through provision of personal care, attendant, or adult day services.

e. Assistance in obtaining out-of-home services such as respite care, emergency housing, or placement in a long-term care facility.

f. Referral to or for any of the following:

1. Legal assistance.

2. Information on establishing power of attorney or representative payee arrangements, or on guardianship of the alleged victim or the alleged victim's property.

3. The Office of the Public Guardian.

4. Medical assistance.

g. Transportation to and from service providers.

h. Other services consistent with this chapter.

(22) "Public Guardian" means the Office of the Public Guardian.

(23) "Self-neglect" means an adult's inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks, including any of the following:

a. Obtaining essential food, clothing, shelter, or medical care.

b. Obtaining goods or services necessary to maintain physical health, mental health, or general safety.

c. Managing one's own financial affairs.

(24) "Sexual abuse" means forced or unwanted sexual interaction, either a touching or nontouching act, with an adult who is impaired or an adult who is incapacitated.

(25) "Substantially impaired in the ability to provide adequately for the individual's own care and custody" means an adult who is impaired or an adult who is incapacitated, and the adult is unable to perform or obtain for the adult's essential services.

(26) "Vulnerable adult" means an adult who meets the criteria under § 1105(c) of Title 11.

(63 Del. Laws, c. 384, § 1; 66 Del. Laws, c. 49, § 1; 68 Del. Laws, c. 42, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 99, §§ 1, 2; 72 Del. Laws, c. 89, §§ 1-3; 78 Del. Laws, c. 179, §§ 368-374; 79 Del. Laws, c. 438, § 1; 80 Del. Laws, c. 31, § 1; 81 Del. Laws, c. 343, § 1; 81 Del. Laws, c. 387, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 529, §§ 2, 4.)

§ 3903. Establishment of protective services system.

(a) The Secretary shall promulgate rules and regulations for the operation of the adult protective services program.

(b) The Department shall provide protective services according to the regulations promulgated by the Secretary. In doing so, the Department may contract with another agency for the provision of services, or it may provide directly the protective services.

(c) The Department shall utilize, to the extent possible, the resources of a public or private agency which is appropriate and available in providing protective services.

(d) The Department shall designate 5 individuals as the initial staff to deliver protective services, as follows:

(1) One individual of at least the primary family service specialist level as the overall supervisor of the protective services program.

(2) Three individuals of at least the senior family service specialist level, to function throughout the State.

(3) One family service specialist.

(e) [Repealed.]

(f) The Department shall make continuing provisions in each county for the shelter of an individual who is determined to be in temporary need of protection under § 3905, § 3906, or § 3907 of this title. In providing continuing provisions, the Department may do any of the following:

(1) Utilize existing resources, such as a state institution.

(2) Contract for bed space in a private facility.

(3) Utilize the resources of a family care and residential home for an alleged victim not requiring medical care.

(g) The Department may make provisions for securing emergency food, clothing, fuel allotments, and funds for an individual determined to be in need of protection under § 3905, § 3906, or § 3907 of this title, insofar as the services are not available from another state-supported program. To the extent that funds are available for this purpose, the Department may draw upon the funds budgeted to provide emergency services as needed and, where possible, reimbursement must be made to the Department for the services provided which amounts shall revert to the General Fund of the State.

(h) When the Department receives a report concerning an allegation of abuse, neglect, or exploitation, the Department shall begin an investigation into the report within the following timeframes:

(1) For a report that includes an allegation of physical abuse, sexual abuse, or self-neglect, within 1 business day.

(2) For a report that includes an allegation of emotional abuse or neglect, within 3 business days.

(3) For a report that includes an allegation of exploitation, within 5 business days.

(i) The Department shall conduct ongoing training programs for relevant staff to advance the purpose of this chapter.

(j) The Department shall continuously publicize the existence of both of the following:

(1) The 24-hour report-line for those who are required to report abuse or neglect under § 3910 of this title.

(2) The 24-hour, statewide, toll-free telephone number for the public to report abuse or neglect.

(63 Del. Laws, c. 384, § 1; 64 Del. Laws, c. 467, § 3; 69 Del. Laws, c. 345, § 5; 73 Del. Laws, c. 41, § 1; 73 Del. Laws, c. 97, § 7; 78 Del. Laws, c. 179, § 375; 81 Del. Laws, c. 343, § 1; 84 Del. Laws, c. 529, § 3.)

§ 3904. Provision of protective services; costs.

(a), (b) [Repealed.]

(c) Adult Protective Services shall do all of the following:

(1) Inform and educate the citizens of the State on the needs of alleged victims and the services available to them.

(2) Accept and process each referral on, or application from, an alleged victim.

(3) Conduct a home visit to each alleged victim, if necessary.

(4) Counsel an alleged victim to assist the alleged victim to accept needed services voluntarily.

(5) Refer an alleged victim to other agencies providing protective services, arrange for visits, and follow up to determine that the agencies delivered the needed protective services.

(6) Maintain case records and statistics.

(7) Contract with existing public or private agencies and professionals for the provision of protective services that the Department does not directly provide.

(8) Provide an alleged victim with temporary shelter, if needed, under § 3903(f) of this title.

(9) Provide emergency food, clothing, fuel allotments, and funds for an alleged victim, if needed.

(10) Arrange the development of a system, in cooperation with public or private agencies, to ensure that protective services required for an emergency are coordinated.

(d) (1) An alleged victim who voluntarily accepts protective services that Adult Protective Services or another agency of this State provides shall pay the costs of the services to the extent that the alleged victim is able from the alleged victim's own resources, insurance programs, Medicare, Medicaid, or similar programs.

(2) If an alleged victim voluntarily accepts protective services and does not pay for the services despite having adequate resources to pay for them, the State may take action in the Court to obtain reimbursement, after making efforts to collect payment through other means.

(3) If protective services are provided under court order, the Court may authorize reasonable payment to the Department from the resources of the alleged victim, if the Department can prove to the satisfaction of the Court that payment may be made without endangering the welfare or interests of the alleged victim.

(4) To the extent that funds are available, the cost of protective services not paid from the resources of an alleged victim must be debited to Division of Services for Aging and Adults with Physical Disabilities' budget.

(63 Del. Laws, c. 384, § 1; 66 Del. Laws, c. 49, § 2; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, § 376; 81 Del. Laws, c. 343, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 529, § 5.)

§ 3905. Voluntary protective services.

(a) A qualified individual may receive protective services, if the individual requests or affirmatively consents to receive the services. If the individual withdraws or refuses consent, the Department may not provide the services unless by Court order.

(b) A person may not interfere with the provision of protective services to an individual who requests or consents to receive services or receives services by Court order. If interference occurs on a continuing basis, the Department or the individual receiving the services may petition the Court to enjoin the interference.

(63 Del. Laws, c. 384, § 1; 84 Del. Laws, c. 529, § 6.)

§ 3906. Involuntary protective services.

If an individual lacks the capacity to consent to receive protective services, services may be provided by 1 or more of the following ways:

(1) A police officer, on probable cause of death or immediate and irreparable physical injury, under § 3907 of this title.

(2) The Attorney General or a Deputy Attorney General of this State, on probable cause of death or immediate and irreparable physical injury, under § 3907 of this title.

(3) An emergency order of the Court, under § 3908 of this title. The Court shall order only that intervention which it determines is the least restrictive of the individual's liberty and rights, while consistent with the individual's welfare and safety. The Court shall state in its opinion the basis for the order.

(4) The appointment of a guardian under § 3901 of Title 12.

(5) An Adult Protective Services staff member, on probable cause of death or immediate and irreparable physical injury under § 3907 of this title.

(63 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 343, § 1; 84 Del. Laws, c. 529, § 7.)

§ 3907. Probable cause of death or immediate and irreparable physical injury.

(a) If probable cause exists to make a peace officer believe that an individual will suffer immediate and irreparable physical injury or death if not immediately placed in a health care facility or other emergency shelter, and if that the individual is incapable of giving consent, the peace officer may transport the individual to an appropriate medical facility or emergency shelter.

(b) If a peace officer transports an individual to an appropriate medical facility or emergency shelter under subsection (a) of this section, the peace officer shall immediately or at the beginning of the next working day notify the Department of all of the following:

(1) The transport.

(2) The circumstances which necessitated the transport.

(3) Any other relevant information.

(c) Adult Protective Services shall investigate and, if involuntary protective services are needed on a continuing basis for the individual transported under subsection (a) of this section, must initiate for the provision of the services under § 3908 of this title or § 3901 of Title 12.

(63 Del. Laws, c. 384, § 1; 84 Del. Laws, c. 529, § 8.)

§ 3908. Emergency petition and order for protective services.

(a) Upon petition by the Public Guardian or Adult Protective Services, the Court may issue an order authorizing the provision of protective services on an emergency basis to an individual after finding on the record and, based on a preponderance of the evidence, that all of the following exist:

(1) The The individual is an adult who is impaired or an adult who is incapacitated.

(2) An emergency exists.

(3) The individual lacks the capacity to consent to receive protective services.

(4) No person authorized by law or Court order to give consent for the adult is available and willing to consent to emergency services.

(5) A compelling reason exists to order services.

(b) In determining whether to issue an emergency order, the Court shall consider all of the following:

(1) Only the protective services necessary to remove the conditions creating the emergency may be ordered, and the Court shall specifically designate the approved services in its order.

(2) Protective services authorized by an emergency order may not include hospitalization or change of residence unless the Court specifically finds the action is necessary and gives specific approval for the action in its order.

(3) Protective services may be provided through an emergency order for a maximum of 90 days upon a showing to the Court that continuation of the original order is necessary to remove the emergency. During this period the adult who is impaired may petition the Court to have the emergency order removed.

(4) In its order, the Court shall appoint the petitioner or another interested person other than the service provider as temporary guardian of the physical body of the adult who is impaired or the adult who is incapacitated. The temporary guardian shall assume responsibility for the adult's welfare and the Court's order shall grant the guardian authority to give consent for the adult for the approved protective services until the expiration of the order.

(5) The issuance of an emergency order and the appointment of a temporary guardian does not deprive the individual of any rights except to the extent validly provided for in the emergency order.

(6) To implement an emergency order, the Court may authorize forcible entry of the premises of the adult who is impaired or the adult who is incapacitated for the purpose of rendering protective services or transporting the adult to another location for services. Forcible entry may be authorized only after a showing to the Court that an attempt to gain voluntary access to the premises failed and forcible entry is necessary. The emergency order must include authorization for the appropriate police department to execute forcible entry.

(c) A petitioner for an emergency order shall state, to the best of the petitioner's knowledge and belief, all of the following:

(1) The petitioner's name, address, and interest in the circumstances for which the petitioner seeks an emergency order.

(2) The name, address, and approximate age of the adult who is impaired or the adult who is incapacitated in need of protective services.

(3) If the information exists and can be obtained, the names and addresses of the spouse and next of kin of the adult who is impaired or the adult who is incapacitated.

(4) The petitioner's attempts to contact the individuals named under paragraph (c)(3) of this section and the individuals' responses to the situation.

(5) The petitioner's reasonable belief, and facts supporting the belief, as to the existence of the facts stated under paragraphs (a)(1) through (5) of this section.

(6) Facts showing petitioner's attempt to obtain the adults consent to protective services and the outcome of the attempt.

(7) The proposed protective services.

(d) (1) Actual notice of the filing of a petition under this section and other relevant information, including the factual basis of the belief that emergency services are needed and a description of the exact services to be rendered, must be given to the adult who is impaired or adult who is incapacitated and, at the Court's discretion, to the adult's spouse or, if none, to the adult's adult children, next of kin, or guardian if any.

(2) The Court may waive notice to a party other than the adult who is impaired or adult who is incapacitated and in need of protective services, if the petition avers with specificity that notice would be detrimental to the adult.

(3) Notice must be given in language reasonably understandable by the intended recipient at least 24 hours prior to the hearing for emergency intervention, or longer if possible.

(e) Upon the filing of a petition for an emergency order for protective services, the Court shall hold a hearing within 7 days or immediately, if necessary, under § 3909 of this title.

(f) If the adult who is impaired or the adult who is incapacitated continues to need protective services after the order and renewal under paragraph (b)(3) of this section has expired, services may be rendered only under the appointment of a guardian.

(g) The petitioner or a witness supplying information is immune from civil liability for damages as a result of filing the petition if the petitioner or witness acts in good faith and believes the adult who is impaired or the adult who is incapacitated needs assistance.

(h) This chapter does not affect the authority of the police departments of this State to transfer an adult who is impaired or an adult who is incapacitated to a mental health facility in cases of a psychiatric emergency under Chapter 50 of Title 16.

(i) (1) The Court may issue an order for forcible entry of a building or premises if the Court finds, based upon a verified petition, affidavit, or other evidentiary materials, that probable cause exists to believe that all of the following are true:

a. The adult at the building or premises is an adult who is impaired or an adult who is incapacitated.

b. An emergency exists.

c. The emergency threatens serious harm to the adult who is impaired or the adult who is incapacitated and the harm may occur before a hearing on the petition for an emergency order may be held.

d. The adult who is impaired or the adult who is incapacitated is located in the building or premises described.

e. Entry or access to the building or premises is being denied.

(2) The Court must sign the order for entry.

(3) The order for entry must include all of the following:

a. The address of the building or premises where the adult who is impaired or the adult who is incapacitated is located.

b. The name of the adult who is impaired or the adult who is incapacitated reported to need protective services.

c. A command that entry to the building or premises where the adult who is impaired or adult who is incapacitated is located be permitted for the purpose of seeing or interviewing, assessing, and counseling the adult named in the order.

d. Authorization for entry on a date specified in the order.

(4) This subsection may not be construed to limit or restrict entry if the consent of the owner, lessor, or lawful occupant is obtained.

(5) If a member of the Court is unavailable, a judge of the Superior Court may exercise the powers under this subsection.

(63 Del. Laws, c. 384, § 1; 66 Del. Laws, c. 49, §§ 3, 4; 67 Del. Laws, c. 185, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, § 377; 79 Del. Laws, c. 438, § 1; 81 Del. Laws, c. 343, § 1; 84 Del. Laws, c. 529, § 9.)

§ 3909. Hearing on petition.

(a) The hearing on a petition for involuntary protective services must be held under all of the following conditions:

(1) An individual needing protective services must be present unless the individual has knowingly and voluntarily waived the right to be present or unless, because of physical or mental incapacity, the individual cannot be present without endangering the individual welfare. Waiver or incapacity may not be presumed from nonappearance but must be determined on the basis of factual information that counsel or an Adult Protective Services caseworker supplies to the Court.

(2) An individual needing protective services has the right to counsel regardless of the individual's presence at the hearing. If the individual is indigent or lacks the capacity to waive counsel, the Court shall appoint counsel. If the individual is indigent, the Court shall assess reasonable attorneys' fees, such as are customarily charged by attorneys in this State for comparable services. To the extent that funding for this purpose is budgeted and available, funds must be drawn from the budget for the Division of Services for Aging and Adults with Physical Disabilities upon an order directing payment signed by the Court.

(3) An individual needing protective services has the right to all of the following:

a. At the expense of the individual or, if indigent, at the expense of the State, to secure an independent medical or psychological examination relevant to the issue involved in a hearing under this section.

b. Have presented a report of an independent evaluation under paragraph (a)(3)a. of this section or to have the Court hear the evaluator's personal testimony as to the condition and circumstances of the individual as a part of the evidence presented on the behalf of the individual at the hearing.

c. Have witnesses and evidence subpoenaed on behalf of the individual and have presented at the hearing witnesses and evidence in support of the position of the individual as the individual desires.

(b) The Court shall record a statement of its findings in support of an order for emergency services.

(63 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, § 378; 84 Del. Laws, c. 529, § 10.)

§ 3910. Duty to report.

(a) (1) A person, including a health-care professional as defined under § 701 of Title 16, having reasonable cause to believe that an adult who is impaired or an adult who is incapacitated and is in need of protective services shall report the information supporting reasonable cause to the Department in the manner and format that the Department requires.

(2) Privilege does not relieve an individual or health-care professional from the duty to report under this section.

(b) Upon receipt of a report, the Department shall make a prompt and thorough evaluation to determine whether the adult who is impaired or the adult who is incapacitated named in the report under subsection (a) of this section is in need of protective services and what services are needed, unless the Department determines that the report is frivolous or without a factual basis. The evaluation may include a visit to the adult and consultation with others having knowledge of the facts of the adult's case. If outside professional assistance is required for a caseworker to complete an evaluation, the Department may contract with an outside professional to provide the assistance.

(c) (1) If an employee of a financial institution who has direct contact with an account holder who is an elderly person or vulnerable adult has reasonable cause to believe that the elderly person or vulnerable adult may be subject to past, current, or attempted financial exploitation, the employee shall follow the financial institution's internal written policy, program, plan, or procedure for the purpose of establishing protocols for the reporting of past, current, or attempted financial exploitation.

(2) The policies, programs, plans, or procedures under paragraph (c)(1) of this section must require written reporting to the Department, in the format that the Department requires, by the earlier of the date on which the financial institution completes its investigation or 5 business days after the financial institution identifies a suspicious transaction under the financial institution's adopted policies, programs, plans, or procedures.

(3) The policies, programs, plans, or procedures under paragraph (c)(1) of this section may allow reporting to another agency in addition to the Department, such as the Delaware Department of Justice or the Federal Trade Commission.

(4) The financial institution may place a hold on a proposed transaction for a period of 10 business days following the filing of a report to the Department under paragraph (c)(1) of this section. The financial institution may hold the proposed transaction an additional 30 business days at the request of an investigating federal or state agency or if the financial institution has not heard from either the Department or the Delaware Department of Justice. The financial institution may also seek injunctive relief from a court of competent jurisdiction.

(d) An individual, financial institution, or other entity participating in good faith in reporting or holding or not holding a transaction under this chapter has immunity from civil, administrative, or criminal liability that might otherwise exist as a result of reporting or holding or not holding the transaction.

(e) Unless the Department or the Delaware Department of Justice requests a hold, a financial institution is not required to hold a transaction when provided with information alleging that financial exploitation may have occurred, may have been attempted, or is being attempted. The financial institution may, however, use its discretion to determine whether to refuse to hold a transaction based on the information available to the financial institution.

(f) A financial institution may provide access to or copies of records that are relevant to suspected or attempted financial exploitation of an elderly person or vulnerable adult to the Department, law enforcement, or the Delaware Department of Justice, either as part of a referral to or upon request by the Department, law enforcement, or the Delaware Department of Justice, under an investigation. The records may include historical records or records relating to the most recent transaction that may comprise financial exploitation, not to exceed 30 calendar days before the first transaction that was reported or 30 calendar days after the last transaction that was reported.

(63 Del. Laws, c. 384, § 1; 66 Del. Laws, c. 49, §§ 5-7; 78 Del. Laws, c. 179, § 371; 79 Del. Laws, c. 438, § 1; 81 Del. Laws, c. 343, § 1; 84 Del. Laws, c. 529, § 11.)

§ 3911. Adult under treatment by spiritual means not abused, mistreated, neglected, impaired, incapacitated, or in need of protective services.

This chapter may not be construed to mean any of the following:

(1) An adult is abused, mistreated, neglected, impaired, incapacitated, or in need of protective services for the sole reason the adult relies upon, or is being furnished with, treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination.

(2) To authorize or require medical care or treatment over the implied or express objections of the adult.

(64 Del. Laws, c. 103, § 1; 68 Del. Laws, c. 42, § 3; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 529, § 12.)

§ 3912. Confidentiality of records.

(a) (1) Records and information in the possession of the Department or anyone providing service to an alleged victim and the alleged victim's relatives is deemed confidential, and may be disclosed only under the following conditions:

a. Under an appropriate court order.

b. With the consent of the recipient of the services, if the recipient has legal capacity. If the recipient lacks capacity, the recipient's agent under Chapters 49 or 49A of Title 12, an agent or default surrogate under Chapter 25 of Title 16, or legal guardian may consent for the recipient.

c. For medical necessity.

(2) Notwithstanding paragraph (a)(1) of this section, disclosure of records or information is always lawful when necessary for purposes directly connected with the administration of protective services, or when the disclosure does not reveal theidentity of the alleged victim, such as in the case of disclosure of statistics or other summary information.

(b) Violation of this section is an unclassified misdemeanor. The Superior Court has jurisdiction over violations of this section.

(c) An Adult Protective Services staff member or another individual providing protective services to an alleged victim who violates these provisions and improperly discloses confidential information must be immediately removed or dismissed.

(67 Del. Laws, c. 185, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 343, § 1; 84 Del. Laws, c. 529, § 13; 85 Del. Laws, c. 91, § 10.)

§ 3913. Violations.

(a) A person who knowingly or recklessly abuses, neglects, exploits, or mistreats an adult who is impaired is guilty of a class A misdemeanor.

(b) A person who knowingly or recklessly exploits an adult who is impaired or an adult who is incapacitated by using the resources of the adult is guilty of the following:

(1) A class A misdemeanor if the value of the resources is less than $500.

(2) A class G felony if the value of the resources is $500 or more but less than $5,000.

(3) A class E felony if the value of the resources is $5,000 or more but less than $10,000.

(4) A class D felony if the value of the resources is $10,000 or more but less than $50,000.

(5) A class C felony if the value of the resources is $50,000 or more.

(6) A class C felony for each subsequent conviction under this subsection regardless of the amount of resources exploited.

(c) An individual who knowingly or recklessly abuses, neglects, exploits, or mistreats an adult who is impaired or an adult who is incapacitated and causes bodily harm, permanent disfigurement, or permanent disability is guilty of a class D felony. If the abuse, neglect, mistreatment, or exploitation results in death, the individual is guilty of a class A felony.

(68 Del. Laws, c. 42, § 2; 72 Del. Laws, c. 89, §§ 4, 5; 78 Del. Laws, c. 179, § 379; 84 Del. Laws, c. 529, § 14.)

Part III
Housing and Slum Clearance
Chapter 40
The Delaware State Housing Authority
Subchapter I
Definitions, Purpose and Powers

§ 4001. Definitions.

As used in this chapter, unless a different meaning appears from the context:

(1) “Area” means the State.

(2) “Authority” means a public body corporate or politic, organized in accordance with Chapter 43 or 45 of this title for a purpose, with the powers and subject to the restrictions set forth in those chapters, including a community exercising the powers and duties of a slum clearance and redevelopment authority; provided however, that “Authority” shall not mean the Delaware State Housing Authority.

(3) “Bonds” mean any bonds (including refunding bonds), notes, interim certificates, debentures or other obligations issued by DSHA pursuant to this chapter.

(4) “Community” means any municipality or county in this State.

(5) “Community facilities” include lands, buildings and equipment for recreation or social assembly, for educational, health or welfare activities and other necessary utilities primarily for use and benefit of the occupants of housing accommodations to be constructed and operated under this chapter.

(6) “Conservation” means the preservation of any area or section of a community and the supervision and care of such area or section, to prevent the reoccurrence or spread of slum conditions or conditions of blight.

(7) “Council” means the State Council on Housing.

(8) “DSHA” means the Delaware State Housing Authority created by § 4010 of this title.

(9) “Federal government” means the United States or any agency or instrumentality, corporate or otherwise, of the United States.

(10) “Federally insured mortgage” means a mortgage loan for land development or for residential housing insured or guaranteed by the United States or an instrumentality thereof, or a commitment by the United States or an instrumentality thereof to insure such a mortgage.

(11) “Federal mortgage” means a mortgage loan for land development or for residential housing made by the United States or an instrumentality thereof to make such a mortgage loan.

(12) “Fiscal year” means, in the case of DSHA, a period of 12 calendar months beginning and ending on such dates as DSHA shall determine prior to the issuance of its bonds, notes or other obligations pursuant to this chapter, and in the case of the State, shall mean the fiscal year of the State as may at any time be provided by law.

(13) “Governing body” means the city council, town council, commissioners or other legislative body charged with governing the municipality, or county council or Levy Court commissioners or other legislative body charged with governing the county.

(14) “Government” includes the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(15) “Housing development” means living accommodations provided or to be provided pursuant to this chapter for 2 or more families by a housing sponsor.

(16) “Housing development costs” means the sum total of all costs incurred in the development of a housing development, which are approved by DSHA as reasonable and necessary, which costs shall include, but are not necessarily limited to:

a. Cost of land acquisition and any building thereon, including payments for options, deposits or contracts to purchase properties on the proposed housing site or payments for the purchase of such properties;

b. Cost of site preparation, demolition and development;

c. Architectural, engineering, legal, accounting, DSHA and other fees paid or payable in connection with the planning, execution and financing of the housing development;

d. Cost of necessary studies, surveys, plans and permits;

e. Insurance, interest, financing, tax and assessment costs and other operating and carrying costs during construction;

f. Cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery and apparatus related to the real property;

g. Cost of land improvements including, without limitation, landscaping and offsite improvements, whether or not such costs have been paid in cash or in a form other than cash;

h. Necessary expenses in connection with initial occupancy of the housing development;

i. A reasonable profit and risk fee, in addition to job overhead to the general contractor and, if applicable, a limited profit housing sponsor;

j. An allowance established by DSHA for working capital and contingency reserves, and reserves for any anticipated operating deficits during the first 2 years of occupancy;

k. The cost of such other items, including tenant relocation, as DSHA shall determine to be reasonable and necessary for the development of the housing development, less any and all net rents and other net revenues received from the operation of the real and personal property on the development site during construction.

(17) "Housing Director" means the Housing Director described in § 8603 of Title 29.

(18) "Housing sponsor" means individuals, public bodies, joint ventures, partnerships, limited partnerships, trusts, firms, associations or other legal entities or any combination thereof, corporations, cooperatives and condominiums, approved by DSHA, as qualified, either to own, construct, acquire, rehabilitate, operate, manage or maintain a housing development whether nonprofit or organized for limited profit and subject to the regulatory powers of DSHA and other terms and conditions set forth in this chapter.

(19) "Issuing officer" means the Housing Director.

(20) "Land development" means the process of acquiring land for residential housing construction, and of making, installing or constructing nonresidential housing improvements including, without limitation, waterlines and water supply installations, sewer lines and sewage disposal installations, steam, gas and electric lines and installations, roads, streets, curbs, gutters, sidewalks, whether on or off the site, which DSHA deems necessary or desirable to prepare such land for residential housing within this State.

(21) "Local authority or local housing authority" means a housing authority constituted under Chapter 43 of this title.

(22) "Mortgage" means any instrument which secures an obligation and constitutes a lien on real property or on a leasehold under a lease having a remaining term, at the time such mortgage is acquired, which does not expire for at least that number of years beyond the maturity date of the obligation secured by such mortgage as is equal to the number of years remaining until the maturity date of such obligation.

(23) "Mortgage lender" means any bank or trust company, savings bank, national banking association, savings and loan association, Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, approved mortgage banker, building and loan association or any insurance company authorized to transact business in the State.

(24) "Mortgage loan" means an interest-bearing obligation secured by a mortgage, and a note or bond which is a first lien on land and improvements in the State constituting single family or multi-family units.

(25) "Municipality" means any city, town or county in the State.

(26) "Obligee" includes any bondholder, agents or trustees for any bondholders or lessor demising to the property of DSHA used in connection with a project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with DSHA.

(27) "Persons of low- or moderate-income" means persons or families who lack the amount of income which is necessary, as determined by DSHA or the local authority undertaking a project, to enable them without financial assistance to live in decent, safe and sanitary dwellings, without overcrowding.

(28) "Public body" means the State or any municipality, county, township, board, commission, authority, district or any other subdivision or public body of this State.

(29) "Real property" includes all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(30) "Workable program" means an official community plan of action for using local public and private resources to eliminate and prevent slums and blight and to guide the community's orderly growth and development.

(71 Del. Laws, c. 357, § 6; 84 Del. Laws, c. 278, § 1; 84 Del. Laws, c. 455, § 19; 85 Del. Laws, c. 43, § 1.)

§ 4002. Purpose.

(a) It is the purpose of this chapter that DSHA have the authority and capacity to:

(1) Efficiently provide, and to assist others to provide, quality affordable housing opportunities and appropriate supportive services to responsible low- and moderate-income Delawareans;

(2) Encourage persons and families benefiting from activities authorized in this chapter, to the maximum extent feasible, to become economically self-sufficient by assisting in the delivery of social, educational and other supportive services and programs which develop self-sufficiency and by facilitating economic and employment opportunities and similar benefits for persons assisted under this chapter;

(3) Coordinate the housing and redevelopment activities of state agencies and other public agencies and private bodies with such responsibilities within the State;

(4) Provide assistance in the rehabilitation of distressed or substandard housing in an effort to preserve current housing stock and strengthen communities;

(5) Serve as a resource where the housing and construction industries, local governments and the public may obtain information on affordable housing and community development programs, data and trends, including coordinating and promoting assistance to nonprofit housing sponsors who develop affordable housing opportunities for persons of low and moderate income;

(6) Assist the Office of State Planning and other state, local and regional planning authorities in the preparation and implementation of comprehensive plans and programs for rural and urban housing and improvement of housing within the State, especially regarding the planning and development of affordable housing;

(7) Confront adverse social conditions and to lessen the effects of drug and crime problems for residents of DSHA housing for low- and moderate-income persons and families by establishing and implementing policies and taking practical steps to mitigate such conditions and eliminate drug and crime problems;

(8) Carry out and enforce the State Housing Code;

(9) Advise and inform the Governor and the public on the affairs and problems relating to housing and community development and revitalization, and make recommendations to the Governor for proposed legislation pertaining thereto;

(10) Administer such provisions of the Downtown Development District Act as set forth in Chapter 19 of Title 22; and

(11) Operate DSHA's financial affairs in a prudent and sound manner.

(b) This section shall be construed according to the fair import of its terms and shall be liberally construed to further the general purposes stated in this section and the special purposes of the particular provisions involved.

(71 Del. Laws, c. 357, § 6; 79 Del. Laws, c. 240, § 7.)

§ 4003. Housing Director.

The administrator and head of DSHA shall be the Housing Director as provided in Chapter 86 of Title 29.

(71 Del. Laws, c. 357, § 6.)

§ 4004. Powers and duties of the Housing Director.

(a) The Housing Director is responsible for the fulfillment of the purposes outlined in § 4002 of this title.

(b) The Housing Director shall:

(1) Employ, in the Housing Director's discretion, planning, architectural and engineering consultants, attorneys, accountants, construction and financial experts and consultants, Superintendents, managers and such other officers, employees and agents as may be necessary in the Housing Director's judgment;

(2) Call to the assistance of the Council the services of such employees of any federal or state agency as it may require to conduct its investigative powers and as may be available for such purpose;

(3) Delegate any of the Housing Director's powers and duties, except those of an issuing officer, to employees of DSHA;

(4) Create and appoint members of advisory boards;

(5) Supervise the activities of the Council;

(6) Enter into any and all agreements or contracts on behalf of the State or DSHA, execute any and all instruments and do and perform any and all acts or things necessary, convenient or desirable for the implementation or the purposes of this chapter or to carry out any power or duty given in this chapter;

(7) Make an annual report to the Governor and the General Assembly regarding DSHA's operations and render such other reports as may be required by law;

(8) Make and enforce regulations to effectuate the purposes of this chapter; provided however, that no such regulation shall extend, modify or conflict with any laws of this State, or the reasonable implications thereof;

(9) Determine the terms and conditions for the allocation and grant of state funds authorized by this chapter;

(10) Coordinate with the federal government to implement and manage federally funded programs;

(11) Be the issuing officer for DSHA; and

(12) Advise the Governor on issues concerning housing and community development.

(71 Del. Laws, c. 357, § 6.)

§ 4005. Additional powers of Housing Director.

Whenever the Housing Director determines that the purposes of this chapter and Chapter 43 of this title, will be better accomplished by a revision of the area of operations of any authority or by the consolidation of 2 or more authorities or by the performance of the functions of an authority by DSHA, the Housing Director may after due notice to all authorities affected and subsequent to a public hearing thereon and with the concurrence of the local governing bodies, make such revision, consolidation or perform such functions; provided, that adequate provision shall be made by the Housing Director for the protection of such authority, its creditors, contracting parties and tenants.

(71 Del. Laws, c. 357, § 6.)

Subchapter II
Delaware State Housing Authority

§ 4010. Creation.

In accordance with Chapter 86 of Title 29, there is created in the Executive Department a public corporation of perpetual duration to be called the "Delaware State Housing Authority," hereinafter referred to as "DSHA." Chapter 43 of this title shall apply to DSHA and

to its projects as fully as such provisions apply to a housing authority created by § 4303 of this title and to its housing projects; provided however, that DSHA shall not be subject to §§ 4303, 4304, 4306, 4307, 4314 and 4317 of this title.

(71 Del. Laws, c. 357, § 6.)

§ 4011. DSHA to contract for labor or materials.

DSHA shall contract for labor or materials (except labor or materials used in the maintenance or operation of projects) pursuant to the manner prescribed in Chapter 69 of Title 29, for departments and other agencies of the state government.

(71 Del. Laws, c. 357, § 6.)

§ 4012. Seal of DSHA.

DSHA shall have a corporate seal in the form of a circle bearing the arms of the State in the center and the name of DSHA in the border. All deeds, contracts or other obligations, certificates or other instruments executed, including bonds which are provided for in § 4017 of this title, made or issued on behalf of DSHA, shall bear the signature of the Housing Director and have impressed or imprinted thereupon the seal of DSHA, or facsimile thereof, and when so appearing shall be conclusively presumed in any judicial action or proceeding the valid act and deed of DSHA. The presumptions set forth in this provision shall also apply to all bonds executed pursuant to § 4016 of this title.

(71 Del. Laws, c. 357, § 6.)

§ 4013. Powers of DSHA.

In addition to its other powers, DSHA is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes, including, without limitation, the following:

(1) To sue and be sued in its own name;

(2) To have perpetual succession;

(3) To maintain an office at such place or places within this State as it may designate;

(4) To adopt and from time to time, amend and repeal bylaws, rules and regulations, not inconsistent with this chapter, to carry into effect the powers and purposes of DSHA and the conduct of its business;

(5) To acquire real or personal property, or any interest therein, on either a temporary or long-term basis in the name of DSHA by gift, purchase, transfer, in the manner prescribed by Chapter 61 of Title 10, foreclosure, lease or otherwise, including rights or easements; to hold, sell, assign, lease, encumber, mortgage or otherwise dispose of any real or personal property, or any interest therein, or mortgage lien interest owned by it or under its control, custody or in its possession and release or relinquish any right, title, claim, lien, interest, easement or demand, however acquired, including any equity or right of redemption in property foreclosed by it; and to do any of the foregoing by public or private sale, with or without public bidding, notwithstanding any other law;

(6) To make mortgage loans on such terms and conditions as may be determined by the Housing Director, and in accordance with this chapter, for the construction, financing, refinancing or rehabilitation of housing for low- and moderate-income persons and families;

(7) To insure mortgage loans to finance the building or rehabilitation of housing designed and planned to be available by sale or lease to low- or moderate-income persons and families;

(8) To build or rehabilitate housing designed and planned to be sold or rented at prices which low- and moderate-income persons and families can afford, and to rent or otherwise dispose of such housing to persons and families of low- and moderate-income or to housing sponsors for the purpose of renting or selling such property to such persons and families;

(9) To charge rents for the use of residential housing facilities in the amounts sufficient to comply with any agreements of DSHA, whether in connection with the issuance of bonds or otherwise including, but not limited to, reimbursement of all costs of financing by DSHA and such service charges as DSHA shall determine to be reasonable, and, in connection with its authorized programs, to make and collect such charges including, but not limited to, reimbursement of all costs of financing by DSHA and such service charges and insurance premiums as DSHA shall determine to be reasonable;

(10) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities from private or public parties to effectuate the purposes of this chapter;

(11) To enter into agreements with the State or any agency thereof, municipalities of the State, the United States, public corporations or bodies and private corporations or individuals and to make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions including contracts or agreements with qualified mortgage lenders for the servicing and processing of mortgage loans pursuant to this chapter and to accept grants and the cooperation of the United States or any agency thereof or of the State or any agency thereof, or any public corporation or municipality in furtherance of the purposes of this chapter;

(12) To provide, contract or arrange for consolidated processing of any aspect of a housing development in order to avoid duplication thereof by either undertaking the processing in whole or in part for any department agency, or instrumentality of the United States or of this State, or, in the alternative, to delegate the processing in whole or in part to any such department, agency or instrumentality;

(13) To provide advice, technical information (including assistance in obtaining federal and state aid), training and educational services, as will assist the planning, construction, rehabilitation and operation of housing developments for persons and families of low- and moderate-income, including, but not limited to, assistance in community development and organization, home management and advisory services for the residents of housing developments and to encourage community organizations to assist in developing the same;

(14) To encourage research and demonstration projects in order to develop new and better techniques and methods for increasing the supply of housing for persons and families of low- and moderate-income, and to engage in such research and demonstration projects and to receive and accept contributions, grants or aid, from any source, public or private, including, but not limited to, the United States and this State, for carrying out this purpose;

(15) To employ architects, engineers, attorneys, accountants, housing construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix their compensation;

(16) To procure insurance against any loss in connection with its property and other assets, including mortgages and mortgage loans, in such amounts and from such insurers as it deems desirable;

(17) To invest any funds not needed for immediate use or disbursement including any funds held in reserve in the following:

a. Any bonds or other obligations which as to principal and interest constitute direct obligations of, or obligations guaranteed by, the United States or the State;

b. Obligations of the Federal National Mortgage Association;

c. Obligations of the Federal Intermediate Credit Corporation;

d. Obligations of Federal Land Banks;

e. Obligations of Federal Home Loan Banks;

f. Certificates of deposit of banks or trust companies, including the Trustee, organized under the laws of the United States or any state thereof which have a combined capital and surplus of at least $15,000,000;

g. Bankers Acceptances;

h. Commercial paper, which has been classified for rating purposes by Dunn & Bradstreet, Inc., as Prime-1, or by Standard & Poor's Corporation as A-1;

i. Bonds, debentures, notes or other obligations issued by any of the following: Bank for Cooperatives, Export-Import Bank of the United States, Government National Mortgage Association, Federal Financing Bank, Small Business Administration or any other agency or instrumentality of the United States of America, created by an Act of Congress (substantially similar to the foregoing in its legal relationship to the United States of America);

j. Contracts for the purchase and sale of obligations described in paragraphs (17)a. through e. and in paragraph (17)i. of this section;

k. Interest-bearing notes issued by a bank, trust company, national banking association or other depository institution or by a bank holding company, an insurance company or other financial institution;

l. Shares of any investment company that:

1. Is registered under the Investment Company Act of 1940, as amended [15 U.S.C. § 80a-1 et seq.];

2. Invests substantially all of its assets in short-term high-quality money-market instruments;

3. Maintains a constant net asset value per share; and

4. Maintains a rating at least as high as DSHA's bonds;

m. Other investment arrangements made pursuant to an investment agreement authorized by a resolution of DSHA; and

n. Corporate debt obligations, rated at least as high as DSHA's bonds, which have a fixed par value and/or whose terms promise a fixed dollar amount at maturity or call date;

(18) To borrow money and issue bonds and notes or other evidence of indebtedness as hereinafter shown without regard to the treatment of interest thereon for federal income tax purposes; provided however, that DSHA shall not issue bonds and notes to exceed $350,000,000 without General Assembly approval with respect to bonds and notes subject to the Capital Reserve Fund established under § 4020 of this title;

(19) To the extent permitted under its contract with the holders of bonds, bond anticipation notes and other obligations of DSHA, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest security or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, contract or agreement of any kind to which DSHA is a party;

(20) To the extent permitted under its contract with the holders of bonds, bond anticipation notes and other obligations, to enter into contracts with any mortgagor containing provisions enabling such mortgagor to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges where, by reason of other income or payment from any department, agency or instrumentality of the United States or this State, such reductions can be made without jeopardizing the economic stability of housing being financed;

(21) To procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or notes or any other evidence of indebtedness thereof issued by DSHA including the power to pay premiums on any such insurance;

(22) To acquire, lease, purchase, manage, operate, hold and dispose of real and personal property in the State, take assignments of leases and rentals, sell and convey such property on any terms, proceed with foreclosure actions, and enter into contracts, leases and other arrangements necessary or incidental to the performance of its corporate duties;

(23) To exercise any or all of the powers conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate including any corporation or corporations which are or shall be formed under

the laws of this State, and for such purposes, DSHA may cause 1 or more corporations to be incorporated under the laws of this State or may acquire the capital stock of any corporation or corporations. Any corporate agent, all of the stock of which shall be owned by DSHA or its nominee or nominees, may to the extent permitted by the law, exercise any of the powers conferred by this chapter upon DSHA, or as shall be conferred upon it by DSHA, as agent;

(24) Fund the operation of any agents it may designate or any authority by advancing moneys appropriated pursuant to § 4030 of this title;

(25) To do any act necessary or convenient to the exercise of the powers herein granted or reasonably implied including all powers presently or hereafter granted to local housing authorities under Chapter 43 of this title;

(26) To agree to make such payments to the State or any political subdivisions thereof (which payments such bodies may accept) as DSHA finds consistent with the maintenance of the low- and moderate-income rent character of housing projects or the achievement of the purposes of this chapter;

(27) To establish and implement policies, and to take all actions deemed appropriate to mitigate adverse social conditions and to eliminate drug and crime problems at DSHA's sites; and

(28) To provide housing assistance as a benefit, not an entitlement, and to require the beneficiaries to recognize their responsibilities to DSHA and to their neighbors as conditions of continued assistance.

(71 Del. Laws, c. 357, § 6.)

§ 4014. Liberal construction.

Neither this chapter nor anything herein contained is or shall be construed as a restriction or limitation upon any powers which DSHA might otherwise have under any laws of this State, and this chapter is cumulative to any such powers. This chapter shall be regarded as supplemental and additional to powers conferred by other laws. However, the issuance of bonds, notes and other obligations and refunding bonds under this chapter need not comply with the requirements of any other state law applicable to the issuance of bonds, notes and other obligations and contracts for the construction and acquisition of any housing developments undertaken pursuant to this chapter need not comply with any other state law applicable to contracts for the construction and acquisition of state-owned property. No proceedings, notice or approval shall be required for the issuance of any bonds, notes and other obligations or any instrument as security therefor, except as to an issue of bonds subject to the requirements of § 4020 of this title relating to the Capital Reserve Fund, and the issuing officer of DSHA shall coordinate any other issuance with the state bond issuing officers.

(71 Del. Laws, c. 357, § 6.)

§ 4015. Audit of books and accounts.

The office of Auditor of Accounts shall cause an annual audit of the books and accounts of DSHA. The selection of the firm to perform the annual audit of the books and accounts of DSHA shall be mutually agreed upon by the office of the Auditor of Accounts and the Housing Director who shall consult and cooperate with each other in the selection, contract, employment and scope of professional services to be rendered, provisions in Chapter 29 of Title 29 notwithstanding. The audit shall be performed by a certified public accountant of recognized national standing and shall conform in all respects to the covenants contained in all bond resolutions entered into by DSHA for the benefit of its bondholders. DSHA shall transfer funds, as requested by the office of Auditor of Accounts, to cover the cost of the audit.

(71 Del. Laws, c. 357, § 6.)

§ 4016. Bonds.

(a) DSHA may, with the approval of the issuing officer and subject to the authorization (if any) required by § 7402 of Title 29, issue bonds (including refunding bonds for the purpose of paying or retiring bonds previously issued by DSHA) from time to time in such amounts as it may deem advisable for any of its corporate purposes. DSHA may issue such types of bonds as it may determine, including bonds on which the principal and interest are payable:

(1) Exclusively from the income and revenues of any undertaking financed in whole or in part with the proceeds of such bonds;

(2) Exclusively from the income and revenues of certain designated housing projects whether or not they were financed in whole or in part with the proceeds of such bonds;

(3) From its revenues generally; or

(4) By grants, subsidies or other payments from the federal government.

Any of such bonds may be additionally secured by a pledge of any revenue or by a mortgage of any housing project, projects or other property of DSHA or any of its agents or designees.

(b) Neither the issuing officer nor any person executing the bonds shall be liable personally on the bonds.

(71 Del. Laws, c. 357, § 6.)

§ 4017. Forms and terms of bonds; disposition of proceeds.

(a) All bonds issued under the authority of this chapter shall be dated, shall bear interest at such rate or rates payable semiannually or at such other time or times as shall be determined by resolution of DSHA, and shall mature at such time or times and may be made redeemable before maturity at such times and at such price or prices and under such terms and conditions as may be fixed by the issuing officer prior

to the issuance of the bonds. The principal of and the interest upon such bonds may be made payable in any lawful medium. The issuing officer shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denominations of the bonds. Both principal of and interest on the bonds shall be payable at such place or places as DSHA may designate.

(b) Bonds shall be signed by manual or facsimile signature of the Housing Director, and the seal of DSHA or a facsimile thereof shall be affixed thereto or imprinted thereon. In case any person whose signature or facsimile thereof shall appear on any bonds or coupons shall cease to be the Housing Director before the delivery of such bonds, such signature or facsimile shall, nevertheless, be valid for all purposes, the same as if the Housing Director had remained in office until delivery.

(c) All bonds issued under this chapter shall have and are declared to have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code.

(d) Such bonds and the income therefrom shall be exempt from all taxation by this State or by any political subdivision, agency or authority thereof.

(e) The bonds may be issued in coupon or registered form, or both, as the issuing officer may determine, and provision may be made for the registration of any coupon bond as to principal alone or as to both principal and interest and for the reconversion of any bonds registered both as to principal and interest into coupon bonds.

(f) The issuing officer may sell such bonds, either at public or private sale, in such manner and for such price as they may determine to be for the best interest of DSHA.

(g) The proceeds of such bonds, exclusive of accrued interest, shall be used solely for the purposes specified in the resolution of DSHA authorizing the issuance thereof or as set forth in the indenture securing their payment, which purposes may include redemption premiums, interest on bonds to be refunded to the redemption date or date of maturity thereof and all legal and other expenses of their issuance and shall be disbursed under such restrictions, if any, as said resolution or trust indenture may provide.

(h) The proceeds of such bonds shall at no time revert to the General Fund of the State Treasury but shall at all times be available to DSHA for the aforesaid purposes; provided however, that if the proceeds of the bonds of any issue shall exceed the amount required for the purpose or purposes for which such bonds are authorized to be issued, the surplus may be used for any purpose of DSHA authorized in this chapter or for the payment of the principal of or interest on its outstanding bonds.

(i) Prior to the preparation of definitive bonds, the issuing officer may issue temporary bonds, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. The issuing officer may also provide for the replacement of any bond which shall become mutilated or be destroyed or lost. Such bonds may be issued without any other proceedings or conditions which are specified and required by this chapter.

(71 Del. Laws, c. 357, § 6.)

§ 4018. Bonds as legal investments for institutions and fiduciaries and as legal deposit.

The bonds issued under the authority of this chapter are declared to be securities in which all state and municipal officers and administrative departments, boards and commissions of the State, all banks, bankers, savings banks, trust companies, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business and all administrators, executors, guardians, trustees and other fiduciaries and all other persons whatsoever who now or may be authorized to invest in bonds or other obligations of this State, may properly and legally invest any funds, including capital belonging to them or within their control, and such bonds are declared securities which may properly and legally be deposited with and received by any state, county or municipal officer or agency of this State for any purpose for which the deposit of bonds or other obligations of this State is now or may hereafter be authorized by law.

(71 Del. Laws, c. 357, § 6.)

§ 4019. Credit of State not pledged.

(a) Bonds issued under this chapter shall be payable exclusively from the revenues and other funds of DSHA and shall contain the following statement on their face:

"The State of Delaware is not obligated to pay the principal of this bond nor the interest thereon, nor are the faith and credit of the State pledged to the payment of the principal of, or interest on, this bond."

(b) The issuance of bonds under this chapter shall not directly or indirectly or contingently obligate the State to levy or pledge any form of taxation whatever therefor or to make any appropriation for their payment, and the bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction; provided also that § 4020 of this title, relative to the Capital Reserve Fund, shall not be deemed to constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

(71 Del. Laws, c. 357, § 6.)

§ 4020. Capital Reserve Fund.

(a) DSHA shall create and establish a special fund to secure the bonds, herein referred to as Capital Reserve Fund, and shall pay into the Capital Reserve Fund:

(1) Any moneys appropriated and made available by the State for the purposes of such fund;

(2) Any proceeds of the sale of bonds, to the extent provided in the resolution of DSHA, authorizing the issuance thereof; and

(3) Any other moneys which may be made available to DSHA for the purpose of such fund from any other source or sources.

All moneys held in the Capital Reserve Fund, except as hereinafter provided, shall be used solely for the payment of the principal of bonds of DSHA as the same mature, the redemption or purchase of bonds of DSHA, the payment of interest on such bonds of DSHA or the payment of any redemption premium required to be paid when such bonds are redeemed prior to the maturity. Moneys in the Capital Reserve Fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of the Fund to less than the maximum amount of principal and interest maturing and becoming due in any succeeding fiscal year on all bonds of DSHA then outstanding, except for the purpose of paying principal and interest on bonds of DSHA maturing and becoming due and for the payment of which other moneys of DSHA are not available. Any income or interest earned by, or increment to, the Capital Reserve Fund due to the investment thereof may be transferred by DSHA to any other fund of DSHA to the extent it does not reduce the amount of Capital Reserve Fund below the maximum amount of principal and interest maturing and becoming due in any succeeding fiscal year on all bonds of DSHA then outstanding.

(b) Except with respect to an issue, or portion of an issue, of bonds designated by resolution of DSHA as not being subject to the requirements and provisions of this section, DSHA shall not issue bonds at any time if the maximum amount of principal and interest maturing and becoming due in a succeeding fiscal year on the bonds then to be issued and on all other bonds of DSHA then outstanding will exceed the amount of the Capital Reserve Fund at the time of issuance unless DSHA, at the time of issuance of such bonds, shall deposit in the Fund from the proceeds of the bonds so to be issued, or otherwise, an amount which, together with the amount then in the Fund, will be not less than the maximum amount of principal and interest maturing and becoming due in any succeeding fiscal year on the bonds then to be issued and on all other bonds of DSHA then outstanding.

(c) To assure the continued operation and solvency of DSHA for the carrying out of the public purposes of this chapter, provision is made for the accumulation in the Capital Reserve Fund of an amount equal to the maximum amount of principal and interest maturing and becoming due in any fiscal year on all bonds of DSHA then outstanding. In order to assure further such maintenance of the Capital Reserve Fund, there may be annually appropriated and paid to DSHA for deposit in the Capital Reserve Fund such sum, if any, as shall be certified by the Housing Director to the Governor and Director of the Office of Management and Budget, as necessary to restore the Capital Reserve Fund to an amount equal to the maximum amount of principal and interest maturing and becoming due in any fiscal year on the bonds of DSHA then outstanding. In any case where a deficiency occurs in the Capital Reserve Fund, the Housing Director shall promptly make and deliver to the Governor and Director of the Office of Management and Budget a certificate stating the amount required to restore the Capital Reserve Fund, and the Governor shall, as soon as practicable during the current fiscal year, request an appropriation of such amount, and the amount so requested may be appropriated and paid to DSHA for deposit into the Capital Reserve Fund.

(d) In computing the amount of the Capital Reserve Fund for the purposes of this section, securities in which all or a portion of the fund is invested shall be valued in the manner provided in the resolution authorizing the issuance of the trust indenture securing such bonds.

(e) Calculations of the amount of principal and interest maturing and becoming due in any succeeding fiscal year shall be based upon the assumption that bonds of DSHA will, after said date of computation, cease to be outstanding by reason of the payment of such bonds at their respective maturities or the payment of all moneys required to be paid into a sinking fund on account of such bonds as may be required by the terms of any resolution or indenture pursuant to which such bonds have been issued and the application of such sinking fund to the retirement of bonds in accordance with their terms.

(f) For the purposes of this section, the term “bonds” shall mean all obligations of DSHA bearing a maturity date more than 2 years after the date thereof, except any bonds, notes or other obligations of DSHA which are designated by resolution of DSHA prior to the issuance thereof as being not subject to this section.

(71 Del. Laws, c. 357, § 6; 75 Del. Laws, c. 88, § 21(14).)

§ 4021. Provisions of bonds and mortgages.

In connection with the issuance of bonds or the incurring of any obligation under a lease and to secure the payment of such bonds or obligations, DSHA in addition to its other powers may:

(1) Pledge all or any part of its rents, fees or revenues to which its right then exists or may thereafter come into existence;

(2) Mortgage all or any part of its property, real or personal, then owned or thereafter acquired, including any of the public domain owned or acquired by it;

(3) Covenant against mortgaging all or any part of its property, real or personal, then owned or thereafter acquired or against permitting or suffering any lien thereon;

(4) Covenant with respect to limitations on its right to sell, lease or otherwise dispose of any project or any part thereof;

(5) Covenant against pledging all or any part of its rents, fees and revenues to which its right then exists or may thereafter come into existence or against permitting or suffering any lien thereon;

(6) Covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise and as to the use and disposition of the proceeds thereof;

(7) Covenant as to what other or additional debts may be incurred by it;

(8) Covenant that DSHA warrants the title to the premises;

(9) Covenant as to the rents and fees to be charged, the amount to be raised each year or other period of time by rents, fees and other revenues and as to the use and disposition to be made thereof;

(10) Covenant as to the use of any or all of its property, real or personal;

(11) Create or authorize the creation of special funds segregating the proceeds of any loans or grants, the revenues of any project or projects, reserves for principal and interest on its bonds and for operating contingencies and other reserves and covenant as to the use and disposal of the moneys held in such funds;

(12) Redeem the bonds and covenant for their redemption and provide the terms and conditions thereof;

(13) Covenant against extending the time for the payment of its bonds or interest thereon;

(14) Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

(15) Covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys;

(16) Vest in an obligee, in the event of a default by DSHA, the right to cure any such default and to advance any moneys necessary for such purpose and covenant that the moneys so advanced become an additional obligation of DSHA with such interest, security and priority as may be provided in any mortgage, lease or contract;

(17) Covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(18) Covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation;

(19) Covenant to surrender possession of a project or projects or parts thereof upon the happening of an event of default and vest in an obligee the right, upon such default and without judicial proceedings, to take possession and use, operate, manage and control such projects or any parts thereof and to collect and receive rents, fees and revenues arising therefrom in the same manner as DSHA itself might do and to dispose of the moneys collected in accordance with the agreement of such obligee with DSHA;

(20) Vest in a trustee or trustees the right to enforce any covenant to secure or pay the bonds or otherwise relating to such bonds, provide for the powers and duties of such trustee or trustees, limit the liabilities thereof and provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any such covenant;

(21) Vest in a government or in a trustee the right, upon the happening of an event of default, to foreclose the mortgage securing any bonds held by such government, through judicial proceedings or through the exercise of a power of sale without judicial proceedings;

(22) Vest in other obligees the right, upon the happening of an event of default, to foreclose any mortgage through judicial proceedings;

(23) Vest in any obligee the right to foreclose any such mortgage as to all or such part or parts of the property covered thereby as such obligee shall elect; the institution, prosecution and conclusion of any such foreclosure proceedings or the sale of any such parts of the mortgaged property shall not affect in any manner or to any extent the lien of the mortgage on the parts of the mortgaged property not included in such proceedings or not sold as aforesaid;

(24) Make covenants other than, and in addition to, the covenants expressly authorized in this section of like or different character and execute all instruments necessary or convenient in the exercise of the powers granted in this chapter or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified, as the government or any purchaser of the bonds of DSHA may require;

(25) Make such covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds or, in the absolute discretion of DSHA, tend to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated in this section.

(71 Del. Laws, c. 357, § 6.)

§ 4022. Trust indenture.

(a) At the discretion of the issuing officer each and any issue of such bonds may be secured by a trust indenture by and between the issuing officer and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without this State.

(b) Such trust indenture may pledge or assign the revenues of DSHA but shall not create a security interest in or convey or mortgage any real property owned, operated or maintained by DSHA. Either the resolution providing for the issuance of the bonds or such trust indenture may contain such provisions specifying, defining, protecting and enforcing the rights and not in violation of law, include covenants setting forth the duties of DSHA in relation to the acquisition, construction, improvement, maintenance, operation, repair and insurance of any facilities or additions thereto, and the custody, safeguarding and application of all moneys.

(c) It shall be lawful for any bank or trust company incorporated under the laws of this State to act as such depository and to furnish such indenture bonds or to pledge such securities as may be required by DSHA. Such indenture may set forth the rights and remedies

of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporation.

(d) In addition to the foregoing, such trust indenture may contain such other provisions as the issuing officer may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust indenture may be treated as a part of the cost of maintenance, operation and repairs of any facility to which such indenture is related or may be paid out of the revenues of DSHA.

(71 Del. Laws, c. 357, § 6.)

§ 4023. Remedies of bondholders and trustees.

(a) Any holder of bonds issued under this chapter or any of the coupons attached thereto, and the trustee under the trust indenture, if any, except to the extent the rights given by this chapter may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may either at law or in equity by suit, action, mandamus or other proceedings protect and enforce any and all rights under the laws of the United States or of this State or granted under this chapter or under such resolution or trust indenture, and may enforce and compel performance of all duties required by this chapter, or by such resolution or trust indenture, to be performed by DSHA or any officer thereof, including the fixing, charging and collecting of fares or charges for the use of any facility operated by DSHA.

(b) Such resolution or trust indenture may contain provisions under which any holder of such bonds or the trustee under such trust indenture shall be entitled to the appointment of a receiver in the event of a default, and any receiver so appointed shall have and be entitled to exercise all the rights and powers of DSHA with respect to the facilities operated or maintained by DSHA and all of the appropriate rights and powers of a receiver in equity.

(71 Del. Laws, c. 357, § 6.)

§ 4024. Moneys as trust funds.

All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds or grants or other contributions from any person corporate or otherwise, or government, or as fees and revenues shall be deemed to be trust funds, to be held and applied solely as provided in this chapter. The issuing officer shall, in the resolution authorizing the issuance of bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds and the fees and revenues to be received, to any officer, agency, bank or trust company who shall act as trustee of such funds, and shall hold and apply the same to the purposes of this chapter, subject to such regulations as this chapter and such resolution or trust indenture may provide.

(71 Del. Laws, c. 357, § 6.)

§ 4025. Subordination of mortgage to agreement with government.

DSHA may agree in any mortgage made by it that such mortgage shall be subordinate to a contract for the supervision by a government of the operation and maintenance of the mortgaged property and the construction of improvements thereon. In such event, any purchase or purchasers at a sale of the property of DSHA pursuant to a foreclosure of such mortgage or any other remedy in connection therewith shall obtain title subject to such contract.

(71 Del. Laws, c. 357, § 6.)

§ 4026. Powers relative to purchase of and sale to financial institutions of mortgage loans; loans to mortgage lenders.

DSHA shall have all the powers necessary or convenient to carry out and effectuate the purposes of this chapter, including the following powers in addition to others herein granted:

(1) To invest in, purchase or to make commitments to purchase, and take assignments from mortgage lenders of notes and mortgages evidencing loans for the construction, rehabilitation, purchase, leasing or refinancing of housing for persons and families of low- and moderate-income in this State;

(2) To make loans to mortgage lenders upon terms and conditions requiring the proceeds thereof to be used by such mortgage lenders for the making of new residential mortgages, upon the terms set forth in § 4027 of this title;

(3) To make commitments to purchase, and to purchase, service and sell mortgages insured by any department, agency or instrumentality of the United States, and to make loans directly upon the security of any such mortgage; provided, that the underlying mortgage loans shall have been made and shall be continued to be used solely to finance or refinance the construction, rehabilitation, purchase or leasing of residential housing for persons and families of low- and moderate-income in this State;

(4) To sell, at public or private sale, with or without public bidding, any mortgage or other obligation held by DSHA;

(5) To enter into mortgage insurance agreements with mortgage lenders in connection with the lending of money by such institutions to persons and families of low- or moderate-income for the purchase of housing;

(6) Subject to any agreement with bondholders or noteholders, to collect, enforce the collection of, and foreclose on any collateral securing its loans to mortgage lenders and acquire or take possession of such collateral and sell the same at public or private sale, with or without public bidding, and otherwise deal with such collateral as may be necessary to protect the interest of DSHA therein.

(71 Del. Laws, c. 357, § 6.)

§ 4027. Terms and conditions of the purchase and sale to financial institutions of mortgage loans; loans to mortgage lenders.

(a) DSHA shall from time to time adopt, modify, amend or repeal rules and regulations governing the making of such loans to mortgage lenders and the application of the proceeds thereof.

Such rules and regulations shall be designed to effectuate the general purposes of this chapter and the following specific objectives:

(1) The expansion of the supply of funds in the State available for new residential mortgages;

(2) The provision of the additional housing needed to remedy the shortage of adequate housing in the State and eliminate the existence of a large number of substandard dwellings; and

(3) The effective participation by mortgage lenders in the program authorized by this chapter and the restriction of the financial return and benefit thereto from such program to that necessary and reasonable to induce such participation.

(b) All new residential mortgages made as required by this section shall comply with the applicable provisions of the laws of the State, and, where federal law or the law of another jurisdiction governs the affairs of the mortgage lender, shall comply with applicable provisions of such law.

(71 Del. Laws, c. 357, § 6.)

§ 4028. Notification of application for Low Income Housing Tax Credit Program.

(a) Whenever a Low Income Housing Tax Credit Program application is submitted to the Delaware State Housing Authority, the Housing Director shall notify by certified and regular mail any state senators and representatives in whose districts any development project will be located. In addition, the Housing Director shall so notify the chief executive officer of any local government in whose jurisdiction any development project will be located.

(b) Whenever a preliminary ranking of Low Income Housing Tax Credit Program applications is made by the Delaware State Housing Authority, the Housing Director shall notify by certified and regular mail any state senators and representatives in whose districts any development project will be located. In addition, the Housing Director shall so notify the chief executive officer of any local government in whose jurisdiction any development project will be located.

(72 Del. Laws, c. 394, § 1.)

§ 4029. Korey Thompson Student Emergency Housing Assistance Fund.

(a) There is established the Korey Thompson Student Emergency Housing Assistance Fund for the benefit of college and university students experiencing homelessness or housing insecurity, referred to in this section as the "Fund." DSHA shall oversee and administer all funds deposited in the Fund, including any funds appropriated by the State to the Fund, as well as any federal funds received from the American Rescue Plan or other COVID relief grants for this purpose.

(b) The Fund must be used exclusively for the provision of housing assistance to individuals enrolled in an undergraduate program at any college or university in this State.

(c) DSHA shall develop eligibility criteria, an application process, appropriate limitations on assistance, and a method of distribution.

(d) DSHA shall report to the Governor and the General Assembly by December 1 of each year all expenditures made from the Fund, including an accounting of how many individuals were served and what institution each individual attended. No personal identifying information may be included in the report.

(83 Del. Laws, c. 238, § 1.)

Subchapter III

Housing Development Fund and Financing of Housing Developments

§ 4030. Housing Development Fund.

(a) The "Housing Development Fund" shall be administered by the Housing Director as a revolving fund for carrying out the purposes of this chapter. DHSA shall report to the General Assembly on an annual basis any private contributions by gift or bequest received and/or deposited in the Housing Development Fund. Sums received from the General Fund, from dedicated sources of revenue, from private contributions by gift or bequest, and in repayment of loans made under this chapter shall be deposited in such Fund. DSHA, with the approval of the Secretary of Finance and the Council on Housing, may borrow from the Fund for any lawful purpose with respect to any housing program or financing with respect thereto, undertaken by DSHA, or for the purpose of investing borrowed funds in accordance with § 4013(17) of this title; any such borrowing to be upon such terms and conditions, and with such security, as the Secretary of Finance and the State's Council on Housing shall direct.

(b) In addition to any further appropriations which may not be reflected in subsection (a) of this section, and in addition to accrued interest on loans, the Housing Development Fund shall retain any interest or other earnings which accrue on uncommitted balances remaining in the Fund undisbursed, and such accrued interest shall not be deposited in the General Fund.

(c) (1) DSHA is hereby authorized to use the interest income earned from the Housing Development Fund for the support of administrative functions associated with the fund.

(2) DSHA may use appropriated special funds, less the Housing Development Fund line, as discretionary operating expenses. Discretionary operating expenses include personnel costs, travel, contractual services, supplies and materials, and other normal business

expenses of DSHA which are not required to be made pursuant to bond resolutions, trust indentures, or agreements with the federal Department of Housing and Urban Development, or otherwise required by operating agreements of DSHA.

(3) Nothing herein shall be construed to require any prior approval for DSHA to meet its previously contracted obligations, including debt service requirements under bond resolution or trust indenture of DSHA, nor shall anything contained herein require any such prior approval for any expenditure by DSHA under any such bond resolution or trust indenture or under any agreement with the Federal Department of Housing and Urban Development.

(d) Any other law to the contrary notwithstanding, programs for the disbursement of funds from the Housing Development Fund, and disbursements pursuant to such programs, may include grants as well as loans, including grants to DSHA; provided however, that any program including grants shall not cause the Fund to lose entirely its character as a revolving fund.

(e) In allocating the resources of the Housing Development Fund over time, any program mix or targeting of funds shall account for the demographics of the population in need of housing, should balance the programs appropriately between rental assistance and ownership, and should apportion the available resources statewide according to local need.

(f) When any loan or grant application is submitted to the Housing Development Fund, the Housing Director of the Delaware State Housing Authority shall notify by certified and regular mail any state senators and representatives in whose districts any development project funded by said loan or grant will be located. In addition, the Housing Director shall so notify the chief executive officer of any local government in whose jurisdiction any development project will be located.

(g) When any loan or grant is awarded by the Housing Development Fund, the Housing Director of the Delaware State Housing Authority shall notify by certified and regular mail any state senators and representatives in whose districts any development project funded by said loan or grant will be located. In addition, the Housing Director shall so notify the chief executive officer of any local government in whose jurisdiction any development project will be located.

(71 Del. Laws, c. 357, § 6; 72 Del. Laws, c. 394, § 2; 73 Del. Laws, c. 307, § 1; 74 Del. Laws, c. 405, §§ 1, 2; 75 Del. Laws, c. 350, § 117; 78 Del. Laws, c. 290, § 89; 85 Del. Laws, c. 324, § 78(a).)

§ 4031. Powers relative to making mortgage loans and temporary construction loans to housing sponsors and persons and families of low- and moderate-income.

(a) DSHA shall have all the powers necessary or convenient to carry out and effectuate the purpose and provisions of this chapter, including the following powers in addition to others herein granted:

(1) To make and undertake commitments to make mortgage loans, including, without limitation, federally insured mortgage loans and to make temporary loans and advances in anticipation of permanent loans to housing sponsors to finance the construction or rehabilitation of housing designed and planned for persons and families of low- and moderate-income upon the terms and conditions set forth in § 4033 of this title;

(2) To make and undertake commitments to make first mortgage loans to persons of low- or moderate-income who may purchase residential housing, including, without limitation, persons and families of low- and moderate-income who are eligible, or potentially eligible, for federally insured mortgage loans or federal mortgage loans. Such loans shall be made only after a determination by DSHA that long-term first mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(3) To make and publish rules and regulations respecting the grant of mortgage loans pursuant to this section, the regulations of borrowers, the admission of housing developments pursuant to this section, and the construction of ancillary commercial facilities;

(4) To enter into agreements and contracts with housing sponsors under this section;

(5) To institute any action or proceeding against any housing sponsor receiving a loan under this chapter, or owning any housing development hereunder in any court of competent jurisdiction in order to enforce this chapter, or to foreclose its mortgage, or to protect the public interest, persons and families of low- and moderate-income, stockholders or creditors of such sponsor. In connection with any such action or proceeding it may apply for the appointment of a receiver to take over, manage, operate and maintain the affairs of such housing sponsor and DSHA, through such agent as it shall designate, is hereby authorized to accept appointment as receiver of any such sponsor when so appointed by a court of competent jurisdiction.

(b) The reorganization of any housing sponsor shall be subject to the supervision and control of DSHA, and no such reorganization shall be had without the consent of DSHA. Upon any such reorganization the amount of capitalization, including therein all stocks, income debentures and bonds and other evidence of indebtedness shall be such as is authorized by DSHA, but not in excess of the fair value of the property received.

(c) In any foreclosure action involving a housing sponsor other than a foreclosure action instituted by DSHA, the municipality in which any tax exemption or abatement is provided, such housing sponsor and DSHA shall, in addition to other necessary parties, be made parties defendant. DSHA and the municipality shall take all steps in such action necessary to protect the interest of the public therein, and no costs shall be awarded against DSHA or the municipality.

(d) Subject to the terms of any applicable agreement, contract or other instrument entered into or obtained pursuant to this chapter, judgment of foreclosure shall not be entered against a housing sponsor unless the court to which application therefor is made shall be

satisfied that the interest of the lienholders or holders cannot be adequately secured or safeguarded except by the sale of the property; and in such proceeding the court shall be authorized to make an order increasing the rental or carrying charges to be charged for the housing accommodations in the housing development involved in such foreclosure, or appoint a member of DSHA or any officer of the municipality in which any tax exemption or abatement with respect to the development is provided, as a receiver of the property, or grant such other and further relief as may be reasonable and proper; and in the event of a foreclosure or other judicial sale, the property shall be sold only to a housing sponsor which will manage, operate and maintain the housing development subject to this chapter, unless the court shall find that the interest and principal on the obligations secured by the lien, which is the subject of foreclosure, cannot be earned under the limitations imposed by this chapter, and that the proceeding was brought in good faith, in which event the property may be sold free of limitations imposed by this chapter or subject to such limitations as the court may deem advisable to protect the public interest.

(e) In the event of a judgment against any housing sponsor in any action not pertaining to the foreclosure of a mortgage, there shall be no sale of any of the real property included in any housing development hereunder of such housing sponsor except upon 60 days' written notice to DSHA. Upon receipt of such notice DSHA shall take such steps as in its judgment may be necessary to protect the rights of all parties.

(71 Del. Laws, c. 357, § 6.)

§ 4032. Power to supervise housing sponsors.

DSHA shall have the power to supervise housing sponsors, including limited profit housing sponsors and their real and personal property, in the following respects:

(1) DSHA may prescribe uniform systems of accounts and records for housing sponsors and may require them to make reports and give answers to specific questions on such forms and at such times as may be necessary for the purposes of this chapter.

(2) Through its agents or employees, DSHA may enter upon and inspect the lands, buildings and equipment of a housing sponsor, including all parts thereof, and may examine all books and records with reference to capital structure, income, expenditures and other payments of a housing sponsor.

(3) DSHA may supervise the operation and maintenance of any housing development and may order such repairs as may be necessary to protect the public interest or the health, welfare or safety of the housing development occupants.

(4) DSHA may fix, and alter from time to time, a schedule of rents and charges for any housing development.

(5) DSHA may determine, for any housing development, standards for tenant selection by a housing sponsor.

(6) DSHA may require any housing sponsor to pay to DSHA such fees as it may prescribe in connection with the examination, inspection, supervision, auditing or other regulations of the housing sponsor.

(7) DSHA may order any housing sponsor to do, or to refrain from doing, such things as may be necessary to comply with the provisions of the law, the rules and regulations of DSHA, and the terms of any contract or agreement to which the housing sponsor may be a party.

(8) DSHA may regulate the retirement of any capital investment or the redemption of stock where any such retirement or redemption, when added to any dividend or other distribution, shall exceed in any 1 fiscal year 10% of the original face amount of any investment by any housing sponsor.

(9) DSHA may prescribe regulations specifying the categories of cost which shall be allowable in the construction or rehabilitation of a housing development. DSHA shall require any housing sponsor to certify the actual housing development costs upon completion of the housing development, subject to audit and determination by DSHA. Notwithstanding this subdivision, DSHA may accept, in lieu of any certification of housing development costs, as provided herein, such other assurances of the said housing development costs, in any form or manner whatsoever, as will enable DSHA to determine with reasonable accuracy the amount of said housing development costs.

(71 Del. Laws, c. 357, § 6.)

§ 4033. Loan terms and conditions.

Loans made by DSHA shall be subject to the following terms and conditions:

(1) No application for a loan for a housing development shall be processed unless the applicant is a housing sponsor as defined in § 4001 of this title.

(2) The ratio of loan to total housing development cost, and the amortization period of loans made under this chapter which are insured by FHA, shall be governed by the FHA mortgage insurance commitment for each housing development but in no event shall such amortization period exceed 50 years.

In the case of a mortgage loan not insured by FHA, the amount of the loan to: (i) limited profit housing sponsors shall not exceed 95% of the total housing development costs, as determined by DSHA, and (ii) other housing sponsors shall not exceed 100% of the total development cost, as determined by DSHA, and the amortization period of such loans shall be determined in accordance with regulations formulated and published by DSHA; provided however, that any such loan shall be subject to an agreement between DSHA and any such housing sponsor prohibiting the transfer of ownership or management responsibilities by such housing sponsor at any time prior to repayment of at least 5% of the original loan, unless the transfer of ownership or management responsibilities has been ordered by a court of competent jurisdiction to a different housing sponsor.

(3) A loan made hereunder may be prepaid to maturity after a period of 15 years with the consent of DSHA, provided DSHA finds that the prepayment of the loan will not result in a material escalation of rents charged to persons and families of low- and moderate-income in the housing development.

(4) DSHA shall have authority to set from time to time the interest rates at which it shall make loans and commitments therefor. Such interest rates shall be established by DSHA at the lowest level consistent with DSHA's cost of operation, and its responsibilities to the holders of its bonds, bond anticipation notes and other obligations. In addition to such interest charges, DSHA may make and collect such fees and charges, including, but not limited to, reimbursement of DSHA's financing costs, service charges, insurance premiums and mortgage insurance premiums, as DSHA determines to be reasonable.

(5) In considering any application for a loan, DSHA shall give first priority to applications for housing developments which will be well-planned, well-designed and which will be a part of or constructed in connection with a major redevelopment program; and shall also give consideration to:

a. The comparative need for housing for persons of low-and moderate-income in the area to be served by the proposed development;

b. The ability of the applicant to construct, operate, manage and maintain the proposed housing development;

c. The existence of zoning or other regulations to protect adequately the proposed housing development against detrimental future uses which could cause undue depreciation in the value of the development; and

d. The availability, where reasonably possible, of adequate parks, recreational areas, utilities, schools, transportation, parking, shopping facilities, churches and other community facilities.

(6) Each mortgage loan shall be evidenced by a mortgage note or bond and by a mortgage which shall be a lien on the housing development and which shall contain such terms and provisions and be in a form approved by DSHA. DSHA shall require the housing sponsor receiving a loan or its contractor to post performance and surety bonds in amounts related to the housing development cost as established by regulation and/or to execute such other assurances and guarantees as DSHA may deem necessary. It may also require the housing sponsors or the contractors to also execute such other assurances and guarantees as DSHA may deem necessary.

(7) Each loan shall be subject to an agreement between DSHA and the housing sponsor which will subject said sponsor and its principals or stockholders to limitations established by DSHA as to rentals and other charges, builders' and developers' profits and fees, and the disposition of its property and franchises to the extent more restrictive limitations are not provided by the law under which the borrower is incorporated or organized.

(8) As a condition of the loan, DSHA shall have the power at all times during the construction and rehabilitation of a housing development by a housing sponsor and the operation thereof:

a. To enter upon and inspect any housing development, including all parts thereof, for the purpose of investigating the physical and financial condition thereof, and its construction, rehabilitation, operation, management and maintenance, and to examine all books and records with respect to capitalization, income and other matters relating thereto and to make such charges as may be required to cover the cost of such inspections and examinations;

b. To order such alterations, changes or repairs as may be necessary to protect the security of its investment in a housing development or the health, safety, and welfare of the occupants thereof;

c. To order any managing agent, housing development manager or owner of a housing development to do such acts as may be necessary to comply with the provisions of all applicable laws or ordinances of any agreement concerning the said development or to refrain from doing any acts in violation thereof and, in this regard, DSHA shall be a proper party to file a complaint and to prosecute thereon for any violations of laws or ordinances as set forth herein.

(9) A limited profit housing sponsor may not make distributions in any 1 year with respect to a housing development financed by DSHA in excess of 10% of a limited profit housing sponsor's equity in such development. Such sponsor's equity in a housing development shall consist of the difference between the mortgage and the total housing development cost. With respect to every housing development, DSHA shall, pursuant to regulations adopted by it, establish such sponsor's equity at the time of the making of the final mortgage advance, and for purposes of this subdivision, that figure shall remain constant during the life of DSHA's mortgage on such development.

(10) Whenever any housing sponsor accumulates earned surplus, in addition to reserves for maintenance, operation and replacement, as DSHA may require in excess of 10% of the initial annual rent roll for the housing development, rents in the housing development shall be reduced to the extent necessary to lower the earned surplus accumulation to such 10% figure in the following fiscal year. Every 10 years the housing sponsor may seek the approval of DSHA for increases in said reserves. To the extent warranted DSHA may grant such approval, if in its judgment there have been increased price levels or unusual maintenance and repayment requirements.

(71 Del. Laws, c. 357, § 6.)

§ 4034. Procedure prior to financing of housing developments undertaken by housing sponsors.

Notwithstanding any other provisions of this chapter, DSHA is not empowered to finance any housing development undertaken by a housing sponsor pursuant to §§ 4031, 4032 and 4033 of this title, unless prior to the financing of any housing development hereunder DSHA finds:

(1) That there exists a shortage of decent, safe and sanitary housing at rentals or prices which persons and families of low-income or moderate-income can afford within the general housing market area to be served by the proposed housing development;

(2) That private enterprise and investment have been unable, without assistance, to provide the needed decent, safe and sanitary housing at rentals or prices which persons or families of low- and moderate-income can afford or to provide sufficient mortgage financing for residential housing for occupancy by such persons or families;

(3) That the housing sponsor or limited-profit housing sponsor or sponsors undertaking the proposed housing development in this State will supply well-planned, well-designed housing for persons or families of low- and moderate-income and that such sponsors are financially responsible;

(4) That the housing development to be assisted pursuant to this chapter will be of public use and will provide a public benefit;

(5) That the housing development will be undertaken within the authority conferred by this chapter upon DSHA and the housing sponsor or sponsors.

(71 Del. Laws, c. 357, § 6.)

§ 4035. Housing Repair and Modification Fund.

(a) As used in this section,

(1) “Low income” means a household making less than 80% of the area median income.

(2) “Very low income” means a household making less than 50 % of area median income.

(b) The Housing Repair and Modification Fund is administered by the Housing Director as a revolving fund for carrying out the purposes of this chapter. DSHA shall report to the General Assembly on an annual basis any private contributions by gift or bequest received or deposited in the Housing Repair and Modification Fund. Sums received from the General Fund, from dedicated sources of revenue, from private contributions by gift or bequest, and in repayment of loans made under this chapter must be deposited in such Fund. DSHA, with the approval of the Secretary of Finance and the Council on Housing, may borrow from the Fund for any lawful purpose with respect to any housing repair program or financing with respect thereto, undertaken by DSHA, or for the purpose of investing borrowed funds in accordance with § 4013(17) of this title; any such borrowing to be upon such terms and conditions, and with such security, as the Secretary of Finance and the State’s Council on Housing shall direct.

(c) (1) In addition to any further appropriations which may not be reflected in subsection (b) of this section, and in addition to accrued interest on loans, or paid interest on loans, the Housing Repair and Modification Fund must retain any interest or other earnings which accrue on uncommitted balances remaining in the Fund undisbursed, and such accrued interest may not be deposited in the General Fund.

(2) Principal payments, including partial payments, must be retained by the Housing Repair and Modification Fund and may not be deposited in the General Fund.

(d) The Housing Repair and Modification Fund is to be used to provide repair on homes, including “manufactured homes” as defined in § 7003 of Title 25, occupied by owners whose households qualify as low income or very low income.

(e) DSHA must allocate the funds in the following manner:

(1) Fifty percent to benefit households that are low income.

(2) Fifty percent to benefit households that are very low income.

(f) Up to 10% of the annual allocation to the Housing Repair and Modification Fund may be made to landlords who own an interest in fewer than 5 rental units, own an interest in any corporations or combination of corporations that own fewer than 5 rental units, or some combination thereof, who are leasing the unit to very low income tenants. Repair funds provided to landlords under this subsection must be low interest loans that are below the market rate and that require the condition that rent is not increased throughout the term of the loan beyond a maximum allowable increase set by DSHA.

(g) Regardless of any other law to the contrary, programs for the disbursement of funds from the Housing Repair and Modification Fund, and disbursements pursuant to such programs, may include grants as well as loans, including grants to DSHA, provided however, that any program including grants may not cause the Fund to lose entirely its character as a revolving fund.

(h) In allocating the resources of the Housing Repair and Modification Fund over time, any program mix or targeting of funds shall account for the demographics of the population in need of housing, should balance the programs appropriately between rental assistance and ownership, and should apportion the available resources statewide according to local need.

(i) DSHA may use part of the allocations made for the Housing Repair and Modification Fund toward the administration of the program.

(84 Del. Laws, c. 356, § 1.)

§ 4036. Housing Development Fund, Affordable Rental Housing Program.

(a) For purposes of this section:

(1) “Adjusted income” means as defined by DSHA.

(2) “Area median income” or “AMI” means as defined by DSHA.

(3) “Basic rent” means the rental charge established to cover expenses in the housing project’s approved budget and the required loan payment contained in the promissory note, reduced by the interest credit agreement with DSHA.

(4) “Housing project” means rental housing financed under this section.

(5) “HUD” means the U.S. Department of Housing and Urban Development.

(6) “Interest credit” means a form of assistance available under the Affordable Rental Housing Program available to eligible borrowers that reduces the effective interest rate of the loan.

(7) “Low-income” means a family with income between 50% and 80% of AMI.

(8) “Moderate-income” means a family with income no more than $5,500 above 80% of AMI.

(9) “Very low-income” means a family with income below 50% of AMI.

(b) The Affordable Rental Housing Program (ARHP) is a revolving fund within the Housing Development Fund that supports affordable rental housing for 1 or more of the following:

(1) Very low-, low-, and moderate-income families.

(2) Elderly individuals.

(3) Individuals with disabilities.

(c) The ARHP provides long-term loans to a housing project for any of the following purposes:

(1) To purchase buildings or land.

(2) For the construction or renovation of buildings.

(3) To provide necessary facilities such as water and waste disposal systems.

(d) (1) The interest rate for a loan under the ARHP must be the lower of the following:

a. The interest rate in effect at the time of loan approval.

b. The interest rate that is in effect at the time of loan closing.

(2) DSHA must provide interest credit to subsidize the interest on ARHP loans to a payment rate of 1%.

(3) ARHP loans must be amortized over a period that does not exceed 50 years and paid over a term that does not exceed 30 years from the date of the loan.

(4) DSHA may establish conditions that limit prepayment of loans under this section.

(e) (1) Rents for units in a housing project must be established at the same rate for all similar units in the housing project.

(2) During the term of a loan under this section, each tenant pays monthly rent in an amount equal to the lesser of the following:

a. The basic rent.

b. Thirty percent of the tenant’s adjusted income.

(3) Tenants may receive rent subsidies from other sources. A housing project must accept all tenant-based rent subsidies.

(4) DSHA may require that a housing project give first priority for tenancy to rental applicants who are living in substandard housing.

(f) A housing project must have 2 or more units per building and meet the requirements under all of the following:

(1) All applicable building codes.

(2) The Model Energy Code.

(3) HUD physical standards.

(g) (1) DSHA may use part of the appropriation made to the ARPH for the administration of the program.

(2) DSHA may use part of an appropriation for tenant-based rental assistance to subsidize the rent for some units in a housing project.

(h) (1) DSHA must promulgate policies and procedures implementing this section, under the Administrative Procedures Act, Chapter 101 of Title 29.

(2) The policies and procedures promulgated under paragraph (h)(1) of this section must include all of the following:

a. The requirements for the origination and servicing of loans under this section.

b. The criteria used to determine eligibility and priority for the ARPH financing.

c. The definition of each of the following:

1. Adjusted income.

2. Area median income.

(3) DSHA must annually publish the AMI for each region, as defined under paragraph (h)(2)c.2. of this section, as a notice in the Register of Regulations and on the DSHA website.

(85 Del. Laws, c. 209, § 1.)

Subchapter IV
Council on Housing

§ 4040. Council on Housing.

(a) The Council on Housing is continued and shall serve in an advisory capacity to the Governor, Housing Director and the General Assembly and shall consider matters relating to housing in this State and such other matters as may be referred to it by the Governor, the

Housing Director or the General Assembly. The Council shall study, research, plan and advise the Governor, Housing Director and the General Assembly on matters it deems appropriate to enable DSHA to function in the best possible manner.

(b) The Council shall review, advise and make recommendations on all DSHA programs.

(c) The Council on Housing shall be composed of 11 members to be appointed by the Governor. There shall be 2 members from each county, 2 members that reside in the City of Wilmington and 3 members at large, 1 of which is a member of a tenant organization. The term of appointment to the Council shall be 3 years. Members shall be eligible for reappointment. A member of the Council shall be suspended or removed by the Governor for misfeasance, nonfeasance, malfeasance, misconduct, incompetency, or neglect of duty. A member subject to disciplinary hearing shall be disqualified from Council business until the charge is adjudicated or the matter is otherwise concluded. A member may appeal any suspension or removal to the Superior Court.

(d) At least 5, but no more than 6, members of the Council shall be affiliated with one of the major political parties and at least 4, but no more than 5, members shall be affiliated with the other major political party; provided however, that there shall be no more than a bare majority representation of 1 major political party over the other major political party. Any person who declines to announce that person's own political affiliation shall also be eligible for appointment as a member of the Council.

(e) Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

(f) A Chairperson of the Council shall be chosen by the members of the Council from among its members and shall serve in that capacity for a term of 1 year. The Chairperson shall be eligible for reelection but may not serve as Chairperson for more than 3 consecutive 1-year terms.

(g) Any appointment pursuant to this section to replace a member whose position becomes vacant prior to the expiration of the member's term shall be filled only for the remainder of that term. Any person appointed to serve out the remainder of an unexpired term shall be eligible for reappointment.

(h) The Chairperson of the Council shall direct the Council's operations and shall perform such other duties as the Housing Director may direct.

(i) The Council shall have the authority to draft and adopt bylaws governing its operations, consistent with the provisions herein. The Housing Director may assign to employment on behalf of the Council such secretarial, clerical and other assistants in DSHA as the internal operation of the Council shall require and for such purposes as the Housing Director shall consider necessary.

(j) The Council shall issue an annual report to the Governor, the Housing Director and the General Assembly on its activities, as well as the housing needs of this State, key statistics and trends, Housing Development Fund expenditures and any recommendations for changes in law, policy and/or funding related to housing.

(71 Del. Laws, c. 357, § 6; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 191, §§ 2-8.)

§ 4041. Investigative powers; power to compel assistance of witnesses and production of books.

(a) The Council may investigate the affairs of housing authorities and all urban renewal and rehabilitation activities by municipal, county and regional agencies and authorities and the dealings, transactions or relationships of such authorities with other persons. The Council may act through a committee of its members in conducting any of the investigations provided for in this chapter and the chairperson of any such committee shall have all the powers of the Council. Each member of the Council may administer oaths, take affidavits and make personal inspections of all places to which that member's duties relate. The Council may subpoena and require the attendance of witnesses and the production of books and papers pertaining to the investigations and inquiries authorized in this chapter and examine them in relation to any matter it has power to investigate and issue commissions for the examination of witnesses who are out of the State or unable to attend before the Council or are excused from attendance.

(b) The Council may hold hearings at such places and at such times as shall be determined by the Council to hear complaints on housing by any aggrieved person as contemplated by this chapter. The procedure outlined in subsection (a) of this section shall apply to such hearings. Written reports shall be rendered in all cases to the Housing Director within 10 days after such hearing. The notice of complaint by any aggrieved person shall be in writing stating the nature thereof and may be made to any member of the Council.

(c) Upon the failure of any person to comply with a subpoena duly issued by the Council, the Council may seek an order from the Superior Court of the county in which the person subpoenaed resides, has a place of business or can be found, to show cause why that person should not be held in contempt for failure to comply with the subpoena.

(71 Del. Laws, c. 357, § 6; 70 Del. Laws, c. 186, § 1.)

Subchapter V

Delaware Housing Insurance Fund

§ 4050. Delaware Housing Insurance Fund.

The Delaware Home Improvement Insurance Fund is renamed the Delaware Housing Insurance Fund. DSHA may insure upon such terms as it may prescribe, any mortgage consistent with the purposes of this chapter. Fees shall be established for said insurance in an

amount sufficient to cover administrative costs accrued for this program as well as payments made where defaults on mortgages cause losses to lenders. DSHA, with approval of the Secretary of Finance and the Council on Housing, may borrow from the Delaware Housing Insurance Fund for any lawful purpose with respect to any housing program or financing with respect thereof.

(71 Del. Laws, c. 357, § 6.)

Subchapter VI

Delaware Interagency Council on Homelessness

§ 4060. Delaware Interagency Council on Homelessness [Repealed].

(76 Del. Laws, c. 404, § 1; 78 Del. Laws, c. 347, § 1; repealed by 81 Del. Laws, c. 345, § 2, effective July 23, 2018.)

Subchapter VII

Delaware Workforce Housing Program [For application of this subchapter, see 84 Del. Laws, c. 352, § 3]

(84 Del. Laws, c. 352, § 2.)

§ 4070. Purpose [For application of this section, see 84 Del. Laws, c. 352, § 3].

Increasing the amount and quality of workforce housing is a critical need for Delaware's residents to ensure economic well-being and better quality of life. The purpose of this subchapter is to encourage use of private capital investment into residential housing units as set forth in this subchapter.

(84 Del. Laws, c. 352, § 2.)

§ 4071. Definitions [For application of this section, see 84 Del. Laws, c. 352, § 3].

As used in this subchapter:

(1) "DSHA" means the Delaware State Housing Authority as established in Chapter 86 of Title 29.

(2) "DWH grant" or "grant" means a Delaware Workforce Housing grant as set forth in § 4072 of this title.

(3) "Investment Level 1" and "Investment Level 2" means the investment levels as set forth by the Delaware Strategies for State Policies and Spending document approved by the Governor in Executive Order 42 on July 23, 2020.

(4) "Minimum qualified workforce housing threshold" means the minimum level of qualified workforce housing investment required by a qualified workforce housing investor in a workforce housing unit to qualify for a grant, as determined by DSHA. The minimum qualified workforce housing threshold must be no lower than $25,000. No more than once per year, DSHA may amend the minimum qualified workforce housing threshold with respect to the types of projects or other criteria determined by DSHA to be necessary or convenient to accomplish the purposes of this subchapter.

(5) "Qualified workforce housing investment" means the amount in excess of the minimum qualified workforce housing threshold that is properly chargeable to a capital account for improvements to rehabilitate, expand, or construct depreciable real property placed in service during the calendar year.

(6) "Qualified workforce housing investor" means an owner or tenant of real property located within an Investment Level 1 or Investment Level 2 zone who expands, rehabilitates, or constructs such real property for use as a workforce housing unit. In the case of a tenant, the amounts of qualified workforce housing investment specified in this section must relate to the proportion of the workforce housing unit for which the tenant holds a valid lease. In the case of an owner of an individual unit within a "common interest community," as such term is defined in § 81-103 of Title 25, the amount of qualified workforce housing investment specified in this subchapter must relate to the proportion of the workforce housing unit for which the owner holds title and not to common elements.

(7) "Workforce housing unit" means a residential dwelling for a household whose income does not exceed 100% of the median income for the area as defined by the United States Department of Housing and Urban Development.

(84 Del. Laws, c. 352, § 2; 85 Del. Laws, c. 68, § 50.)

§ 4072. Qualifications for DWH grants [For application of this section, see 84 Del. Laws, c. 352, § 3].

Subject to the limitations set forth in this subpart, any qualified workforce housing investor making a qualified workforce housing investment in an Investment Level 1 or Investment Level 2 is entitled to a grant in an amount up to 20% of the qualified workforce housing investment in excess of the minimum qualified workforce housing threshold.

(84 Del. Laws, c. 352, § 2.)

§ 4073. Limitations and conditions [For application of this section, see 84 Del. Laws, c. 352, § 3].

(a) The availability of DWH grants in any given year is subject to appropriation by the General Assembly.

(b) Except as otherwise provided in subsection (c) of this section, DSHA may not approve a DWH grant for a workforce housing unit that uses a federal low-income or state low-income housing tax credit.

(c) DSHA may approve a DWH grant for 1 or more workforce housing units in a multiple unit housing project so long as those workforce housing units do not utilize a federal low-income or state low-income housing tax credit.

(d) In addition to its other powers and responsibilities, DSHA is expressly authorized to establish any other limitations and conditions with respect to DWH grants as may be necessary or convenient to accomplish the purposes of this subchapter, including:

(1) Amending the minimum qualified workforce investment threshold, except that the minimum qualified workforce investment threshold must not be less than $25,000.

(2) Establishing caps or limits on DWH grants available to any qualified workforce housing investor, alone or in combination with other local, state, or federal incentives for any workforce housing unit including Delaware state historic preservation tax credits pursuant to Chapter 18 of Title 30.

(3) Establishing additional qualifying criteria with respect to residential uses or types of projects.

(4) Incentivizing particular types of uses or projects in 1 or more workforce housing units.

(5) Establishing such other limitations and conditions in 1 or more workforce housing units as DSHA may determine from time to time.

(e) DSHA may use part of the allocations made for the Delaware Workforce Housing Program towards the administration of the program.

(f) DSHA may establish or amend the foregoing limitations and conditions no more than once per year.

(84 Del. Laws, c. 352, § 2.)

§ 4074. Policies and procedures for allocation of DWH grants [For application of this section, see 84 Del. Laws, c. 352, § 3].

(a) Qualified workforce housing investors are eligible to receive DWH grants provided for in this subchapter to the extent that they apply for and are approved for grant allocations through DSHA.

(b) The accuracy and validity of information on qualified workforce housing investments is subject to verification procedures in accordance with rules promulgated by DSHA, on forms supplied by DSHA, and in accordance with dates specified by DSHA.

(84 Del. Laws, c. 352, § 2.)

§ 4075. Administration [For application of this section, see 84 Del. Laws, c. 352, § 3].

(a) DSHA holds primary responsibility for administering the Delaware Workforce Housing Program. DSHA’s powers and duties include:

(1) Adopting rules and procedures as needed or desirable to effectuate provisions of this subchapter.

(2) Administering, enforcing, and interpreting such rules and procedures.

(3) Allocating DWH grant funds in accordance with the provisions of this subchapter.

(4) Monitoring the implementation and operation of this subchapter.

(b) Beginning no later than November 15, 2025, and occurring every November 15 thereafter, DSHA shall issue an annual report to the Governor and the General Assembly evaluating the effectiveness of the Delaware Workforce Housing Program.

(c) DSHA may delegate to and receive assistance from other state agencies in carrying out its responsibilities of this subchapter.

(d) DSHA shall adopt regulations necessary to implement this subchapter in accordance with the procedures specified in the Administrative Procedures Act, Chapter 101 of Title 29.

(84 Del. Laws, c. 352, § 2.)

Part III
Housing and Slum Clearance

Chapter 41
Delaware State Housing Code

Subchapter I
Applicability and Adoption

§ 4101. Title and scope.

This chapter shall be known as the Delaware State Housing Code which establishes minimum property maintenance standards for structures covered by this chapter and is herein sometimes referred to as the "State Housing Code" or "Code" and shall apply to and include the entire State except as may be exempted by this chapter.

(65 Del. Laws, c. 153, § 1.)

§ 4102. Purpose.

This chapter is intended to protect the public safety, health and welfare in existing residential structures and on existing residential premises, as hereinafter provided by:

(1) Establishing minimum maintenance standards for existing residential structures and premises for basic equipment and facilities for light, ventilation, heat and sanitation; for safety from fire; for space; and for safe and sanitary maintenance of existing structures and premises;

(2) Fixing the responsibilities of owners, operators and occupants of all structures; and

(3) Providing for administration, enforcement and penalties.

(65 Del. Laws, c. 153, § 1.)

§ 4103. Applicability.

The State Housing Code shall apply to existing residential structures used for human habitation. The provisions are designed to eliminate or prevent substandard conditions with respect to structures, protect against fire hazards, provide for adequate space for light and air, provide for proper heating and ventilating and eliminate unsanitary conditions and overcrowding. Every portion of a building or premises used or intended to be used for residential purposes shall comply with this chapter, except hotels and motels serving transient guests only, migratory labor housing, rest homes, convalescent homes, nursing homes, recreational campers and civil defense shelters. For the purpose of this chapter, regulations by the State Department of Health and Social Services for Migratory Labor Camps will apply to migrant housing.

(65 Del. Laws, c. 153, § 1.)

§ 4104. Liberal interpretation.

The entire chapter shall be liberally interpreted so as to minimize displacement of persons whose dwelling units may deviate from this chapter's specifications but do not pose an imminent threat to the health, safety and general welfare of the occupants and other persons. Additionally, this chapter is to be liberally interpreted so as to minimize hardships to persons that inhabit or own dwelling units which deviate from this chapter's specifications but do not pose an imminent threat to the health, safety and general welfare of the occupants and other persons.

(65 Del. Laws, c. 153, § 1.)

§ 4105. Exemptions.

(a) This chapter does not replace or modify requirements otherwise established for the construction, repair, alteration or use of buildings and facilities related thereto.

(b) Nothing in this chapter shall be deemed to abolish or impair existing rights or remedies of a county or municipality or its officers or agencies relating to the removal or demolition of any buildings which are deemed to be unsafe or unsanitary.

(c) The Delaware State Housing Code shall not apply to any existing single family owner-occupied residential structure. The provisions shall become and remain applicable upon the rental or sale of such residential structure after July 17, 1990. The Delaware State Housing Code shall not apply to any existing resort residential structure with an occupancy limited to the months of May through September inclusively.

(d) When there are practical difficulties involved in carrying out the provisions of this Code, such that the literal application of the requirements of the Code would cause undue hardship or the displacement of low income occupants with no affordable housing alternatives, the code official is permitted to vary or modify such provision or provisions upon written application of the owner or the owner's representative; provided, that the spirit and intent of the law shall be observed and public welfare and safety be assured.

(e) The State Housing Code shall not be administered in any community which has enacted its own code which contains minimum standards for the promotion and protection of the safety and health of the public which are equal to or exceed the standards established by subchapter II of this chapter and administration and enforcement procedures which are substantially equivalent to those set forth in subchapter III of this chapter, as determined by the Housing Director. At the request of any community which has adopted a housing code, the Housing Director shall provide written notice to the community of its determination, stating the reasons therefore. Provided, however, that if such community thereafter seeks to amend, alter or otherwise change its housing code, it shall provide the Housing Director with a copy of such proposed change. In such a case, the Housing Director shall notify such community in writing within 60 days of receipt of such proposed change of its determination whether such proposed change meets the standards set forth in this subsection, and, in such case, the State Housing Code shall not be administered in such community, notwithstanding such amendment or change.

(65 Del. Laws, c. 153, § 1; 67 Del. Laws, c. 386, §§ 1-3.)

§ 4106. Construction of terms; definitions.

(a) Words used in the present tense include the future; the singular includes the plural and the plural includes the singular. Unless otherwise expressly stated, where terms are not defined under this chapter, they shall have ascribed to them their ordinarily accepted meanings or such as the context herein may imply. Whenever the words “multi-family dwelling,” “residence building,” “dwelling unit,” “mobile home” or “premises” are used in this chapter, they shall be construed as though they were followed by the words, “or any part thereof.”

(b) The following terms are defined as listed below:

(1) *Approved. —*

Approved, as applied to a material, device or method of construction, shall mean approved by the code official under this chapter or approved by other authority designated by law to give approval in the matter in question.

(2) *Basement. —*

That portion of a building which is partly below and partly above grade, and having at least one half its height above grade (see “cellar”).

(3) *Cellar. —*

That portion of a building which is partly or completely below grade, and having at least one half its height below grade (see “basement”).

(4) *Central heating. —*

The heating system permanently installed and adjusted so as to provide the distribution of heat to all habitable rooms, bathrooms and water closet compartments from a source outside of these rooms.

(5) *Code official. —*

The official who is charged with the administration and enforcement of this chapter, or any duly authorized representative. The Housing Director, or any duly authorized representative thereof, shall be the code official for the State.

(6) *Community. —*

Any municipality or county in the State.

(7) *Condemn. —*

To adjudge unfit for residential use or human occupancy.

(8) *Condemnation .—*

The act of judicially condemning.

(9) *Dwelling. —*

a. *One-family dwelling. —*

A building containing 1 dwelling unit with not more than 5 lodgers or boarders.

b. *Two-family dwelling. —*

A building containing 2 dwelling units with not more than 5 lodgers or boarders per family.

c. *Multi-family apartment house. —*

Multi-family apartment house. — A building or portion thereof containing more than 2 dwelling units and not classified as a 1 or 2 family dwelling.

d. *Boarding house, lodging house and tourist house. —*

A building arranged or used for lodging, with or without meals, for compensation, by more than 5 and not more than 20 individuals.

e. *Dormitory. —*

A space in a building where group sleeping accommodations are provided in 1 room, or in a series of closely associated rooms for persons not members of the same family group.

f. *Hotel. —*

Any building containing 6 or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied, or which are occupied for sleeping purposes by guests.

g. *Mobile home. —*

— A 1-family dwelling designed for transportation after fabrication on streets and highways on its own wheels or supported by other vehicles or trailers but which is not self-propelled, and arriving at the site where it is to be occupied complete and ready for occupancy, except for minor and incidental unpacking and assembly operations, supported on jacks or other foundations and connected to utilities and the like.

(10) *Dwelling unit. —*

A single unit providing complete, independent living facilities for 1 or more persons, including a mobile home, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(11) *Enforcement officer. —*

The official designated herein or otherwise charged with the responsibilities of administering this chapter, or the official's authorized representative.

(12) *Exterior property areas. —*

The open space on the premises and on adjoining property under the control of owners or operators of such premises.

(13) *Extermination. —*

The control and elimination of insects, rats or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poison spraying, fumigating, trapping or by any other approved pest elimination methods.

(14) *Family. —*

An individual or married couple and the children thereof with not more than 2 other persons, living together as a single housekeeping unit in a dwelling unit.

(15) *Garbage. —*

The animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

(16) *Habitable space. —*

Space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas are not considered habitable space.

(17) *Hotel. —*

See "dwellings."

(18) *Housing Director. —*

The Director of the Delaware State Housing Authority.

(19) *Infestation. —*

The presence, within or contiguous to a structure or premises, of insects, rats, vermin or other pests.

(20) *Junk vehicle. —*

Any vehicle which is without a currently valid license plate or plates and is in either a rusted, wrecked, discharged, dismantled, partly dismantled, inoperative or abandoned condition. A junk vehicle shall be classified as to its condition in 1 of the 2 following categories:

a. *Restorable. —*

A junk vehicle that is in a condition whereby repairs to same could be made to place it in operating condition without exceeding the estimated value when repaired.

b. *Wreck. —*

A junk vehicle in such condition that it is economically unsound to restore same to operating condition considering the repairs to be made, age of the vehicle, market value of the vehicle if it were restored or in such condition that it warrants such classification.

(21) *Let for occupancy or let. —*

To permit possession or occupancy of a dwelling, dwelling unit, rooming unit, building or structure by a person who shall be legal owner or not be the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

(22) *Maintenance. —*

Conformance of a building and its facilities to the code under which the building was constructed.

(23) *Motel. —*

A hotel as defined in this chapter.

(24) *Multi-family (multiple) dwellings. —*

See "dwellings."

(25) *Occupant. —*

Any person over 1 year of age (including owner or operator) living and sleeping in a dwelling unit or having actual possession of said dwelling or rooming unit.

(26) *Openable area. —*

That part of a window or door which is available for unobstructed ventilation and which opens directly to the outdoors.

(27) *Operator. —*

Any person who has charge, care or control of a structure or premises which are let or offered for occupancy.

(28) *Overcrowded. —*

A dwelling shall be overcrowded when its occupancy exceeds the maximum number of persons permitted in subsections (k), (l) and (q) of § 4115 of this title.

(29) *Owner. —*

Any person, firm or corporation having a legal or equitable interest in the premises or any agent thereof.

(30) *Person. —*

Any individual, corporation or partnership.

(31) *Plumbing. —*

The labor, materials and fixtures used in the installation, maintenance, extension and alteration of all piping, fixtures, appliances and appurtenances.

(32) *Plumbing fixture. —*

A receptacle or device which is either permanently or temporarily connected to the water distribution system of the premises and demands a supply of water therefrom; or discharges used water, liquid-borne waste materials, or sewage either directly or indirectly to the drainage system of the premises; or which requires both a water supply connection and a discharge to the drainage system of the premises.

(33) *Premises. —*

A lot, plot or parcel of land including the buildings or structures thereon.

(34) *Public nuisance. —*

Includes the following:

a. The physical condition, or use of any premises regarded as a public nuisance at common law; or

b. Any physical condition, use or occupancy of any premises or its appurtenances considered an attractive nuisance to children, including, but not limited to, abandoned wells, shafts, basements, excavations and unsafe fences or structures; or

c. Any premises designated as having unsanitary sewerage or plumbing facilities; or

d. Any premises designated as unsafe for human habitation or use; or

e. Any premises which are manifestly capable of being a fire hazard, or are manifestly unsafe or unsecure so as to endanger life, limb or property; or

f. Any premises from which the plumbing, heating or other facilities required by this chapter have been removed, or from which utilities such as water, sewer, gas and electricity have been disconnected, destroyed, removed or rendered ineffective, or the required precautions against trespassers have not been provided; or

g. Any premises which are unsanitary, or which are littered with rubbish or garbage, or which have an uncontrolled growth of weeds; or

h. Any structure or building that is in an advanced state of dilapidation, deterioration or decay; of faulty construction; overcrowded; open, vacant or abandoned; damaged by fire to the extent as not to provide adequate shelter; in danger of collapse or structural failure; and is dangerous to anyone on or near the premises.

(35) *Rennovation. —*

Work on a building and its facilities to make it conform to present day minimum standards of sanitation, fire and life safety.

(36) *Residence building. —*

A building in which sleeping accommodations, toilet, bathing and cooking facilities as a unit are provided.

(37) *Rooming house. —*

Any residence building, or any part thereof, containing 1 or more rooming units, in which space is let by the owner or operator to more than 5 persons who are not members of the family (see “dwellings”: “boarding house”).

(38) *Rooming unit. —*

Any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

(39) *Rubbish. —*

Combustible and noncombustible waste materials, except garbage, and the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.

(40) *Structure. —*

That which is built or constructed, including without limitation because of enumeration, buildings for any occupancy or use whatsoever, fences, signs, billboards, fire escapes, chute escapes, railings, water tanks, towers, open grade steps, sidewalks or stairways, tents or anything erected and framed to component parts which is fastened, anchored or rests on a permanent foundation or on the ground.

(41) *Supplied. —*

Installed, furnished or provided by the owner or operator.

(42) *Ventilaion. —*

The process of supplying and removing air by natural or mechanical means to or from any space.

a. *Mechanical. —*

Ventilation by power-driven devices.

b. *Natural. —*

Ventilation by opening to outer air through windows, skylights, doors, louvers or stacks without wind-driven devices.

(43) *Workmanlike. —*

Whenever the words “workmanlike state of maintenance and repair” are used in this chapter, they shall mean that such maintenance and repair shall be made in a reasonably skillful manner.

(44) *Yard. —*

An open unoccupied space on the same lot with a building extending along the entire length of street, or rear or interior lot line.

(65 Del. Laws, c. 153, § 1; 67 Del. Laws, c. 386, §§ 4-6; 70 Del. Laws, c. 186, § 1.)

§ 4107. Adoption by reference.

Any community in Delaware may adopt the State Housing Code as its own municipal or county housing code by reference to this title and chapter of the Delaware Code.

(65 Del. Laws, c. 153, § 1.)

§ 4108. Enforcement authority.

It shall be the duty and responsibility of each community to enforce the State Housing Code throughout the confines of that municipality or county.

(65 Del. Laws, c. 153, § 1.)

§ 4109. Enforcement by State or community.

In the event that after 3 years subsequent to the adoption of the State Housing Code by the General Assembly a community has not undertaken to enforce this chapter, the Housing Director, acting as the code official, may begin enforcement within that community, subject to this chapter. Any community may contract with another community to act on its behalf in the enforcement of this chapter.

(65 Del. Laws, c. 153, § 1; 67 Del. Laws, c. 386, § 7.)

§ 4110. Coordination of enforcement.

Inspection of premises and the issuing of orders in connection therewith under this chapter shall be the exclusive responsibility of the code official. When, in the opinion of the code official, it is necessary or desirable to have inspections of any conditions by any other community or state agency, the code official shall arrange for this to be done in such a manner that the owners or occupants of the dwelling shall not be subjected to visits by numerous inspectors nor to multiple or conflicting orders. No order for correction of any violation under this section, when coordination of enforcement is required, shall be issued without the approval of the code official and, before issuing any such order, the code official shall obtain the concurrence of any other department or agency having jurisdiction thereover.

(65 Del. Laws, c. 153, § 1.)

Subchapter II

Minimum Conditions of Premises and Buildings

§ 4111. General provisions.

This subchapter shall describe the minimum conditions of residential premises and buildings to be used for human occupancy. Every residential building or structure occupied by humans, except as exempted by §§ 4103 and 4105 of this title and its premises shall comply with the conditions and standards herein prescribed when a deviation from such conditions and standards poses an imminent threat to the

health, safety and general welfare of the occupants and other persons. The code official may cause periodic inspections to be made of residential buildings and premises to secure compliance with these requirements.

(65 Del. Laws, c. 153, § 1.)

§ 4112. Premises conditions.

(a) *Responsibility of owner.* — The owner of buildings and premises shall maintain such buildings and premises in compliance with these requirements. A person shall not occupy as owner-occupant or let to another for occupancy or use premises which do not comply with the following requirements of this section.

(b) *Vacant structures and land.* — All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause blight or adversely affect the public health or safety.

(c) *Sanitation.* — All premises shall be maintained in a clean, safe and sanitary condition free from any accumulation of rubbish or garbage.

(d) *Containers.* — Garbage, vegetable wastes or other putrescible materials shall be stored in leakproof containers, provided with close-fitting covers, for the storage of such materials until removed from the premises for disposal.

(e) *Grading and drainage.* — All premises shall be graded and maintained so as to prevent the accumulation of stagnant water thereon, or within any structure located thereon.

(f) *Insect and rat control.* — All premises shall remain free of insects, rats, vermin or other pests in all exterior areas of the premises. An owner shall be responsible for extermination, except that the occupant shall be responsible for such extermination in the exterior areas of the premises of a single-family dwelling. Extermination in the shared or public parts of the premises of other than a single-family dwelling shall be the responsibility of the owner.

(g) *Noxious weeds.* — All premises in predominately residential areas shall be kept free from weeds or plant growth which are noxious or detrimental to the public health and welfare and shall be trimmed to a height of not more than 12 inches.

(h) *Exhaust vents.* — Except as to previously existing and operating exhaust systems, no person shall construct, maintain or operate pipes, ducts, conductors, fans or blowers discharging gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes so as to discharge directly upon abutting or adjacent public or private property or property of another tenant.

(i) *Accessory structures.* — All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in compliance with §§ 4113 and 4114 of this title.

(j) *Motor vehicles.* — All premises, except as provided in other regulations, shall not contain any unregistered or uninspected or junk vehicle that poses a threat to the health, safety and general welfare of the occupants or other persons. Not more than 2 currently unregistered or uninspected vehicles, owned by the occupants, that do not pose a threat to the occupants or other persons' health and safety shall be parked in a predominantly residential area. Said vehicles shall not be in a state of disassembly or disrepair.

(65 Del. Laws, c. 153, § 1.)

§ 4113. Exterior structure.

(a) *In general.* — The exterior of a structure shall be maintained structurally sound and sanitary so as not to pose a threat to the health and safety of the occupants and so as to protect the occupants from the environment.

(b) *Structural members.* — All supporting structural members of all structures shall be maintained structurally sound, free of deterioration and capable of safely bearing the dead and live loads imposed upon them.

(c) *Exterior surfaces (foundations, walls and roof).* — Every foundation, exterior wall, roof and all other exterior surfaces shall be maintained in a workmanlike state of maintenance and repair and shall be kept in such condition so as to exclude rats.

(d) *Foundation walls.* — All foundation walls shall be maintained so as to carry the safe design and operating dead and live loads, plumb and free from open cracks and breaks, except as necessary to release excessive water pressure on the wall so as not to be detrimental to public safety and welfare.

(e) *Exterior walls.* — Every exterior wall shall be free of holes, breaks, loose or rotting boards or timbers and any other condition which might admit rain or dampness to the interior portions of the walls or to the occupied spaces of the building. All exterior surface materials, including wood, composition or metal siding, shall be maintained weatherproof so as to prevent deterioration.

(f) *Roofs.* — The roof shall be structurally sound, tight and not have defects which might admit rain, and roof drainage shall be adequate to prevent rain water from causing dampness in the walls or interior portion of the building.

(g) *Decorative features.* — All cornices, trim, wall facings and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition.

(h) *Signs, marquees and awnings.* — All canopies, marquees, signs, metal awnings, stairways, fire escapes, standpipes, exhaust ducts and similar overhang extensions shall be maintained in good repair, shall be properly anchored so as to be kept in a safe and sound condition and shall be protected from the elements and against decay.

(i) *Chimneys.* — All chimneys, cooling towers, smokestacks and similar appurtenances shall be maintained structurally safe, sound and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay.

(j) *Stairs and porches.* — Every stair, porch, balcony and all appurtenances attached thereto shall be so maintained as to be safe to use and capable of supporting the loads to which it may be subjected and shall be maintained in sound condition and repair.

(k) *Windows, doors and frames.* — Every window, door and frame shall be maintained in such relation to the adjacent wall construction so as to exclude rain as completely as possible and to substantially exclude wind from entering the building.

(*l*) *Weathertight.* — Every window and exterior door shall be fitted reasonably in its frame and be weathertight. Weather stripping shall be used as necessary to exclude wind or rain from entering the dwelling or structure and shall be kept in sound condition and good repair.

(m) *Glazing.* — Every required window sash shall be fully supplied with glazing materials which securely hold in place window glass.

(n) *Openable windows.* — Every window, other than a fixed window, shall be capable of being opened and shall be held in position by window hardware.

(o) *Door hardware.* — Every exterior door, door hinge and door latch shall be maintained in good condition. Door locks in dwelling units shall be in good repair and capable of tightly securing the door.

(p) *Basement and window hatchways.* — Every basement or cellar hatchway or window shall be so maintained as to prevent the entrance of rats, rain and surface drainage into the structure.

(65 Del. Laws, c. 153, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4114. Interior structure.

(a) *In general.* — The interior of a structure and its equipment shall be maintained structurally sound and in a sanitary condition so as not to pose a threat to the health and safety of the occupants and to protect the occupants from the environment.

(b) *Structural members.* — The supporting structural members of every building shall be maintained structurally sound, not showing any evidence of deterioration which would render them incapable of carrying the imposed loads.

(c) *Interior surfaces.* — Floors, walls, including windows and doors, ceilings and other interior surfaces shall be maintained in good, clean and sanitary condition.

(d) *Lead-based paint.* — Lead-based paint with a lead content of more than 0.5 percent shall not be applied to any interior or exterior surface of a dwelling or dwelling unit, including fences and outbuildings upon any premises.

(e) *Bathroom and kitchen floors.* — Every toilet, bathroom and kitchen floor surface shall be constructed and maintained so as to permit such floor to be easily kept in a clean and sanitary condition.

(f) *Free from dampness.* — Cellars, basements and crawl spaces shall be maintained free from standing water so as to prevent conditions conducive to decay or deterioration of the structure.

(g) *Sanitation.* — The interior of every structure shall be maintained in a clean and sanitary condition free from any accumulation of rubbish, refuse or garbage. Rubbish, garbage and other refuse shall be properly kept inside temporary storage facilities.

(h) *Public halls and stairways.* — Garbage or refuse shall not be allowed to accumulate or be stored in public halls or stairways.

(i) *Insect and rat harborage.* — All structures shall be kept free from insect and rat infestation, and where insects or rats are found they shall be promptly exterminated by acceptable processes which will not be injurious to human health. After extermination, proper precautions shall be taken to prevent reinfestation.

(j) *Exit doors.* — Every door available as an exit shall be capable of being opened easily from the inside.

(k) *Exit facilities — Adequacy.* — Stairs, porches, railings and other exit facilities shall be adequate for safety.

(*l*) *Exit facilites — Maintenance.* — All interior stairs and railings and other exit facilities of every structure shall be maintained in sound condition and good repair by replacing treads and risers that evidence excessive wear or are broken, warped or loose. Every inside stair shall be so constructed and maintained as to be safe to use and capable of supporting the anticipated loads.

(65 Del. Laws, c. 153, § 1.)

§ 4115. Light, ventilation and space requirements.

(a) *In general.* — All spaces or rooms shall be provided sufficient light so as not to endanger health and safety. All spaces or rooms shall be provided sufficient natural or mechanical ventilation so as not to endanger health and safety. Where mechanical ventilation is provided in lieu of the natural ventilation, such mechanical ventilating system shall be maintained in operation during the occupancy of any structure or portion thereof.

(b) *Light in habitable rooms.* — Every habitable room, except kitchens, toilet rooms, basement or cellar rooms and interior rooms of townhouses and row houses, shall have at least 1 window facing directly to the outdoors, a court or a porch. Every habitable room, except kitchens and toilet rooms, shall have at least 1 door or window which can be opened to adequately ventilate the room. Kitchens, toilet rooms without windows, basement or cellar rooms and interior rooms of townhouses and row houses shall have natural or mechanical ventilation.

(c) *Common halls and stairways.* — Every common hall and stairway in every building, other than 1-family dwellings, shall be adequately lighted at all times with an illumination of at least a 60 watt light bulb. Such illumination shall be provided throughout the normally traveled stairs and passageways.

(d) *Other spaces.* — All other spaces shall be provided with natural or artificial light of sufficient intensity and so distributed as to permit the maintenance of sanitary conditions and the safe use of the space and the appliances and fixtures.

(e) *Toilet rooms.* — Every bathroom and water closet compartment shall comply with the light and ventilation requirements for habitable rooms as required by subsection (b) of this section except that a window shall not be required in bathrooms or water closet compartments equipped with an approved mechanical ventilation system.

(f) *Cooking.* — Primary cooking facilities shall not be permitted in any sleeping room or dormitory unit, except for efficiency apartments.

(g) *Separation of unit.* — Dwelling units shall be separate and apart from each other. With the exception of cribrooms or rooms accommodating persons with disabilities, sleeping rooms shall not be used as the only means of access to other sleeping rooms.

(h) *Privacy.* — Hotel units, lodging units and dormitory units shall be designed to provide privacy and be separate from other adjoining spaces.

(i) *Common access.* — A habitable room, bathroom or water closet compartment which is accessory to a dwelling unit shall not open directly into or be used in conjunction with a food store, barber or beauty shop, doctor's or dentist's examination or treatment room or similar room used for public purposes.

(j) *Basement rooms and cellar rooms.* — Basement and cellar rooms partially below grade shall not be used for sleeping purposes unless the basement and cellar room (or rooms) is (are) within the specifications for sleeping rooms as provided for in this chapter.

(k) *Dwelling units.* — Every dwelling unit shall contain a minimum gross floor area of not less than 150 square feet for the first occupant, and 100 square feet for each additional occupant. The floor area shall be calculated on the basis of the total area of all habitable rooms.

(*l*) *Area for sleeping purposes.* — Every room occupied for sleeping purposes by 1 occupant shall contain at least 64 square feet of floor area.

(m) *Overcrowding.* — If any room used for residential purposes is overcrowded as defined in § 4106(28) of this title, the code official may order the number of persons sleeping or living in said room to be reduced.

(n) *Prohibited use.* — It shall be prohibited to use for sleeping purposes any kitchen, nonhabitable space or public space.

(o) *Minimum ceiling heights.* — Habitable rooms shall have a clear ceiling height over the minimum area required by this chapter at not less than 7 feet, 4 inches, except that in attics, basements, or top half-stories the ceiling height shall be not less than 7 feet over not less than one-third of the minimum area required by this chapter when used for sleeping, study or similar activity. In calculating the floor area of such rooms, only those portions of the floor area of the room having a clear ceiling height of 5 feet or more may be included.

(p) *Minimum ceiling heights in mobile homes.* — Habitable space in a mobile home shall have a minimum ceiling height of 7 feet over 50 percent of the floor area, and the floor area where the ceiling height is less than 5 feet shall not be considered in calculating floor area.

(q) *Required space in mobile homes.* — Every mobile home shall contain a minimum gross floor area of not less than 150 square feet for the first 2 occupants, and 100 square feet for each additional occupant.

(65 Del. Laws, c. 153, § 1; 78 Del. Laws, c. 179, § 380.)

§ 4116. Plumbing facilities and fixtures requirements.

(a) *In general.* — Every dwelling unit shall include its own plumbing facilities which are in proper operating condition, can be used in privacy and are adequate for personal cleanliness and the disposal of human waste.

(b) *Water closet and lavatory.* — Every dwelling unit shall contain a lavatory and a water closet supplied with cold running water. The water closet shall not be located in a habitable room. The lavatory may be placed in the same room as the water closet, or, if located in another room, the lavatory shall be located in close proximity to the door leading directly into the room in which said water closet is located. The lavatory shall be supplied with hot and cold running water.

(c) *Bathtub or shower.* — Every dwelling unit shall contain a room which affords privacy to a person in said room and which is equipped with a bathtub or shower supplied with hot and cold running water.

(d) *Sink.* — Every dwelling unit shall contain a kitchen sink apart from the lavatory required under subsection (b) of this section and shall be supplied with hot and cold running water.

(e) *Rooming house.* — At least 1 water closet, lavatory basin and bathtub or shower properly connected to an approved water and sewer system and in good working condition shall be supplied for each 4 rooms within a rooming house, wherever said facilities are shared. Every lavatory basin and bathtub or shower shall be supplied with hot and cold water at all times.

(f) *Hotels.* — Where private water closets, lavatories, and baths are not provided, 1 water closet, 1 lavatory and 1 bathtub accessible from a public hallway shall be provided on each floor. Each lavatory, bathtub or shower shall be supplied with hot and cold water at all times.

(g) *Toilet rooms and bathrooms — Privacy.* — Toilet rooms and bathrooms shall be designed and arranged to provide privacy.

(h) *Toilet rooms and bathrooms — Direct access.* — Toilet rooms and bathrooms shall not be used as a passageway to a hall or other space or to the exterior. At least 1 toilet room or bathroom in a dwelling unit shall be accessible from any sleeping room without passing through another sleeping room.

(i) *Toilet rooms and bathrooms — Location on same story.* — Toilet rooms and bathrooms serving hotel units, lodging units or dormitory units, unless located within such respective units, or directly connected thereto, shall be provided on the same story with such units and be accessible only from a common hall or passageway.

(j) *Toilet rooms and bathrooms — Floors.* — Bathrooms and toilet rooms shall be provided with floors of moisture resistant material.

(k) *Connections.* — Water supply lines, plumbing fixtures, vents and drains shall be properly installed, connected and maintained in working order and shall be kept free from obstructions, leaks and defects and capable of performing the function for which they are designed.

(*l*) *Maintained clean and sanitary.* — All plumbing facilities shall be maintained in a clean and sanitary condition by the occupant so as not to breed insects and rats or produce dangerous or offensive gases or odors.

(m) *Access for cleaning.* — Plumbing fixtures shall be installed so as to permit easy access for cleaning both the fixtures and the areas about them.

(n) *Water conservation.* — Plumbing fixtures which are replaced shall be of water saving construction and use.

(o) *Contamination.* — The water supply shall be maintained free from contamination and all water inlets for plumbing fixtures shall be located above the overflow rim of the fixture.

(p) *Supply.* — The water supply systems shall be installed and maintained to provide at all times a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable them to function satisfactorily.

(q) *Water heating facilities.* — Water heating facilities shall be properly installed, properly maintained and properly connected with hot water lines to the fixtures required to be supplied with the hot water. Water heating facilities shall be capable of heating water to such a temperature so as to permit an adequate amount of water to be drawn at every required kitchen sink, lavatory basin, bathtub, shower and laundry facility or other similar units at a temperature of not less than 110° F.

(r) *Connections.* — Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other facility shall be properly connected to either a public sewer system or to an approved private sewage disposal system.

(s) *Maintenance.* — Every plumbing stack, waste and sewer line shall be so installed and maintained as to function properly and shall be kept free from obstructions, leaks and defects to prevent structural deterioration or health hazards.

(t) *Storm drainage.* — An approved system of storm water disposal shall be provided and maintained for the safe and efficient drainage of roofs and paved areas, yards and courts and other open areas on the premises.

(65 Del. Laws, c. 153, § 1.)

§ 4117. Heating, cooking and refrigeration facilities.

(a) *Heating.* — Every dwelling unit and guest room shall be provided with heating facilities capable of maintaining a room temperature of 65° F., at a point 3 feet above the floor and 3 feet from an exterior wall in all habitable rooms, bathrooms and toilet rooms.

(b) *Cooking facilities.* — In every dwelling unit that contains cooking and baking facilities for the purpose of preparation of food, such facilities shall be properly installed by the owner and operated and kept in a clean and sanitary working condition by the occupant.

(c) *Refrigeration.* — In every dwelling unit that contains a refrigeration unit for the temporary preservation of perishable foods, such unit shall be capable of maintaining an average temperature below 45° F. and shall be properly installed by the owner and operated and kept in a clean and sanitary working condition by the occupant.

(d) *Cooking and heating equipment.* — All cooking and heating equipment, components and accessories in every heating, cooking and water heating device shall be maintained free from leaks and obstructions and kept functioning properly so as to be free from fire, health and accident hazards.

(e) *Installation.* — All mechanical equipment shall be properly installed and safely maintained in good working condition and be capable of performing the function for which it was designed and intended.

(f) *Flue.* — All fuel-burning equipment designed to be connected to a flue, chimney or vent shall be connected in an approved manner.

(g) *Clearances.* — All required clearances from combustible materials shall be maintained.

(h) *Safety controls.* — All safety controls for fuel-burning equipment shall be maintained in effective operation.

(i) *Combustion air.* — A supply of air for complete combustion of the fuel and for ventilation of the space shall be provided to the fuel-burning equipment.

(j) *Fireplaces.* — Fireplaces and other devices intended for use similar to a fireplace, including wood-and-coal-burning stoves, shall be stable and structurally safe and connected to approved chimneys.

(k) *Climate control.* — When facilities for interior climate control (heating, cooling or humidity) are integral functions of structures used as dwelling units, such facilities shall be maintained and operated in a continuous manner in accordance with the designed capacity.

(65 Del. Laws, c. 153, § 1.)

§ 4118. Electrical facilities.

(a) *Outlets required.* — Where there is electric service available to a structure, every habitable room of a dwelling unit and every guest room shall contain at least 2 separate and remote outlets, 1 of which may be a ceiling or wall type electric light fixture. In a kitchen, 3 separate and remote wall type electric convenience outlets or 2 such convenience outlets and 1 ceiling or wall type electric light fixture shall be provided. Every public hall, water closet compartment, bathroom, laundry room or furnace room shall contain at least 1 electric light fixture; in addition to the electric light fixture in every bathroom and laundry room, there shall be provided at least 1 electric outlet.

(b) *Installation.* — All electrical equipment, wiring and appliances shall be installed and maintained in a safe manner in accordance with all applicable laws. All electrical equipment shall be of an approved type.

(c) *Correction of defective system.* — Where it is found, in the opinion of the code official, that the electrical system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, improper fusing, insufficient outlets, improper wiring or installation, deterioration or damage or for similar reasons, the code official shall require the defects to be corrected to eliminate the hazard.

(65 Del. Laws, c. 153, § 1.)

§ 4119. Fire safety requirements.

(a) *In general.* — A safe, continuous and unobstructed means of egress shall be provided from the interior of a structure to the exterior at a street, or to a yard, court or passageway leading to a public open area at grade.

(b) *Direct exit.* — Every dwelling unit or guest room shall have access directly to the outside or to a public corridor.

(c) *Locked doors; exit through other units.* — All doors in the required means of egress shall be readily openable from the inner side. Exits from dwelling units, hotel units, lodging units and dormitory units shall not lead through other such units, or through toilet rooms or bathrooms.

(d) *Fire escapes.* — All required fire escapes shall be maintained in working condition and structurally sound.

(e) *Exit signs.* — All exit signs shall be maintained, illuminated and visible.

(f) *Accumulations of waste, etc., prohibited.* — Waste, refuse or other materials shall not be allowed to accumulate in stairways, passageways, doors, windows, fire escapes or other means of egress.

(g) *Flammable matter.* — Highly flammable or explosive matter, such as paints, volatile oils, and cleaning fluids, or combustible refuse, such as wastepaper, boxes and rags, shall not be accumulated or stored on residential premises except in reasonable quantities consistent with normal usage.

(h) *Residential unit.* — A dwelling unit or rooming unit shall not be located within a structure containing an establishment handling, dispensing or storing flammable liquids with a flash point of 110° F. or lower.

(i) *Fire alarms.* — Fire alarms and detecting systems shall be maintained and be suitable for their respective purposes.

(j) *Fire suppression system.* — Fire suppression systems shall be maintained in good condition, free from mechanical injury. Sprinkler heads shall be maintained clean, free of corrosion and paint and not bent or damaged.

(k) *Fire extinguishers.* — All portable fire extinguishers shall be visible and accessible, and maintained in an efficient and safe operating condition.

(65 Del. Laws, c. 153, § 1.)

§ 4120. Responsibilities of owners and occupants.

(a) *Cleanliness.* — Every occupant of a structure or part thereof shall keep that part of the structure or premises thereof which that occupant occupies, controls or uses in a clean and sanitary condition. Every owner of a dwelling containing 2 or more dwelling units shall maintain, in a clean and sanitary condition, the shared or public areas of the dwelling and premises thereof.

(b) *Disposal of rubbish.* — Every occupant of a structure or part thereof shall dispose of all rubbish in a clean and sanitary manner by placing it in rubbish containers equipped with tight fitting covers as required by this chapter.

(c) *Disposal of garbage.* — Every occupant of a structure or part thereof shall dispose of garbage in a clean and sanitary manner, securely wrapping such garbage and placing it in tight garbage storage containers as required by this chapter, or by such other disposal method as may be required by applicable laws or ordinances.

(d) *Rubbish storage facilities.* — Every dwelling unit shall be supplied with approved containers and covers for storage of rubbish, and the owner, operator or agent in control of such dwelling shall be responsible for the removal of such rubbish.

(e) *Food preparation.* — All spaces used or intended to be used for food preparation shall contain suitable space and equipment to store, prepare and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage when necessary.

(f) *Fixtures and equipment — Supplied by owner.* — The owner or occupant of a structure or part thereof shall keep the supplied equipment and fixtures therein clean and sanitary and shall be responsible for the exercise of reasonable care in their proper use and operation.

(g) *Fixtures and equipment — Furnished by occupant.* — The equipment and fixtures furnished by the occupant of a structure shall be properly installed and shall be maintained in good working condition, kept clean and sanitary and free of defects, leaks or obstructions.

(65 Del. Laws, c. 153, § 1.)

§ 4121. Extermination.

(a) *Owner's responsibility.* — The owner of any structure shall be responsible for extermination of insects, rats, vermin or other pests within the structure prior to renting, leasing or selling the structure.

(b) *Tenant-occupant's responsibility.* — The tenant-occupant of any structure shall be responsible for the continued rat proof condition of the structure, and if the tenant occupant fails to maintain the rat-proof condition, the cost of extermination shall be the responsibility of the tenant-occupant.

(c) *Single unit occupant's responsibility.* — The occupant of a structure containing a single dwelling unit shall be responsible for the extermination of any insects, rats or other pests in the structure or on the premises, except as otherwise provided in subsection (e) of this section.

(d) *Responsibility for common areas in multiple unit structures.* — Every owner, agent or operator of 2 or more dwelling units or multiple occupancies, or rooming houses, shall be responsible for the extermination of any insects, rats or other pests in the public or shared areas of the structure and premises.

(e) *Bed bug remediation.* —

(1) If the tenant notifies the owner that the tenant found or reasonably suspects a bed bug infestation in a dwelling unit within 60 days after the dwelling unit was occupied or within 30 days of discovery of a bed bug infestation in an adjoining unit in the building, the owner shall be responsible for the costs of investigating and remediating the infestation.

(2) If the tenant notifies the owner of a bed bug infestation more than 60 days after the dwelling unit was occupied and not within 30 days of a discovery of a bed bug infestation in an adjoining unit within the building, the landlord shall be responsible for investigating and remediating the bed bug infestation, provided that the tenant shall share in the responsibility for the reasonable costs for remediating the infestation in the tenant's unit.

(3) The tenant shall not be responsible to share in costs with properties managed by a state or local government housing authority.

(65 Del. Laws, c. 153, § 1; 83 Del. Laws, c. 451, § 3.)

Subchapter III

Administration and Enforcement

§ 4122. General provisions.

This subchapter shall govern the administration and enforcement procedures of the State Housing Code. Any municipality or county that adopts the Code as its own may use these administrative and enforcement procedures as its own or may develop procedures which are similar in nature as determined by the Code official.

(65 Del. Laws, c. 153, § 1; 67 Del. Laws, c. 386, § 8.)

§ 4123. Administrative liability.

Except as may otherwise be provided by state statute, no officer, agent or employee of the State or any Delaware community charged with the enforcement of this chapter shall be rendered personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of duties under this chapter. No person who institutes, or assists in the prosecution of, a criminal proceeding under this chapter shall be liable for damage therefor unless such person acted with actual malice and without reasonable grounds for believing that the person accused or prosecuted was guilty of an unlawful act or omission. Any civil suit brought against any officer, agent or employee of the State or of any Delaware community as a result of any act required or permitted in the discharge of duties under this chapter shall be defended by the attorney-at-law of each jurisdiction and of the State until the final determination of the proceedings therein.

(65 Del. Laws, c. 153, § 1.)

§ 4124. Conflict of interest.

No officer or employee who has an official duty in connection with the administration and enforcement of this chapter shall be financially interested in the furnishing of labor, materials or appliances for the construction, alteration or maintenance of a building or in making the plans or specifications therefor, unless that person is the owner of such building. No such officer or employee shall engage in any activity which is inconsistent with the public interest and the officer's official duties.

(65 Del. Laws, c. 153, § 1; 67 Del. Laws, c. 386, § 9.)

§ 4125. Records.

The code official shall keep or cause to be kept records concerning the enforcement of this chapter's provisions, which records shall be open to public inspection.

(65 Del. Laws, c. 153, § 1.)

§ 4126. Duties and powers of code official.

(a) *In general.* — The code official shall enforce all the provisions of this chapter relative to the maintenance of structures and premises, except as may otherwise be specifically provided by other regulations.

(b) *Notices and orders.* — The code official shall issue all necessary notices and orders to abate illegal or unsafe conditions to insure compliance with the chapter requirements for the safety, health and general welfare of the public.

(c) *Inspections.* — In order to safeguard the safety, health and welfare of the public, the code official is authorized to enter any structure or premises at any reasonable time for the purpose of making inspections and performing duties under this chapter. The fee for inspections performed by the Housing Director, when acting as a code official for the enforcement of the Code in areas which have not adopted the Code shall be $25 for the initial inspection and $10 for each subsequent inspection related to the same complaint. At the discretion of the Housing Director and for good cause shown, such inspection fees may be waived.

(d) *Right of entry.* — If any owner, occupant or other person in charge of a structure subject to this chapter refuses, impedes, inhibits, interferes with, restricts or obstructs entry and free access to any part of the structure or premises where inspection authorized by this chapter is sought, the code official may seek, in a court of competent jurisdiction, an order that such owner, occupant or other person in charge cease and desist with such interference.

(e) *Access by owner or operator.* — Every occupant of a structure or premises shall give the owner or operator thereof, or agent or employee, access to any part of such structure or its premises at reasonable times for the purpose of making such inspection, maintenance, repairs or alterations as are necessary to comply with this chapter.

(f) *Credentials.* — The code official or the code official's authorized representative shall disclose proper evidence of the official's or representative's respective office for the purpose of demonstrating authority to inspect any and all buildings and premises in the performance of duties under this chapter.

(g) *Rulemaking authority.* — The code official shall have power, as may be necessary in the interest of public safety, health and general welfare, to adopt and promulgate rules and regulations to interpret and implement this chapter to secure the intent thereof and to designate requirements applicable because of local climatic or other conditions.

(h) *Annual report.* — At least annually, the code official shall submit to the chief executive of the community or State a written statement of activities in a form and content as shall be prescribed by the chief executive of that jurisdiction.

(65 Del. Laws, c. 153, § 1; 67 Del. Laws, c. 386, § 10; 70 Del. Laws, c. 186, § 1.)

§ 4127. Condemnation.

(a) *In general.* — When a structure is found by the code official to be unsafe, or when a structure or part thereof is found unfit for human occupancy or use, it may be condemned pursuant to this chapter and may be placarded and vacated. Such condemned structure shall not be reoccupied without approval of the code official, but such approval may not be withheld upon completion of specified corrections of violations.

(b) *Unsafe structure.* — An unsafe structure is one in which all or part thereof is found to be dangerous to life, health, property or the safety of the public or the structure's occupants because it is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation that it is likely to partially or completely collapse.

(c) *Unsafe equipment.* — Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that it is found to be a hazard to life, health, property or safety of the public or occupants of the premises or structure. Unsafe equipment may contribute to the finding that the structure is unsafe or unfit for human occupancy or use.

(d) *Structure unfit for human occupancy.* — A structure is unfit for human occupancy or use whenever the code official finds that it is unsafe or, because it lacks maintenance and is in extreme disrepair, is unsanitary, vermin- or rat-infested, contains filth and contamination or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this chapter.

(e) *Closing of vacant structures.* — If the structure or part thereof is vacant and unfit for human habitation, occupancy or use, and is not in danger of structural collapse, the code official may post a placard of condemnation on the premises and may order the structure closed up so it will not be an attractive nuisance to youngsters. Upon failure of the owner to close up the premises within the time specified in the order, the code official shall cause it to be closed through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate in accordance with § 4134 of this title.

(65 Del. Laws, c. 153, § 1.)

§ 4128. Notices and orders.

(a) *Notice to owner or to person or persons responsible.* — Whenever the code official determines that there has been a violation of this chapter or has reasonable grounds to believe that a violation has occurred, or whenever the code official has condemned any structure or equipment under § 4127 of this title, notice shall be given to the owner or the person or persons responsible therefor in the manner prescribed below. If the code official has condemned the property or part thereof, the code official shall give notice to the owner and to the occupants of the intent to placard and to order vacation of the premises or to order equipment out of service.

(b) *Form.* — Such notice shall:

(1) Be in writing;

(2) Include a description of the real estate sufficient for identification;

(3) Include a statement of the reason or reasons why it is being issued;

(4) Include a correction order allowing a reasonable time for the repairs and improvements required to bring the dwelling unit or structure into compliance with this chapter; and

(5) Include state penalties for noncompliance.

(c) *Service.* — Such service shall be deemed properly served upon such owner and/or occupant if a copy thereof is delivered to the owner and/or occupant personally; or by leaving the notice at the usual place or abode, in the presence of someone in the family of suitable age and discretion who shall be informed of the contents thereof; or by certified or registered mail service addressed to the owner and/or occupant at the last known address. If the owner, agent or person in control is not found, a copy of the notice posted in a conspicuous place on the premises shall be deemed the equivalent of personal service, upon posting. Any notice herein shall, if mailed, be deemed to be effective upon mailing.

(d) *Service on occupant.* — When a condemnation order is served on an occupant other than the owner or person responsible for such compliance, a reasonable time to vacate the property after noncompliance shall be stated. Owners or persons responsible for compliance must vacate at the time set for correction of defects if there is failure of compliance.

(e) *Penalties.* — Failure to comply with orders and notices shall be subject to the penalties set forth in § 4131(b) of this title.

(f) *Transfer of ownership.* — It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such property to another until the compliance order or notice of violation has been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the code official and shall furnish to the code official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

(65 Del. Laws, c. 153, § 1; 67 Del. Laws, c. 386, §§ 11, 12; 70 Del. Laws, c. 186, § 1.)

§ 4129. Placarding.

(a) *Placarding of structure.* — After the condemnation notice required under this chapter has resulted in an order by virtue of failure to comply within the time given, the code official may post on the premises or structure or parts thereof, or on defective equipment, a placard bearing the words “Condemned as unfit for human occupancy or use,” and a statement of the penalties provided for any occupancy or use or for removing the placard. The owner or the person or persons responsible for the correction of violations and all other occupants shall remove themselves from the property on failure to comply with the correction order in the time specified.

(b) *Use following placarding prohibited.* — Any person who shall occupy a placarded premises or structure or part thereof, or shall use placarded equipment, and any owner or any person responsible for the premises who shall let anyone occupy a placarded premises shall be subject to the penalties set forth in § 4131(b) of this title.

(c) *Removal of placard.* — The code official shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the code official shall be subject to the penalties provided by this chapter.

(65 Del. Laws, c. 153, § 1.)

§ 4130. Emergency orders.

(a) *In general.* — Whenever a code official finds that an emergency exists on any premises, or in any structure or part thereof or on any defective equipment which requires immediate action to protect the public’s health and safety or that of the occupants thereof, the code official may, with proper notice and service in accordance with § 4128 of this title, issue an order reciting the existence of such an emergency and requiring the vacating of the premises or such action taken as the code official deems necessary to meet such emergency. Notwithstanding other provisions of this chapter, such order shall be effective immediately, and the premises or equipment involved shall be placarded immediately upon service of the order.

(b) [Repealed.]

(65 Del. Laws, c. 153, § 1; 67 Del. Laws, c. 386, § 13.)

§ 4131. Violations.

(a) *Unlawful acts.* — It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, remove, demolish, use or occupy any structure or equipment regulated by this chapter, or cause same to be done, contrary to or in conflict with or in violation of this chapter.

(b) *Penalty for violation; jurisdiction.* — Any person who shall violate this chapter or who fails to comply with any notice or order issued by a code official pursuant to this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25 nor more than $1,000 or imprisoned for a term not to exceed 30 days, or both. Each day of a separate and continuing violation

shall be deemed a separate offense under this section. The Justice of the Peace Court in the county in which the property is located shall have exclusive jurisdiction over offenses prosecuted under this chapter.

(c) *Prosecution.* — In the event any violation order is not promptly complied with, a code official with constable powers pursuant to § 2901 of Title 10, may issue a citation, and in cases involving first offenders of this Code, may assess a fine of $100 or, in the alternative, may direct that the owner or occupant appear in the court of law having jurisdiction over the alleged violation. In those jurisdictions in which the code officials do not have constable powers, the code official may institute an action in the appropriate court, or may request the city solicitor or community attorney-at-law to institute such action to seek the penalties provided in subsection (b) of this section.

(65 Del. Laws, c. 153, § 1; 67 Del. Laws, c. 93, § 1; 67 Del. Laws, c. 386, §§ 14, 15.)

§ 4132. Demolition.

(a) *In general.* — The code official may order the owner of premises upon which is located any structure or part thereof, which in the code official's judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation, occupancy or use, so that it would be unreasonable to repair the same, to raze and remove such structure or part thereof; or, if it can be made safe by repair, to repair and make safe and sanitary or to raze and remove at the owner's option; or, where there has been a cessation of normal construction of any structure for a period of more than 2 years, to raze and remove such structure or part thereof.

(b) *Order.* — The order shall specify a time in which the owner shall comply therewith and specify repairs, if any. It shall be served on the owner of record or an agent where an agent is in charge of the building and upon the holder of any lien in the manner provided for service of a summons by a court of record. If the owner or a holder of a lien of record cannot be found, the order may be served by posting it on the main entrance of the building and by publishing it once each week for 3 successive weeks in a newspaper of general circulation in accordance with the rules of the Justice of the Peace Court.

(c) *Restraining actions.* — Anyone affected by any such order may, within 30 days after service of such order, apply to a Justice of the Peace Court for an order restraining the code official from razing and removing such structure or parts thereof. The Court shall determine whether the order of the code official is reasonable, and if found unreasonable, the court may issue a restraining order.

(d) *Failure to comply.* — Whenever the owner of a property fails to comply with a demolition order within the time prescribed, the code official shall cause the structure or part thereof to be razed and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such razing and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate as provided in § 4134 of this title.

(e) *Salvage materials.* — When any structure has been ordered razed and removed the code official or other designated officer may sell the salvage and valuable materials resulting from such razing or removal, such materials to be sold at the highest price obtainable. The net proceeds of such sale, after deducting the expenses of such razing and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the use of the person who may be entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

(65 Del. Laws, c. 153, § 1; 67 Del. Laws, c. 93, §§ 2, 3; 67 Del. Laws, c. 386, § 16.)

§ 4133. Creation of tax lien.

There is hereby created a tax lien on real property for moneys expended by the State, or a community, for razing, demolition, removal or repairs of buildings or abatement of other unsafe conditions constituting a threat to the public health and safety where the responsible party refuses or fails to comply with the lawful order of the code official after due notice thereof, either actual or constructive. Upon certification of a tax lien to the appropriate state or community official by the code official, the amount of such lien shall be recorded and collected in the same manner as other county real estate taxes, and paid to the State or community, when collected, by the appropriate county government.

(65 Del. Laws, c. 153, § 1; 67 Del. Laws, c. 386, § 16.)

§ 4134. Violation of existing ordinance, code or regulation.

This chapter shall not affect violations of any other ordinance, code or regulation of the State, county or municipality existing prior to July 12, 1985, and any such violation shall be governed and shall continue to be enforced to the full extent of the law under such ordinances, codes or regulations in effect at the time the violation was committed.

(65 Del. Laws, c. 153, § 1; 67 Del. Laws, c. 386, § 16.)

§ 4135. Violation of existing ordinance, code or regulation [Transferred].

Transferred.

Part III
Housing and Slum Clearance
Chapter 42
Universal Design Standards for Affordable Housing

§ 4201. Standards.

All applications for public financial assistance to be used in the construction of new dwelling units shall include the extent of the proposed construction's use of the standards of universal design found in this chapter. This chapter does not apply to redevelopment or rehabilitation of existing structures, to multi-family housing as defined by the U.S. Department of Housing and Urban Development, or to public financial assistance in the form of grants, loans, or tax credits provided to individual homeowners using the dwelling unit as a residence. During the process of appropriating the public financial assistance, the extent of the proposed construction's use may constitute a basis of best value, and the invitation to bid must so indicate. This section is in addition to any requirements of any other statute or regulation governing the bidding and construction of dwelling units as defined.

(78 Del. Laws, c. 368, § 5.)

§ 4202. Definitions.

As used in this chapter, the following terms shall mean:

(1) "Accessible level" shall mean the first floor of the dwelling unit.

(2) "Accessible route" shall mean a continuous, unobstructed path that complies with § 4204 of this title. With the exception of ramped surfaces, all portions of an accessible route shall have a slope less than 5% parallel to travel, have a cross slope of less than 2%, and shall be at least 42 inches wide. An accessible route shall be free of any protruding object.

(3) "Administering entity" shall mean any state agency, local government, municipality or any instrumentality thereof responsible for the process by which public financial assistance is allocated, distributed, conveyed, contracted, or appropriated or any entity performing those duties on behalf of any state agency, local government, municipality, or any instrumentality thereof.

(4) "Dwelling unit" shall mean any single family residence and each individual living unit in a duplex or triplex, or semi-detached residential building which is constructed with public financial assistance.

(5) "Point" or "points" shall mean the amount of credit given, out of a possible total of 41, for calculating an application's Universal Design Standards compliance for purposes of this chapter.

(6) "Primary bathroom" shall mean a bathroom that provides a toilet, lavatory, and tub/shower or shower.

(7) "Public financial assistance" shall mean:

a. A building contract or similar contractual agreement with any state agency;

b. Any real estate received by the owner through a donation by the State;

c. State tax credits;

d. Grant assistance from state funds;

e. State loan guarantees;

f. Federal funds administered by the State, a state agency, local government, or municipality; or

g. Funding by municipalities and other local governments or their agencies and instrumentalities;

but does not include loans and grants from any public entity to individual homeowners.

(8) "Ramp" shall mean a surface with a running slope more than 1:20 and equal to or less than 1:12, and a cross slope less than 1:50. Handrails shall be required on both sides of the ramp.

(78 Del. Laws, c. 368, § 5.)

§ 4203. Dwelling unit no-step entry.

(a) The dwelling unit may provide at least 1 primary no-step entry, valued at 8 points if it complies with the following:

(1) A door width and type that is 36 inches wide, at a minimum, with a standard pivot or hinged door;

(2) A maximum threshold height that is $^1/_2$ inch beveled or $^1/_4$ inch squared; and

(3) The no-step entry may be achieved through the addition of a permanent ramp on the outside of the dwelling unit when grading prevents reasonable no-step entry otherwise.

(b) A primary no-stop entry sheltered from weather with an overhang shall be valued at an additional 2 points.

(78 Del. Laws, c. 368, § 5.)

§ 4204. Interior accessible route; interior doors, doorways, and hallways.

The dwelling unit may provide for an accessible route running through the interior of the dwelling unit, valued at 8 points if it complies with the following:

(1) The accessible route shall be continuous through all spaces within the dwelling unit and shall connect to all primary living spaces, including, but not limited to, the living room, the family room, and the dining space;

(2) The interior doors and doorways, except for closets, of the dwelling unit shall provide a clear opening with a minimum width of 36 inches; and

(3) The hallways of the dwelling unit shall be at least 42 inches wide.

(78 Del. Laws, c. 368, § 5.)

§ 4205. Bathroom.

(a) The bathroom shall be on an accessible level and be connected to the accessible route.

(b) The bathroom shall have at least a 60-inch diameter turning space, valued at 1 point.

(c) The bathroom shall have a barrier-free shower stall (2 points), raised toilet seat height of at least 16 inches (1 point), 29 inches of knee space under the lavatory (1 point), ADA compliant faucets (1 point), hand-held shower (1 point), and grab bars (2 points) or grab bar blocking for subsequently mounting a grab bar (allocated 1 point instead of 2 points for the actual grab bars in place).

(78 Del. Laws, c. 368, § 5.)

§ 4206. Bedrooms.

The dwelling unit may provide at least 1 primary bedroom or room that can easily be converted to a primary bedroom within the dwelling unit on the accessible level and connected to the accessible route, valued at 7 points.

(78 Del. Laws, c. 368, § 5.)

§ 4207. Kitchen.

(a) The kitchen shall be on an accessible level and be connected to the accessible route.

(b) The kitchen in the dwelling unit shall have at least a 60-inch diameter turning space valued at 1 point.

(c) The kitchen in the dwelling unit shall have all pull-out shelving valued at 1 point.

(78 Del. Laws, c. 368, § 5.)

§ 4208. Hardware.

(a) With the exception of panel boxes and HVAC filter access panels, all door hardware, cabinet hardware, faucets, bath and shower valves, diverters, and similar items throughout the dwelling unit shall be lever and wire handles or D-pull handles. Such items shall operate easily by using a single closed fist and shall be valued at 2 points.

(b) Luminous rocker or toggle light switches, valued at 1 point, shall be mounted 36 to 42 inches above the finished floor throughout the dwelling unit, for a separate value of 1 point.

(78 Del. Laws, c. 368, § 5.)

§ 4209. Implementation of this chapter.

The administering entity shall comply with this chapter by incorporating points as calculated herein into its process for approving the use of public financial assistance for the construction of new dwelling units. The points for Universal Design Standards may be scaled to fit the individual process but shall be given a significant weight as compared to other scoring categories. Tenths of a point may be awarded to account for compliance with this chapter for a corresponding portion of the total development. The administering entity shall enforce compliance with the standards included in the application for public financial assistance during construction of the dwelling unit. The administering entity may include universal design standards incentives or requirements in excess of the provisions of this chapter.

(78 Del. Laws, c. 368, § 5.)

§ 4210. Other applicable law or regulation.

This chapter does not limit or supplant requirements, rights, or remedies which are otherwise applicable or available under any other building code, disabilities rights statute, or any other applicable law or regulation. To the extent any other applicable law or regulation contains more stringent standards and requirements, that law or regulation controls.

(78 Del. Laws, c. 368, § 5.)

Part III
Housing and Slum Clearance

Chapter 43
Housing Authority

§ 4301. Definitions.

As used in this chapter, unless a different meaning appears from the context:

(1) "Area" or "area of operation" means the county or part of the county in and with respect to which an authority shall be created.

(2) "Authority" or "housing authority" means a corporate body organized in accordance with the provisions of this chapter for the purposes, with the powers and subject to the restrictions set forth in this chapter.

(3) "Bureau" means the State Bureau of Housing.

(4) "Commissioner" means 1 of the members of an authority appointed in accordance with the provisions of this chapter.

(5) "Community facilities" includes lands, buildings and equipment for recreation or social assembly, for educational, health or welfare activities and other necessary utilities primarily for use and benefit of the occupants of housing accommodations to be constructed and operated under this chapter.

(6) "DSHA" means the Delaware State Housing Authority.

(7) "Government" includes the state and federal governments, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(8) "Housing project" or "project" means any work or undertaking:

a. To demolish, clear or remove buildings from any slum area acquired by the authority;

b. To provide decent safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment facilities, and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, utilities, parks, site preparation, landscaping, administrative, community, health, recreational, welfare or other purposes; or

c. To accomplish a combination of the foregoing. The term "housing project" or "project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith; and the term shall include all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.

(9) "Persons of low income" means persons or families who lack the amount of income which is necessary, as determined by the authority undertaking a project, to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(10) "Slum" means any area where dwellings predominate which by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to safety, health and morals.

(39 Del. Laws, c. 16, § 2; Code 1935, § 5454; 48 Del. Laws, c. 117, §§ 1, 2; 31 Del. C. 1953, § 4301; 52 Del. Laws, c. 126, § 1; 56 Del. Laws, c. 293, § 2; 57 Del. Laws, c. 679, § 5A; 71 Del. Laws, c. 357, § 7.)

§ 4302. Legislative purpose.

It is as a matter of legislative determination that, in order to promote and protect the health, safety, morals and welfare of the public, it is necessary in the public interest to provide for the creation of public corporate bodies to be known as housing authorities, and to confer upon and vest in such housing authorities all powers necessary or appropriate in order that they may engage in low-rent housing and slum clearance projects, and that the powers herein conferred upon the housing authorities, including the power to acquire property, to remove unsanitary or substandard conditions, to construct and operate housing accommodations and to borrow, expend and repay moneys for the purposes set forth in this chapter are public objects essential to the public interest.

(39 Del. Laws, c. 16, § 3; Code 1935, § 5455; 31 Del. C. 1953, § 4302.)

§ 4303. Creation of authority; appointment and removal of commissioners; area of operation.

Whenever DSHA shall have determined that there is need for a housing authority in any county or in any part of a county of the State, it shall issue to each appointing officer named in this chapter a certificate of such determination, describing the area of operation of the proposed authority, and as soon as possible thereafter an authority shall be created by the appointment of commissioners who shall constitute the authority, all of whom shall be residents of the area in which the authority operates. In the case of a New Castle County housing authority, there shall be 7 commissioners who shall be appointed by the County Executive with the advice and consent of the County Council, no more than a bare majority of the commissioners shall be affiliated with any 1 major political party, 1 member shall serve as chairperson and shall serve at the pleasure of the County Executive, 6 members shall serve for terms of 3 years each; provided,

that the terms of the original members shall be established in a manner that 2 shall expire each year, and that 1 member from each council district shall be represented on the commission. Except as otherwise provided in this chapter, in the case of authorities other than a New Castle County housing authority, there shall be 6 commissioners who shall be appointed as follows: 3 by the Governor for initial terms of 6 years, 4 years and 3 years respectively, 3 by the mayor of the most populous incorporated city or town in the area of operation in accordance with the last federal census for initial terms of 5 years, 2 years and 1 year respectively. Not more than 2 appointees of the Governor or of the mayor at any 1 time shall be from the same political party or subdivision thereof. The terms of the commissioners appointed before July 1, 1959, shall continue until the expiration of the terms thereof, the first occurring appointment to succeed the appointee of the resident judge shall be made by the mayor, the second occurring appointment to succeed the appointee of the resident judge shall be made by the Governor.

Forthwith upon the appointment of the original commissioners, the appointing officers shall execute and file or cause to be filed in the office of the Secretary of State a certificate or certificates stating that such appointments have been duly made and setting forth the name and term of office of each commissioner. Such certificate or certificates shall be conclusive evidence of the due and proper creation of the authority. Each appointing officer shall execute and file or cause to be filed in the office of the Secretary of State a certificate with respect to each appointment of a successor commissioner stating the fact of such appointment and setting forth the name of the successor commissioner and the successor commissioner's term of office. The respective appointing officers shall appoint successors to commissioners appointed by them or by their respective predecessors in office. In the case of an authority other than a New Castle County housing authority, each successor commissioner shall be appointed to hold office in the case of a vacancy for the unexpired term, or, in the case of expiration, for a term of 6 years or until a successor shall have been appointed and qualified. In the case of a New Castle County housing authority, each successor commissioner shall be appointed to hold office in the case of a vacancy for the unexpired term, or, in the case of expiration of a term, for a term of 3 years from the date of expiration of such term or until a successor shall have been appointed and qualified.

In the case of an authority other than a New Castle County housing authority, the Governor and the mayor by unanimous vote may remove a commissioner of the authority for official misconduct, neglect of duty or incompetence, but only after the commissioner shall have been given a copy of the charges against the commissioner and an opportunity to be heard in person or by counsel in the commissioner's own defense; pending the determination of the charges against the commissioner, the Governor and the mayor by unanimous vote may suspend the commissioner from office. A copy of the charges and the result of the hearing shall be forwarded to DSHA.

In the case of a New Castle County housing authority, the County Executive, with the advice and consent of County Council, may remove a commissioner of the authority for official misconduct, neglect of duty or incompetence, but only after the commissioner shall have been given a copy of the charges against the commissioner and an opportunity to be heard in person or by counsel in the commissioner's own defense; pending the determination of the charges against the commissioner, the County Executive with the advice and consent of County Council by unanimous vote may suspend the commissioner from office. A copy of the charges and the result of the hearing shall be forwarded to the Department.

(39 Del. Laws, c. 16, § 4; Code 1935, § 5456; 48 Del. Laws, c. 339, § 1; 31 Del. C. 1953, § 4303; 52 Del. Laws, c. 126, §§ 2-4; 56 Del. Laws, c. 293, § 2; 57 Del. Laws, c. 679, § 5B; 58 Del. Laws, c. 161, § 2; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 340, § 1.)

§ 4304. Wilmington Housing Authority.

The Wilmington Housing Authority shall consist of 9 commissioners, 7 of whom shall be appointed by the Mayor of the City of Wilmington, 1 of whom shall be appointed by the Governor and 1 of whom shall be appointed by the County Executive of New Castle County. Each commissioner shall serve for a term of 3 years unless replaced before 3 years by an interim commissioner.

Notwithstanding any provisions of this chapter to the contrary, a Wilmington Housing Authority commissioner or interim commissioner shall serve at the pleasure of the person who appointed that commissioner or interim commissioner, and may be removed, with or without cause, by the appointing person. In the event of death, disability, resignation, or removal of a commissioner or interim commissioner before the expiration of that commissioner's or interim commissioner's term, the appointing person may appoint an interim commissioner to complete the term.

(31 Del. C. 1953, § 4303A; 58 Del. Laws, c. 139; 59 Del. Laws, c. 323, § 1; 64 Del. Laws, c. 390, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 9, § 1; 84 Del. Laws, c. 155, § 1.)

§ 4304A. Newark Housing Authority.

The Newark Housing Authority shall consist of 7 commissioners, 4 of whom shall be appointed by the Mayor of the City of Newark, and 3 of whom shall be appointed by the Governor. Each commissioner shall serve for a term of 3 years unless replaced by an interim commissioner before the expiration of the 3-year term.

A Newark Housing Authority commissioner or interim commissioner shall serve at the pleasure of the person who appointed the commissioner or interim commissioner, and may be suspended or removed by the appointing authority for misfeasance, nonfeasance, malfeasance, misconduct, incompetence, or neglect of duty. A commissioner may appeal any suspension or removal to the Superior Court by filing an appeal within 30 days of the suspension or removal decision.

A commissioner who is absent without adequate reason for 3 consecutive meetings, or who fails to attend at least half of all regular business meetings during any calendar year, shall be guilty of neglect of duty.

In the event of the death, disability, resignation, or removal of a commissioner or interim commissioner before the expiration of the commissioner's or interim commissioner's term, the appointing authority may appoint an interim commissioner to complete the term.

(77 Del. Laws, c. 340, § 2.)

§ 4305. Interest of authority member or employee in projects.

No member or employee of an authority shall acquire any interest, direct or indirect, in a project or in any property then or thereafter included or planned to be included in a project, nor retain any interest direct or indirect in any property acquired subsequently to the member's or employee's appointment or employment which is later included or to the member's or employee's knowledge planned to be included in a project, nor shall the member or employee have any interest, direct or indirect, in any contract or proposed contract for materials or services to by furnished or used in connection with any project. If any member or employee of an authority owns or controls an interest, direct or indirect, in any property included in any project, which was acquired prior to the member's or employee's appointment or employment, the member or employee shall disclose such interest and the date of acquisition thereof in writing to the authority, and such disclosure shall be entered upon the minutes of the authority.

(39 Del. Laws, c. 16, § 5; Code 1935, § 5457; 31 Del. C. 1953, § 4304; 70 Del. Laws, c. 186, § 1.)

§ 4306. Organization by commissioners; quorum; employment of assistants.

As soon as possible after the creation of an authority, the commissioners shall organize for the transaction of business by choosing from among their number a chairperson and vice-chairperson and by adopting bylaws and rules and regulations suitable to the purposes of this chapter. Three commissioners shall constitute a quorum for the purpose of organizing the authority and conducting the business thereof. The commissioners shall, from time to time, select and appoint such officers and employees, including a director to be ex officio secretary, and engineering, architectural and legal assistants, as they may require for the performance of their duties, and shall prescribe the duties and compensation of each officer and employee.

(39 Del. Laws, c. 16, § 6; Code 1935, § 5458; 31 Del. C. 1953, § 4305; 70 Del. Laws, c. 186, § 1.)

§ 4307. Compensation and expenses of commissioners.

No commissioner shall receive any compensation, whether in form of salary, per diem allowances or otherwise, for or in connection with the commissioner's services as such commissioner. Each commissioner shall, however, be entitled to reimbursements, to the extent of appropriations or other funds available therefor, for any necessary expenditures in connection with the performance of the commissioner's general duties or in connection with the construction or operation of any project. The authority may allocate such expenses among its project in such manner as it may consider proper.

(39 Del. Laws, c. 16, § 7; Code 1935, § 5459; 31 Del. C. 1953, § 4306; 70 Del. Laws, c. 186, § 1.)

§ 4308. Powers of authority.

(a) An authority shall constitute a body both corporate and politic, exercising public powers and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others granted in this chapter:

(1) To investigate into living and housing conditions in its area of operations and into the means and methods of improving such conditions; to determine where unsanitary or substandard housing conditions exist; to study and make recommendations concerning the plans of the area of operations in relation to the problems of clearing, replanning and reconstruction of areas in which unsanitary or substandard conditions exist, and the providing of housing accommodations for persons of low income, and to cooperate with any city, regional or state planning agency;

(2) To prepare, carry out and operate projects; to provide for the construction, reconstruction, improvement, alteration or repair of any project or any part thereof; to take over by purchase, lease, or otherwise any project undertaken by any government; to act as agent for the federal government in connection with the acquisition, construction, operation or management of a project or any part thereof; to arrange with any government within the area of operation for the furnishing, planning, replanning, opening or closing of streets, roads, roadways, alleys, parks or other places or public facilities or for the acquisition by any government or any agency, instrumentality or subdivision thereof, including, specifically, the Federal Emergency Administration of Public Works and the Public Works Emergency Housing Corporation, of property, options or property rights or for the furnishing of property or services in connection with a project;

(3) To lease or rent any of the housing or other accommodations, or any of the lands, buildings, structures or facilities embraced in any project and to establish and revise the rents or charges therefor; to purchase, lease, obtain options upon, acquire by eminent domain or otherwise, sell, exchange, transfer, assign, mortgage or pledge any property, real or personal or any interest therein from any person, firm, corporation or any municipal state, or federal government or any agency, instrumentality or subdivision thereof, including specifically, the Federal Emergency Administration of Public Works and the Public Works Emergency Housing Corporation, by gift, grant, bequest or devise; to own, hold, clear and improve property; in its discretion to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable;

(4) To borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by mortgage upon property held or to be held by it or by pledge of its revenues, or in any other manner, and in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this chapter; to invest any funds held in reserves or sinking funds, or in any funds not required for immediate disbursements in state or federal securities;

(5) To sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this chapter, and to carry into effect the powers and purposes of the authority;

(6) To enter upon any building or property in order to conduct investigations or to make surveys or soundings; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the authority, or excused from attendance; and to do all things necessary or convenient to carry out the powers given in this chapter.

(b) Any of the investigations or examinations provided for in this chapter may be conducted by the authority or by a committee appointed by it, consisting of 1 or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions. Any authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific project or projects, through or by any agent or agents which it may designate.

(39 Del. Laws, c. 16, § 8; Code 1935, § 5460; 31 Del. C. 1953, § 4307.)

§ 4309. Agreements with federal government.

An authority may, in connection with the borrowing of funds, or otherwise, enter into any agreement with the federal government or any agency or subdivision thereof providing for supervision and control of the authority of any project, and containing such covenants, terms and conditions as the authority may deem advisable.

(39 Del. Laws, c. 16, § 14; Code 1935, § 5466; 31 Del. C. 1953, § 4308.)

§ 4310. Transfer of property to authority by municipalities.

Any city, village or incorporated town included in the area of operation of an authority may sell, convey or lease any of its interest in any property or grant easements, licenses or any other rights or privileges therein or with respect thereto to the authority, irrespective of the purposes for which such property or such interest therein may have been acquired. Such city, village or incorporated town is authorized to sell any such property, property rights or interest therein to the authority at private sale without advertisement or competitive bidding, and, in the case of property, property rights or interest therein devoted or dedicated to a public use, the city, village or incorporated town is authorized to make grants to the authority on such terms and under such conditions as it deems advisable. The authority may acquire and accept any such property, property rights or interest therein as it deems necessary or desirable in the development of a project pursuant to this chapter.

(39 Del. Laws, c. 16, § 9; Code 1935, § 5461; 42 Del. Laws, c. 162; 31 Del. C. 1953, § 4309.)

§ 4311. Condemnation procedure.

Whenever the housing authority cannot agree with the owner of any land, building, franchise, easement or other property necessary to be taken or used in the construction, reconstruction or maintenance of any housing project or proposed housing project, which the housing authority constructs, reconstructs or otherwise improves, or proposes to construct, reconstruct or otherwise improve, for the purpose thereof, the housing authority may exercise the power of eminent domain by proceeding in accordance with Chapter 61 of Title 10.

(39 Del. Laws, c. 16, § 10; Code 1935, § 5462; 31 Del. C. 1953, § 4310.)

§ 4312. Property as public property.

All property, both real and personal, acquired, owned, leased, rented or operated by an authority is deemed public property for public use.

(39 Del. Laws, c. 16, § 11; Code 1935, § 5463; 31 Del. C. 1953, § 4311.)

§ 4313. Projects subject to zoning regulations.

All projects of an authority shall be subject to the comprehensive development plan, including the housing component thereof, planning, zoning, sanitary, and building laws, ordinances and regulations applicable to the locality in which the project is to be situated.

(39 Del. Laws, c. 16, § 12; Code 1935, § 5464; 31 Del. C. 1953, § 4312; 58 Del. Laws, c. 161, § 3.)

§ 4314. Issuance of evidences of indebtedness; rights of creditors.

Subject to the restrictions set forth in this chapter, an authority may incur any indebtedness, issue any obligations and give any security therefor which it deems necessary or advisable in connection with any project undertaken by it under this chapter. Authorization for the issuance of bonds shall be made by resolution of the authority and the bonds shall be signed by any agent whom the authority designates.

The bonds, notes or other evidences of indebtedness executed by an authority shall not be a debt or charge against the State, county, municipality, or any subdivision or agency or instrumentality thereof other than the authority, and no individual liability shall attach for any lawful official act done by any commissioner, but a commissioner shall be liable for the commissioner's own malfeasance. The rights of creditors of an authority shall be solely against such authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity, and the enforcement of such rights shall be subject to all the provisions of Part III of this title.

(39 Del. Laws, c. 16, § 13; Code 1935, § 5465; 31 Del. C. 1953, § 4313; 70 Del. Laws, c. 186, § 1.)

§ 4315. Supervision of projects by the DSHA.

Whenever any project of any agency, including public or private organizations or corporations, is financed in whole or in part by this State pursuant to Chapter 40 of this title, the Housing Director of DSHA may:

(1) Order any agency undertaking or operating a project to make, at its expense, such repairs and improvements as will preserve or promote the health and safety of the occupants of buildings and structures owned or operated by such agency;

(2) Order all such agencies to do such acts as may be necessary to comply with the law, the rules and regulations adopted by the Housing Director by the terms of any project approved by the Housing Director, or to refrain from doing any acts in violation thereof;

(3) Examine all such agencies and keep informed as to their general condition, their capitalization and the manner in which their property is constructed, leased, operated or managed;

(4) By the Housing Director's duly authorized agents, enter in or upon and inspect the property, equipment, buildings, plants, offices, apparatus and devices of any such agency, examine all books, contracts, records, documents and papers of any such agency and, by subpoena duces tecum issued by DSHA, compel the production thereof;

(5) In the Housing Director's discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such agencies and to prescribe or order accounts in which particular outlays and receipts shall be entered, charged or credited;

(6) Require every such agency to file with DSHA an annual report setting forth such information as the Housing Director may require verified by the oath of a duly authorized representative of the agency. Such report shall be in the form, cover the period and be filed at the time prescribed by the Housing Director. The Housing Director may further require answers to questions upon which the Housing Director or DSHA may desire information and may also require such agency to file periodic reports in the form covering the period at the time prescribed by the Housing Director;

(7) From time to time make, amend and repeal rules and regulations for carrying into effect this chapter.

(31 Del. C. 1953, § 4314; 56 Del. Laws, c. 293, § 3; 57 Del. Laws, c. 679, §§ 5B, 5C; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 357, §§ 9-16.)

§ 4316. Material and labor contracts; bids.

All materials furnished to and all labor for an authority in excess of the probable cost of $500, except materials and labor used in the maintenance and operation of housing projects and employees directly under the authority, shall be supplied or done under contract made after competitive bids have been requested and submitted.

(39 Del. Laws, c. 16, § 18; Code 1935, § 5470; 31 Del. C. 1953, § 4317.)

§ 4317. Dissolution.

Whenever an authority desires to discontinue its operations, it shall make application to DSHA for permission to dissolve. Permission to dissolve shall be given only upon the showing, satisfactory to DSHA, that all projects undertaken by the authority have been completed or abandoned with the approval of DSHA, that provision satisfactory to a majority of its creditors, holding a majority in the amount of claims, has been made, and that the continued existence of the authority would not serve the public interest. Notice of such application for permission to dissolve shall be given to all creditors of the authority in such manner as DSHA approves. If the application to dissolve is granted, DSHA shall either (1) designate an agent to take possession of the authority, to dispose of all of its property in the manner authorized herein, and, after paying or making provisions for the debts and liabilities of the authority and the expenses of dissolution, pay the balance remaining, if any, into the General Fund of the State; or (2) DSHA may, after proper provision has been made for paying or meeting the debts and liabilities of an authority and the expenses of dissolution, approve an agreement conveying the property of the authority to the State, provided that no debt or obligation of the authority shall become the debt or obligation of the State by virtue of such conveyance, unless expressly assumed by the State.

(39 Del. Laws, c. 16, § 19; Code 1935, § 5471; 31 Del. C. 1953, § 4318; 57 Del. Laws, c. 679, § 5B; 71 Del. Laws, c. 357, § 17.)

§ 4318. Tax exemption; payments in lieu of taxes.

The property of an authority is declared to be public property used for essential public purposes, and such property and an authority shall be exempt from all taxes and assessments of the city, the county, the State or any political subdivision thereof. In lieu of such taxes an authority may agree to make annual payments to such city or county for improvements, services and facilities furnished by such city or county for the benefit of the housing project, in amounts not to exceed the regular taxes which would be levied on such projects by the aforesaid taxing bodies if the project were not exempt therefrom. Bonds and other obligations of an authority are declared to be issued for

an essential public and governmental purpose and to be public instrumentalities, and together with interest thereon and income therefrom, shall be exempt from taxes.

(Code 1935, § 5471A; 43 Del. Laws, c. 241, § 1; 31 Del. C. 1953, § 4319; 56 Del. Laws, c. 108, § 1.)

§ 4319. Exemption from execution sale.

All real property of an authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against an authority be a charge or lien upon its real property. This section shall not apply to or limit the right of bondholders or other obligees of an authority to pursue any remedies for the enforcement of any pledge or lien given to them on its rents, fees or revenues or any mortgage of or agreement to sell a project given as security for any bonds or other obligations of the authority.

(Code 1935, § 5471B; 43 Del. Laws, c. 241, § 1; 31 Del. C. 1953, § 4320.)

§ 4320. Form and sale of bonds.

Bonds, notes and certificates of indebtedness of an authority may be issued in 1 or more series, may bear such date or dates, may mature at such time or times from their respective dates, may bear interest at such rate or rates not in excess of 4% over the discount rate charged by the Federal Reserve Board of Governors to its member banks, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without a premium, may be declared or become due before the maturity date thereof, may provide for the replacement of mutilated, destroyed, stolen or lost bonds, may be authenticated in such manner and upon compliance with such conditions, may be payable from such income of the authority upon such terms, may be secured in such manner, may provide for such rights and remedies upon their default, and may contain such other covenants, terms and conditions (including, without being limited to the foregoing) as may be provided by resolution or resolutions of the authority or any trust indenture authorized thereby. Notwithstanding the former tenor thereof, and in the absence of an express recital on the face thereof that the bonds or notes are nonnegotiable, all bonds of an authority shall at all times be and shall be treated as negotiable instruments for all purposes. Such bonds, notes and certificates shall be sold at not less than par at public sale held after notice published once at least 5 days prior to such sale in a newspaper having a general circulation in the city or county and in a financial newspaper published in the City of Wilmington or in the City of New York, New York. Such bonds and other obligations may be sold to the federal government or any agency thereof at private sale at not less than par.

(Code 1935, § 5471C; 43 Del. Laws, c. 241, § 1; 31 Del. C. 1953, § 4321; 63 Del. Laws, c. 91, § 1.)

§ 4321. Authority to invest in bonds or other obligations of housing authorities.

The State and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority established pursuant to this chapter or issued by any public housing authority or agency in the United States, when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government, or any agency thereof, and such bonds and other obligations shall be authorized security for all public deposits and fully negotiable in this State. It is the purpose of this section to authorize any persons, firms corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds or other obligations and that such bonds or other obligations shall be security for public deposits and negotiable in this State. Nothing contained in this section shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities.

(44 Del. Laws, c. 186, § 1; 31 Del. C. 1953, § 4322.)

§ 4322. Additional powers of Department [Repealed].

Repealed by 71 Del. Laws, c. 357, § 18, effective July 2, 1998.

§ 4323. Inspection of housing projects located within the City of Wilmington.

(a) Every dwelling, apartment or other living accommodation owned or managed by the Wilmington Housing Authority and located within the City of Wilmington shall be subject to the comprehensive development plan, including the housing component thereof, and the planning, zoning, sanitary and building laws, ordinances and regulations of the City of Wilmington.

(b) No dwelling, apartment or other living accommodation owned or managed by the Wilmington Housing Authority and located within the City of Wilmington shall be given a Certificate of Occupancy after January 1, 2000, until such property has been determined to be in compliance with the applicable codes, ordinances and regulations of the City of Wilmington as determined by the Department of Licensing and Inspection.

(72 Del. Laws, c. 406, § 1.)

Part III
Housing and Slum Clearance

Chapter 44
Custodianship

§ 4400. Petition for custodianship.

For any Delaware State Housing Authority financed housing development, as defined by § 4001(15) of this title, the Delaware State Housing Authority may petition for the establishment of a custodianship with the Court of Chancery upon the grounds that there has existed for 5 days or more after notice to the landlord and owner:

(1) A lack of heat, lack of running water, lack of light, lack of electricity or lack of adequate sewage facilities and the rental agreement or any state or local statute, code, regulation or ordinance places a duty upon the landlord to so provide;

(2) Unsound financial condition or conditions, such that operational needs are not being met, due to mismanagement and/or malfeasance or the transaction of business without proper authority in violation of Chapter 40 of this title, and/or the rules and regulations of the Delaware State Housing Authority; or

(3) Any other condition or conditions imminently dangerous to the life, health or safety of the tenants.

(75 Del. Laws, c. 121, § 1.)

§ 4401. Parties.

(a) In a proceeding brought pursuant to § 4400 of this title, the Delaware State Housing Authority shall join as defendants:

(1) The record owner or owners at the time of the filing of the petition and/or such owner's heirs, executors, administrators or successors as existing at the time petition is filled; and

(2) Persons having an equitable or legal interest of record at the time the petition filed, including an interest to a judicial sale or a statutory sale pursuant to § 8771 et seq. of Title 9.

(b) Lien holders as persons whose real or equitable interests in the housing development may be adversely affected by a petition pursuant to this chapter shall not be deemed to be necessary parties and shall not be required to be joined as a defendants. Notice in writing, however, shall be given to the above classes of persons in the manner prescribed from time to time by the Rules of Civil Procedure of the Court of Chancery for the State.

(c) The Chancery Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof, modes of proof and the manner of notice to persons having an interest in the housing development which relate to the custodian proceedings.

(75 Del. Laws, c. 121, § 1.)

§ 4402. Defenses.

It shall be a sufficient defense to this proceeding if any defendant of record establishes that:

(1) The condition or conditions described in the petition do not exist at the time of the hearing;

(2) The condition or conditions alleged in the petition have been caused by the negligent acts of 1 or more of the tenants or members of tenants' families, or by persons on the premises with his, her or their consent; or

(3) Such condition or conditions would have been corrected, were it not for the refusal by tenant or tenants to allow reasonable access to the property in order for the landlord and/or the landlord's agent to take timely corrective action.

(75 Del. Laws, c. 121, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4403. Stay of judgment by defendant.

(a) Upon filing with the Court of Chancery, the matter shall be expedited pursuant to the process established by the Chancery Court Rules of Civil Procedure. If, after the hearing, the Court determines that the petition should be granted, the Court shall immediately enter an order thereon and appoint a custodian as authorized herein; provided however, prior to the entry of an order and appointment of a custodian, the owner or any mortgagee or the lien or of record or other person having an interest in the property may apply to the Court to be permitted to remove or remedy the conditions specified in the petition. If such person demonstrates the ability to perform promptly the necessary work and posts security for the performance thereof within the time, and in the amount and manner, deemed necessary by the Court, then the Court may stay judgment and issue an order permitting such person to perform the work within a time fixed by the Court and requiring such person to report to the Court periodically on the progress of the work. The Court shall retain jurisdiction over the matter until the work is completed.

(b) If, after the issuance of an order under subsection (a) of this section, but before the time fixed in such order for the completion of the work prescribed therein, there is reason to believe that the work will not be completed pursuant to the Court's order or that the person permitted to do the same is not proceeding with due diligence, the Court or the petitioner, upon notice to all parties to the proceeding, may move that a hearing be held to determine whether judgment should be rendered immediately as provided in subsection (c) of this section.

(c) (1) If, upon a hearing authorized in subsection (b) of this section, the Court shall determine that such party is not proceeding with due diligence, or upon the actual failure of such person to complete the work in accordance with the provisions of the order, the Court shall appoint a custodian as authorized herein.

(2) Such order shall direct the custodian to apply the security posted to executing the powers and duties as described herein.

(3) In the event that the amount of such security should be insufficient to accomplish the above objectives, such order shall direct the custodian to collect the rents, profits and issues to the extent of the deficiency. In the event that the security should exceed the amount necessary to accomplish the above objectives, such order shall direct the custodian to return the excess to the person posting the security.

(75 Del. Laws, c. 121, § 1.)

§ 4404. Custodianship procedures.

(a) The Court shall appoint a custodian qualified to carry out the responsibilities of this chapter and such custodian may be the Delaware State Housing Authority, or its successor agency, by agreement of all parties of interest pursuant to subsection (b) of this section, or otherwise by order of the Court.

(b) (1) Upon its appointment, the custodian shall make within 15 days an independent finding and recommendation to the Court as to whether or not there is proper cause shown for the need for rent to be paid to it, and for the employment of a private contractor to correct the condition complained of in § 4400 of this title and found by the Court to exist.

(2) If the custodian makes such a finding and recommendation to the Court and the Court adopts the custodian's recommendation, the custodian shall file a copy of the Court's order with the recorder of deeds of the county where the property lies and it shall be a lien on that property where the violation complained of exists.

(3) Upon completion of the aforesaid contractual work and full payment to the contractor, the custodian shall file a certification of such with the Court and the recorder of deeds of the appropriate county, and this filing shall release the aforesaid lien.

(4) The custodian shall forthwith give notice to all lien-holders of record.

(5) If the custodian shall make a finding at such time or any other time that for any reason the appointment of the custodian may not be appropriate and/or is no longer necessary, it shall make application to the Court for discharge after notice to all interested parties and, if so ordered, shall make legal distribution of any funds in its possession, including the return of any security posted pursuant to this chapter.

(75 Del. Laws, c. 121, § 1.)

§ 4405. Powers and duties of custodian.

The custodian shall have all the powers and duties accorded a custodian foreclosing a mortgage on real property, and all other powers and duties deemed necessary by the Court. Such powers and duties shall include, but are not necessarily limited to, collecting and using all rents and profits of the property, prior to and despite any assignment of rent, for the purposes of:

(1) Correcting the condition or conditions alleged in the petition;

(2) Materially complying with all applicable provisions of any federal, state, local statute, code, regulation or ordinance governing the maintenance, construction, use or appearance of the surrounding grounds;

(3) Paying all expenses reasonably necessary for the proper operation and management of the property including insurance, mortgage payments, taxes and assessments, and fees for the services of the custodian and any agent the custodian should hire;

(4) Paying the costs of the custodianship proceeding; and

(5) In accordance with the Delaware Landlord Tenant Code [Chapter 51 et seq. of Title 25], compensating the tenants for whatever deprivation of their rental agreement rights resulted from the condition or conditions alleged in the petition.

(75 Del. Laws, c. 121, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4406. Discharge of custodian; costs.

(a) In addition to those situations described in § 4404 of this title, the custodian may also be discharged when:

(1) The condition or conditions alleged in the petition have been remedied;

(2) The property materially complies with all applicable provisions of any state or local statute, code, regulation or ordinance governing the maintenance, construction, use or appearance of the surrounding grounds;

(3) The costs of the above work and any other costs as authorized herein have been paid or reimbursed from the rents and profits of the property; and

(4) The surplus money, if any, has been paid over to the owner.

(b) Upon paragraphs (a)(1) and (2) of this section being satisfied, the owner, mortgagee or any lien or may apply for the discharge of the custodian after paying to the custodian all moneys expended by the custodian and all other costs which have not been paid or reimbursed from the rents and profits of the property.

(c) If the Court determines that future profits of the property will not cover the cost of satisfying paragraphs (a)(1) and (2) of this section, the Court may discharge the custodian and order such action as would be appropriate in the situation, including but not limited to terminating the rental agreement; and may order the vacation of the development within a specified time.

(75 Del. Laws, c. 121, § 1.)

Part III
Housing and Slum Clearance
Chapter 45
Slum Clearance and Redevelopment Authority Law

§ 4501. Definitions.

As used in this chapter, unless a different meaning is clearly indicated by the context:

(1) "Area of operation" means in the case of a municipality the area within such municipality and in the case of a county, the area within the county, except that the area of operation in such case shall not include any area which lies within the territorial boundaries of a municipality unless a resolution shall have been adopted by the governing body of such municipality declaring a need therefor; and in the case of a regional authority, shall mean the area within the communities for which such regional authority is created; provided, however, that a regional authority shall not undertake a redevelopment project within the territorial boundaries of any municipality or county unless a resolution shall have been adopted by the governing body of such municipality or county declaring that there is a need for the regional authority to undertake such redevelopment project within such municipality. No authority shall operate in any area of operation in which another authority already established is undertaking or carrying out a redevelopment project without the consent, by resolution, of such other authority.

(2) "Authority" or "slum clearance and redevelopment authority" means a public body, corporate and politic, created by or pursuant to § 4503 of this title or any housing authority or community exercising the powers, rights and duties of a slum clearance and redevelopment authority pursuant to § 4503 of this title.

(3) "Blighted area" means that portion of a municipality or community which is found and determined to be a social or economic liability to such municipality or community because of any of the following conditions:

a. The generality of buildings used as dwellings, or the dwelling accommodations therein, are substandard, unsafe, unsanitary, dilapidated or obsolescent, or possess any of such characteristics, or are so lacking in light, air or space, as to be conducive to unwholesome living;

b. The discontinuance of the use of any building previously used for commercial, manufacturing, residential or industrial purposes, the abandonment of a building, or allowing a building to fall into so great a state of disrepair as to render the building untenantable and detrimental to the appraised market value of surrounding property;

c. Unimproved vacant land, which has remained so for a period of 10 years prior to the date of the public hearing as provided in § 4524 of this title, and which land by reason of its location, or remoteness from developed sections or portions of such municipality or community, or lack of means of access to such other parts thereof, topography, or nature of the soil is not likely to be developed through the instrumentality of private capital;

d. Areas (including slum areas) with buildings or improvements which by reason of dilapidation, obsolescence, deteriorated or deteriorating structures, overcrowding, faulty arrangement or design in relation to size, adequacy, accessibility or usefulness, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, predominance or defective or inadequate street layout, or any combination of these or other factors are detrimental to the safety, health, morals, or welfare of the municipality or community;

e. A growing or total lack of proper utilization of areas caused by the condition of the title, diverse ownership of the real property therein, tax or special assessment delinquency exceeding the fair value of the land, or the existence of conditions which endanger life or property by fire or other causes and other conditions, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare; and

f. Vacant or unimproved lot, parcel of ground or structure in a predominantly built-up-neighborhood, which by reason of neglect or lack of maintenance:

1. Has become a place for accumulation of trash and debris or a haven for rodents or other vermin;

2. Depreciates assessable and/or fair market value of the surrounding property, as certified by a licensed appraiser;

3. Is a public nuisance, as defined by common law or declaration in accordance with the local housing, building, plumbing, fire and related codes;

4. Is an attractive nuisance to children, as defined by common law;

5. Has had its utilities, plumbing, heating, sewerage or other facilities disconnected, destroyed, removed from the structure, or rendered ineffective so that the property is unfit for its intended use;

6. Requires a disproportionate expenditure of public funds for public health and safety, crime prevention, correction, and prosecution; and

7. Has contributed to a quantified disproportionate exodus of families and businesses from the surrounding neighborhood.

(4) "Bonds" mean any bonds (including refunding bonds), notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this chapter.

(5) “Clerk” means the clerk or other official of the municipality or county who is the custodian of the official records of such municipality or county.

(6) “Community” means any municipality or county in this State.

(7) “Conservation” means the preservation of an area or section of a community, and the supervision and care of such area or section, to prevent the recurrence or spread of slum conditions or conditions of blight.

(8) “Federal government” includes the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(9) “General neighborhood renewal plan” means a plan for an area of such size that it will encompass 2 or more projects that will entail renewal activities which may have to be spread over a period of up to 10 years, and for which programming of the entire area is desirable in advance of the planning and carrying out of specified projects.

(10) “Governing body” means the city council, town council, commissioners or other legislative body charged with governing the municipality or Levy Court commissioners or other legislative body charged with governing the county.

(11) “Housing authority” means any public body created by or pursuant to Chapter 43 of this title.

(12) “Mayor” means the mayor of a municipality or the officer or body having the duties customarily imposed upon the executive head of a municipality.

(13) “Municipality” means any incorporated city or town in this State.

(14) “Obligee” includes any bondholder, agents or trustees for any bondholders, or lessor demising to the authority property used in connection with a redevelopment project, or any assignee or assignees of such lessor’s interest or any part thereof, and the federal government when it is a party to any contract with the authority.

(15) “Public body” means the State or any municipality, county, township, board, commission, authority, district or any other subdivision or public body of this State.

(16) “Real property” includes all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(17) “Redeveloper” means any person, partnership, or public or private corporation or agency which enters or proposes to enter into a redevelopment contract.

(18) “Redevelopment contract” means a contract entered into between an authority and a redeveloper for the redevelopment of an area in conformity with a redevelopment plan.

(19) “Redevelopment plan” means a plan other than a preliminary or tentative plan for the acquisition, clearance, reconstruction, rehabilitation or future use of a redevelopment project area.

(20) “Redevelopment project” means any work or undertaking to:

a. Acquire slum areas or blighted areas or portions thereof, including lands, structures or improvements the acquisition of which is necessary or incidental to the proper clearance, development or redevelopment of such slum or blighted areas or to the prevention of the spread or recurrence of slum conditions or conditions of blight;

b. Clear any such areas by demolition or removal of existing buildings, structures, streets, utilities or other improvements thereon and to install, construct or reconstruct streets, utilities and site improvements essential to the preparation of sites for uses in accordance with a redevelopment plan;

c. Sell, lease or otherwise make available land in such areas for residential, recreational, commercial, industrial or other use or for public use or to retain such land for public use, in accordance with a redevelopment plan;

and such term may also include the preparation of a redevelopment plan, the planning, survey and other work incident to a redevelopment project and the preparation of all plans and arrangements for carrying out a redevelopment project.

(21) “Rehabilitation” means the reconstruction, alteration or repair of improvements, structures and buildings in accordance with the requirements of the municipality or community in its codes, laws or regulations pertaining to building, fire prevention, health, housing, and zoning, and also the use of land, and the use and occupancy of buildings and improvements.

(22) “Related activities” means:

a. Planning work for the preparation of a general neighborhood renewal plan, or for the preparation or completion of a communitywide plan or program pursuant to § 4520 of this title, as amended, and

b. The functions related to the acquisition and disposal of real property pursuant to § 4516(11) of this title, as amended.

(23) “Slum area” means an area in which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare.

(24) "Urban renewal area" means a slum area or a blighted area or any combination thereof which the local governing body designates as appropriate for an urban renewal project.

(25) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan:

a. Shall conform to the general plan for the municipality or community as a whole; and

b. Shall be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, rehabilitation and conservation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities and building requirements.

The term "urban renewal plan" shall be also construed as including and meaning redevelopment plan wherever the context of this chapter requires.

(26) a. "Urban renewal project" means undertakings and activities of a municipality or community, in an urban renewal area, for the elimination and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan. Such undertakings and activities may include:

1. Acquisition of a slum area or a blighted area or portion thereof;

2. Clearance of any such areas by demolition or removal of existing buildings, structures, streets, utilities, parks, playgrounds or other improvements thereon;

3. Installation, construction or reconstruction of streets, utilities, parks, playgrounds and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this chapter in accordance with the urban renewal plan;

4. Disposition of any property acquired in the urban renewal area (including sale, initial leasing or retention by the municipality or community itself) at its fair value for uses in accordance with the urban renewal plan;

5. Carrying out plans for a program of voluntary or compulsory repair, rehabilitation and conservation of buildings or other improvements in accordance with the urban renewal plan;

6. Acquisition of real property in the urban renewal area which, under the urban renewal plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitation of the structures and resale of the property;

7. Acquisition of any other real property in the urban renewal area where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities; and

8. Acquisition of slum areas or blighted areas or portions thereof including lands, structures, or improvements, the acquisition of which is necessary or incidental to the proper clearance, development or redevelopment or to the conservation or rehabilitation of such slum or blighted area or to the prevention of the spread or recurrence of slum conditions or conditions of blight.

b. "Urban renewal project" shall also be construed as including and meaning redevelopment project wherever the context of this chapter requires.

(48 Del. Laws, c. 345, § 3; 31 Del. C. 1953, § 4501; 55 Del. Laws, c. 292, §§ 1-4; 56 Del. Laws, c. 293, § 12; 74 Del. Laws, c. 395, §§ 1, 2.)

§ 4502. Declaration of necessity.

It is found and declared that there exist in localities throughout the State slum and blighted areas (as defined in § 4501 of this title) which constitute a serious and growing menace, injurious and inimical to the public health, safety, morals and welfare of the residents of the State; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public services and facilities, constitutes an economic and social liability, substantially impairs or arrests the sound growth of communities and retards the provision of housing accommodations; that this menace is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids provided in this chapter; that the elimination of slum conditions or conditions of blight, the acquisition and preparation of land in or necessary to the development of slum or blighted areas and its sale or lease for development or redevelopment in accordance with general plans and redevelopment plans of communities and any assistance which may be given by any state public body in connection therewith are public uses and purposes for which public money may be expended and private property acquired; and that the necessity in the public interest for the provisions enacted in this chapter is declared as a matter of legislative determination.

It is found and declared that:

(1) There exists in communities of this State blighted and deteriorated areas which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the State, and the findings and declarations made in this section prior to December 27, 1965, are affirmed and restated,

(2) Certain blighted, deteriorated, or deteriorating areas, or portions thereof, may require acquisition and clearance, as provided in this chapter, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation,

but other areas or portions thereof may, through the means provided in this chapter, be susceptible of conservation or rehabilitation in such a manner that the conditions and evils enumerated in this section may be eliminated, remedied or prevented, and to the extent feasible, salvable blighted, deteriorated, or deteriorating areas should be conserved and rehabilitated through voluntary action and the regulatory process, and

(3) All powers conferred by this chapter, as amended, are for public uses and purposes for which public money may be expended and such other powers exercised, and the necessity in the public interest for the provisions of this chapter is declared as a matter of legislative determination.

A municipality or community to the greatest extent it determines to be feasible in carrying out the provisions of this chapter shall afford maximum opportunity, consistent with the sound needs of the municipality or community as a whole, to the conservation or rehabilitation or redevelopment of areas by private enterprise.

(48 Del. Laws, c. 345, § 2; 31 Del. C. 1953, § 4502; 55 Del. Laws, c. 292, § 7.)

§ 4503. Creation of slum clearance and redevelopment authority.

There is created in each community (as defined in § 4501 of this title) a public body corporate and politic, to be known as the "slum clearance and redevelopment authority" of the community. Such authority shall not transact any business or exercise its powers under this chapter until or unless the governing body shall approve (by resolution, as provided in this chapter) the exercise in such community of the powers, functions and duties of an authority under this chapter. If it deems such action to be in the public interest, the governing body may, instead of such resolution, adopt a resolution approving the exercise of such powers, functions and duties by the community itself or by a housing authority, and in such event, the community or housing authority, as the case may be, shall be vested with all the powers, functions, rights, duties and privileges of a slum clearance and redevelopment authority under this chapter.

(48 Del. Laws, c. 345, § 4; 31 Del. C. 1953, § 4503.)

§ 4504. Resolutions.

The governing body of a community shall not adopt a resolution pursuant to § 4503 of this title unless it finds that:

(1) One or more slum or blighted areas (as defined in § 4501 of this title) exist in such community; and

(2) The redevelopment of such area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such community.

(48 Del. Laws, c. 345, § 4; 31 Del. C. 1953, § 4504.)

§ 4505. Regional slum clearance and redevelopment authority.

If the governing body of each of 2 or more communities declares, by resolution, that there is a need for 1 slum clearance and redevelopment authority to be created for all of such communities, and has made the findings required by § 4504 of this title, a public body, corporate and politic, to be known as a regional slum clearance and redevelopment authority (herein referred to as "regional authority" or "authority") shall thereupon exist for all of such communities and may exercise the powers and other functions of an authority under this chapter in such communities.

(48 Del. Laws, c. 345, § 4; 31 Del. C. 1953, § 4505.)

§ 4506. Area of operation of regional authority.

The area of operation of a regional authority shall be increased from time to time to include 1 or more additional communities if the governing body of each of such additional communities adopts the resolution described in § 4505 of this title and makes the findings required by § 4504 of this title, and the commissioners of the regional authority consent to the inclusion within its area of operation of such additional communities.

(48 Del. Laws, c. 345, § 4; 31 Del. C. 1953, § 4506.)

§ 4507. Board of commissioners; number; tenure of office; vacancies.

When the governing body of a municipality adopts a resolution as provided in this chapter, it shall promptly notify the mayor of such adoption. If the resolution adopted is one approving the exercise of powers hereunder by a slum clearance and redevelopment authority, the mayor, by and with the advice and consent of the governing body, shall appoint a board of commissioners of the authority created for such municipality which shall consist of 5 commissioners, and when the governing body of a county adopts such a resolution, the body shall appoint a board of commissioners of the authority created for such county which shall consist of 5 commissioners. The commissioners who are first appointed pursuant to this chapter shall be designated to serve for terms of 1, 2, 3, 4 and 5 years, respectively, from the date of their appointment, but thereafter commissioners shall be appointed as aforesaid for a term of office of 5 years, except that all vacancies shall be filled for the unexpired term.

(48 Del. Laws, c. 345, § 4; 31 Del. C. 1953, § 4507.)

§ 4508. Appointment of commissioners for each additional community; tenure.

If a regional authority is created as provided in this chapter, 1 person shall be appointed as a commissioner of such authority for each community for which such authority is created. When the area of operation of a regional authority is increased to include an additional

community or communities as provided in this chapter, 1 additional person shall be appointed as a commissioner of such authority for each such additional community. Each such commissioner appointed for a municipality shall be appointed by the mayor thereof, by and with the advice and consent of the governing body, and each such commissioner appointed for a county shall be appointed by the governing body thereof. The first appointment of commissioners of a regional authority may be made at or after the time of the adoption of the resolution declaring the need for such authority or declaring the need for the inclusion of such community in the area of operation of such authority. The commissioners of a regional authority and their successors shall be appointed as aforesaid for terms of 5 years except that all vacancies shall be filled for the unexpired terms.

(48 Del. Laws, c. 345, § 4; 31 Del. C. 1953, § 4508.)

§ 4509. Odd and even number of communities; tenure; certificate of appointment as evidence.

If the area of operation of a regional authority consists at any time of an even number of communities, the commissioners of the regional authority already appointed in the manner described in this chapter shall appoint 1 additional commissioner whose term of office shall be as provided for a commissioner of a regional authority, except that such term shall end at any earlier time that the area of operation of the regional authority shall be changed to consist of an odd number of communities. The commissioners of such authority already appointed in the manner described in this chapter shall likewise appoint each person to succeed such additional commissioner. The term of office of such person begins during the terms of office of the commissioners appointing such person. A certificate of the appointment of any such additional commissioner of such regional authority shall be filed with the other records of the regional authority and shall be conclusive evidence of the due and proper appointment of such additional commissioner.

(48 Del. Laws, c. 345, § 4; 31 Del. C. 1953, § 4509; 70 Del. Laws, c. 186, § 1.)

§ 4510. Compensation; traveling expenses; certificate of appointment filed with municipal or county clerk; evidence.

A commissioner of an authority shall receive no compensation for services, but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of the commissioner's duties. Each commissioner shall hold office until a successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the municipal or county clerk, as the case may be, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

(48 Del. Laws, c. 345, § 4; 31 Del. C. 1953, § 4510; 70 Del. Laws, c. 186, § 1.)

§ 4511. Power of authority; quorum; meetings; qualifications for appointment as commissioner.

The powers under this chapter vested in each slum clearance and redevelopment authority shall be exercised by the board of commissioners thereof. A majority of the commissioners shall constitute a quorum of such board for the purpose of conducting business and exercising the powers of the authority and for all other purposes. Action may be taken by the board upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority shall require a larger number. Meetings of the board of an authority may be held anywhere within the perimeter boundaries of the area of operation of the authority. Any persons may be appointed as commissioners of the authority if they reside within such area and are otherwise eligible for such appointments under this chapter.

(48 Del. Laws, c. 345, § 4; 31 Del. C. 1953, § 4511.)

§ 4512. Officers; employees; duties and compensation; legal services.

The commissioners of an authority shall elect a chairperson and vice-chairperson from among the commissioners. An authority may employ an executive director, technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. For such legal services as it may require, an authority may, with the approval of the governing body, call upon the chief law officer of the communities within its area of operation or it may employ its own counsel and legal staff. An authority may delegate to 1 or more of its agents or employees such powers or duties as it may deem proper.

(48 Del. Laws, c. 345, § 4; 31 Del. C. 1953, § 4512; 70 Del. Laws, c. 186, § 1.)

§ 4513. Removal; hearing; filing of proceedings in office of municipal or county clerk's office.

For inefficiency or neglect of duty or misconduct in office, a commissioner of an authority may be removed by the official or public body which appointed such commissioner, but a commissioner shall be removed only after a hearing and after the commissioner shall have been given a copy of the charges at least 10 days prior to such hearing and have had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the municipal or county clerk, as the case may be.

(48 Del. Laws, c. 345, § 4; 31 Del. C. 1953, § 4513; 70 Del. Laws, c. 186, § 1.)

§ 4514. Actions or proceedings; proof of adoption of resolutions as evidence.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of or bonds issued by an authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers under this chapter upon proof of the adoption of the appropriate resolution prescribed in § 4503 or § 4505 of this title. Each such resolution shall be deemed sufficient if it authorizes the exercise of powers under this chapter by the authority or other public body and finds in

substantially the terms provided in § 4504 of this title (no further detail being necessary) that the conditions therein enumerated exist. A copy of such resolution duly certified by the municipal or county clerk, as the case may be, shall be admissible in evidence in any suit, action or proceeding.

(48 Del. Laws, c. 345, § 4; 31 Del. C. 1953, § 4514.)

§ 4515. Interest in contracts; disclosure of interest; violations.

No commissioner or employee of an authority shall voluntarily acquire any interest, direct or indirect, in any redevelopment project or in any property included or planned by the authority to be included in any such project, or in any contract or proposed contract in connection with any such project. Where the acquisition is not voluntary, such commissioner or employee shall immediately disclose such interest in writing to the authority and such disclosure shall be entered upon the minutes of the authority. If any commissioner or employee of an authority presently owns or controls or owned or controlled within the preceding 2 years an interest, direct or indirect, in any property included or planned by the authority to be included in any redevelopment project, the commissioner or employee immediately shall disclose such interest in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Upon such disclosure such commissioner or employee shall not participate in any action by the authority affecting such property. Any violation of this section shall constitute misconduct in office.

(48 Del. Laws, c. 345, § 4; 31 Del. C. 1953, § 4515; 70 Del. Laws, c. 186, § 1.)

§ 4516. Powers of an authority.

An authority shall constitute a public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others granted in this chapter:

(1) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal bylaws, rules and regulations, not inconsistent with this chapter, to carry out the provisions of this chapter;

(2) To prepare or cause to be prepared and recommend redevelopment plans to the governing body of the community or communities within its area of operation and to undertake and carry out redevelopment projects within its area of operation;

(3) To arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with a redevelopment project; and (notwithstanding anything to the contrary contained in this chapter or any other provision of law), to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of a redevelopment project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate;

(4) Within its area of operation, to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, eminent domain or otherwise, any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear or prepare for redevelopment any such property; to sell, lease, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate or otherwise encumber or dispose of any real or personal property or any interest therein; to enter into contracts with redevelopers of property containing covenants, restrictions and conditions regarding the use of such property for residential, commercial, industrial, recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions and conditions as the authority may deem necessary to a recurrence of slum or blighted areas or to effectuate the purposes of this chapter; to make any of the covenants, restrictions or conditions of the foregoing contracts covenants running with the land, and to provide appropriate remedies for any breach of any such covenants or conditions, including the right in the authority to terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds and provide security for loans or bonds; to insure or provide for the insurance of any real or personal property or operation of the authority against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this chapter. No statutory provision with respect to the acquisition, clearance or disposition of property by other public bodies shall restrict an authority or other public body exercising powers hereunder, in such functions, unless the General Assembly shall specifically so state;

(5) Within its area of operation, to enter into any building or property in any urban renewal area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted;

(6) To invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to redeem its bonds at the redemption price established therein or to purchase its bonds at less than redemption price, all bonds so redeemed or purchased to be cancelled;

(7) To borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the federal government, the State, county, municipality or other public body or from any sources, public or private, for the purposes of this chapter, to give such security as may be required and to enter into and carry out contracts in connection therewith; an authority,

notwithstanding the provisions of any other law, may include in any contract for financial assistance with the federal government for a redevelopment project such conditions imposed pursuant to federal law as the authority may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter;

(8) Acting through 1 or more commissioners or other persons designated by the authority, to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, and to issue commissions for the examination of witnesses who are outside of the State or unable to attend before the authority, or excused from attendance; to make available to appropriate agencies or public officials (including those charged with the duty of abating or requiring the correction of nuisances or like conditions or of demolishing unsafe or insanitary structures or eliminating slums or conditions of blight within its area of operation) its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, safety, morals or welfare;

(9) Within its area of operation, to make or have made all surveys, appraisals, studies and plans (but not including the preparation of a general plan for the community) necessary to the carrying out of the purposes of this chapter and to contract or cooperate with any and all persons or agencies, public or private, in the making and carrying out of such surveys, appraisals, studies and plans;

(10) To prepare plans and provide reasonable assistance for the relocation of families displaced from a redevelopment project area to permit the carrying out of the redevelopment project, to the extent essential for acquiring possession of and clearing such area or parts thereof;

(11) With the approval of the local government body:

a. Prior to approval of an urban renewal plan, or by approval of any modification of the plan, to acquire real property in an urban renewal area, demolish and remove any structures on the property, and pay all costs related to the acquisition, demolition, or removal, including any administrative or relocation expenses; and

b. To assume the responsibility to bear any loss that may arise as the result of the exercise of authority under this paragraph in the event that the real property is not made part of the urban renewal project;

(12) Within its area of operation, to make or have made all surveys and plans necessary to the carrying out of the purposes of this chapter, as amended, and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify and amend such plans, which plans may include, but are not limited to:

a. Plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements,

b. Plans for the enforcement of state and local laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements, and

c. Appraisals, title searches, surveys, studies and other plans and work necessary to prepare for the undertaking of urban renewal projects and related activities; and to develop, test and report methods and techniques, and carry out demonstrations and activities for the prevention and the elimination of slums and urban blight, and to apply for, accept and utilize grants of funds from the federal government for such purposes;

(13) To engage in rehabilitation and conservation activities as defined in § 4501 of this title, as amended;

(14) To make such expenditures as may be necessary to carry out the purposes of this chapter; and to make expenditures from funds obtained from the federal government without regard to any other laws pertaining to the making and approval of appropriations and expenditures;

(15) To exercise all or any part or combination of powers herein granted.

(48 Del. Laws, c. 345, § 5; 31 Del. C. 1953, § 4516; 55 Del. Laws, c. 292, § 6.)

§ 4517. Approval of redevelopment plans.

An authority shall not acquire real property for a redevelopment project unless the governing body of the community in which the redevelopment project area is located has approved the redevelopment plan, as prescribed in § 4525 of this title.

(48 Del. Laws, c. 345, § 6; 31 Del. C. 1953, § 4517.)

§ 4518. Finding of necessity by local governing body.

An authority shall not exercise the authority conferred upon municipalities or communities by this chapter until after the local governing body shall have adopted a resolution finding that:

(1) One or more slum or blighted areas shall exist in such municipality or community; and

(2) The rehabilitation, conservation, redevelopment or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such municipality or community.

(48 Del. Laws, c. 345, § 6; 31 Del. C. 1953, § 4518; 55 Del. Laws, c. 292, § 5.)

§ 4519. General plan prior to recommendation of redevelopment plan.

An authority shall not recommend a redevelopment plan to the governing body of the community in which the redevelopment project area is located until a general plan for the development of the community has been prepared.

(48 Del. Laws, c. 345, § 6; 31 Del. C. 1953, § 4519.)

§ 4520. Preparation of redevelopment plan; contents.

(a) The authority may itself prepare or cause to be prepared a redevelopment plan or any person or agency, public or private, may submit such a plan to an authority. A redevelopment plan shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the redevelopment project area and shall include without being limited to:

(1) The boundaries of the redevelopment project area, with a map showing the existing uses and condition of the real property therein;

(2) A land use plan showing proposed uses of the area;

(3) Information showing the standards of population densities, land coverage and building intensities in the area after redevelopment;

(4) A statement of the proposed changes, if any, in zoning ordinances or maps, street layouts, street levels or grades, building codes and ordinances;

(5) A site plan of the area; and

(6) A statement as to the kind and number of additional public facilities or utilities which will be required to support the new land uses in the area after redevelopment.

(b) The authority, or any public body authorized to perform planning work, may prepare a general neighborhood renewal plan for urban renewal areas which may be of such scope that urban renewal activities may have to be carried out in stages over an estimated period of up to 10 years. Such plan may include, but is not limited to, a preliminary plan which:

(1) Outlines the urban renewal activities proposed for the area involved;

(2) Provides a framework for the preparation of urban renewal plans; and

(3) Indicates generally the land uses, population density, building coverage, prospective requirements for rehabilitation and improvement of property and portions of the area contemplated for clearance and redevelopment.

A general neighborhood renewal plan shall, in the determination of the local governing body, conform to the general plan of the locality as a whole and to the workable program of the municipality.

(c) The authority, or any public body authorized to perform planning work, may prepare or complete a communitywide plan or program for urban renewal which shall conform to the general plan for the development of the municipality or community as a whole and may include, but shall not be limited to, identification of slum or blighted areas, measurement of blight, determination of resources needed and available to renew such areas, identification of potential project areas and types of action contemplated and scheduling of urban renewal activities.

(48 Del. Laws, c. 345, § 6; 31 Del. C. 1953, § 4520; 55 Del. Laws, c. 292, § 9.)

§ 4521. Submission of plan for review and recommendations.

Prior to recommending a redevelopment plan to the governing body for approval, an authority shall submit such plan to the planning commission of the community in which the redevelopment project area is located for review and recommendations as to its conformity with the general plan for the development of the community as a whole. The planning commission shall submit its written recommendations with respect to the proposed redevelopment plan to the authority within 30 days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission or, if no recommendations are received within the 30 days, then without such recommendations, an authority may recommend the redevelopment plan to the governing body of the community for approval.

(48 Del. Laws, c. 345, § 6; 31 Del. C. 1953, § 4521.)

§ 4522. Considerations prior to recommendation of plan.

Prior to recommending a redevelopment plan to the governing body for approval, an authority shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted and harmonious development of the community and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage and other public utilities, schools, parks, recreational and community facilities and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, the prevention of the recurrence of insanitary or unsafe dwelling accommodations, slums, or conditions of blight and the provision of adequate, safe and sanitary dwelling accommodations.

(48 Del. Laws, c. 345, § 6; 31 Del. C. 1953, § 4522.)

§ 4523. Statement of proposed costs; revenue, finances and relocation of displaced families.

The recommendation of a redevelopment plan by an authority to the governing body shall be accompanied by the recommendations, if any, of the planning commission concerning the redevelopment plan, a statement of the proposed method and estimated cost of the acquisition and preparation for redevelopment of the redevelopment project area and the estimated proceeds or revenues from its disposal

to redevelopers, a statement of the proposed method of financing the redevelopment project and a statement of a feasible method proposed for the relocation of families to be displaced from the redevelopment project area.

(48 Del. Laws, c. 345, § 6; 31 Del. C. 1953, § 4523.)

§ 4524. Public hearing; notice; publication.

The governing body of the community shall hold a public hearing on any redevelopment plan or substantial modification thereof recommended by the authority, after reasonable public notice thereof by publication at least once a week for 2 consecutive weeks in a newspaper of general circulation in the community, the time of the hearing to be at least 10 days from the last publication. The notice shall describe the time, date, place and purpose of the hearing and shall also generally identify the area to be redeveloped under the plan. All interested parties shall be afforded at such public hearing a reasonable opportunity to express their views respecting the proposed redevelopment plan.

(48 Del. Laws, c. 345, § 6; 31 Del. C. 1953, § 4524.)

§ 4525. Approval of plan; required findings.

(a) Following the hearing required by § 4524 of this title, the local governing body may approve an urban renewal project and the plan therefor if it finds that:

(1) A feasible method exists for the location of families who will be displaced from the urban renewal area, in decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families;

(2) The urban renewal plan conforms to the general plan of the municipality or community as a whole;

(3) The urban renewal plan gives due consideration to the provision of adequate park and recreational areas and facilities that may be desirable for neighborhood improvement, with special consideration for the health, safety and welfare of children residing in the general vicinity of the site covered by the plan; and

(4) The urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality or community as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise.

(b) If the urban renewal area consists of an area of open land to be acquired by the municipality or community, such area shall not be so acquired unless:

(1) If it is to be developed for residential uses, the local governing body shall determine that a shortage of housing of sound standards and design which is decent, safe and sanitary exists in the municipality or community, that the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas, that the conditions of blight in the area and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and spread of disease and crime, and constitute a menace to the public health, safety, morals, or welfare, and that the acquisition of the area for residential uses is an integral part of and essential to the program of the municipality or community; or

(2) If the area is to be developed for nonresidential uses, the local governing body shall determine that such nonresidential uses are necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives, which acquisition may require the exercise of governmental action as provided in this chapter, because of defective or unusual conditions of title, diversity of ownership, tax delinquency, improper subdivisions, outmoded street patterns, deterioration of site, economic disuse, unsuitable topography or faulty lot layouts, the need for the correlation of the area with other areas of a municipality or community, by streets and modern traffic requirements, or any combination of such factors or other conditions which retard development of the area.

(48 Del. Laws, c. 345, § 6; 31 Del. C. 1953, § 4525; 55 Del. Laws, c. 292, § 8.)

§ 4526. Modification of plan; notice; objections.

An urban renewal plan which has not been approved by the governing body when recommended by the authority may again be recommended to it with any modifications deemed advisable. A redevelopment plan may be modified at any time by the authority; provided, that, if modified after the lease or sale of real property in the urban renewal project area, the modification must be consented to by the redeveloper or redevelopers, or any successor or successors who acquired 75% of the land in the project area and whose interest may be affected by the proposed modification.

The notice of the proposed modification shall be sent by certified mail to the last known address of the redeveloper or redevelopers of the real property, or any successor or successors, who shall have 30 days from the date of the notice to state objections to the modification. These objections will be submitted to the governing body at the time of the hearing. If no objections are made within the 30 days from the date of the notice, then the authority may recommend the plan and state to the governing body that there were no objections.

(48 Del. Laws, c. 345, § 6; 31 Del. C. 1953, § 4526; 57 Del. Laws, c. 565, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1.)

§ 4527. Disposal of property in redevelopment project.

(a) An authority may sell, lease, exchange or otherwise transfer real property or any interest therein in a redevelopment project area to any redeveloper for residential, recreational, commercial, industrial or other uses or for public use in accordance with the redevelopment plan, subject to such covenants, conditions and restrictions as it may deem to be in the public interest or to carry out the purposes of

this chapter. Such sale, lease, exchange or other transfer, and any agreement relating thereto, may be made only after, or subject to, the approval of the redevelopment plan by the governing body of the community. Such real property shall be sold, leased or transferred at its fair value for uses in accordance with the redevelopment plan, notwithstanding such value may be less than the cost of acquiring and preparing such property for redevelopment. In determining the fair value of real property for uses in accordance with the redevelopment plan, an authority shall take into account and give consideration to the uses and purposes required by such plan, the restrictions upon, and the covenants, conditions and obligations assumed by the redeveloper of, such property, the objectives of the redevelopment plan for the prevention of the recurrence of slum or blighted areas and such other matters as the authority shall specify as being appropriate. In fixing rentals and selling prices, an authority shall give consideration to appraisals of the property for such uses made by land experts employed by the authority.

(b) An authority shall, by public notice by publication once each week for 2 consecutive weeks in a newspaper having a general circulation in the community, prior to the consideration of any redevelopment contract proposal, invite proposals from, and make available all pertinent information to private redevelopers or any persons interested in undertaking the redevelopment of an area, or any part thereof, which the governing body has declared to be in need of redevelopment. Such notice shall identify the area and shall state that such further information as is available may be obtained at the office of the authority. The authority shall consider all redevelopment proposals and the financial and legal ability of the prospective redevelopers to carry out their proposals and may negotiate with any redevelopers for proposals for the purchase or lease of any real property in the redevelopment project area. The authority may accept such redevelopment contract proposal as it deems to be in the public interest and in furtherance of the purposes of this chapter; provided, that the authority has, not less than 30 days prior thereto, notified the governing body in writing of its intention to accept such redevelopment contract proposal. Thereafter, the authority may execute such redevelopment contract in accordance with the provisions of subsection (a) of this section and deliver deeds, leases and other instruments and take all steps necessary to effectuate such redevelopment contract. At its discretion, the authority may, without regard to the foregoing provisions of this paragraph, dispose of real property in a redevelopment project area to private redevelopers for redevelopment under such reasonable competitive bidding procedures as it shall prescribe, subject to the provisions of subsection (a) of this section. Further the authority may, at its discretion, dispose of real property in a redevelopment project area to public, quasi-public, charitable and religious corporations by negotiation without resorting to the provisions of this subsection.

(c) An authority may temporarily operate and maintain real property in a redevelopment project area pending the disposition of the property for redevelopment without regard to the provisions of subsections (a) and (b) of this section, for such uses and purposes as may be deemed desirable even though not in conformity with the redevelopment plan.

(48 Del. Laws, c. 345, § 7; 31 Del. C. 1953, § 4527; 57 Del. Laws, c. 564, § 1.)

§ 4528. Eminent domain.

An authority may acquire by the exercise of the power of eminent domain any real property which it may deem necessary for a redevelopment project or for its purposes under this chapter after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner prescribed by Chapter 61 of Title 10. Property already devoted to a public use may be acquired in like manner. No real property belonging to the municipality, the county or the State may be acquired without its consent. When an authority has found and determined by resolution that certain real property described therein is necessary for a redevelopment project or for its purposes under this chapter, the resolution shall be conclusive evidence that the acquisition of such real property is necessary for the purposes described therein.

(48 Del. Laws, c. 345, § 8; 31 Del. C. 1953, § 4528.)

§ 4529. Acquisition and development of undeveloped vacant land.

Upon a determination by resolution of the governing body of the community in which such land is located that the acquisition and development of undeveloped vacant land, not within a slum or blighted area, is essential to the proper clearance or redevelopment of slum or blighted areas or a necessary part of the general slum clearance program of the community, the acquisition, planning, preparation for development or disposal of such land shall constitute a redevelopment project which may be undertaken by the authority in the manner provided in this chapter. The determination by the governing body shall be in lieu of the declaration required by § 4518 of this title, but shall not be made until the governing body finds that there is a shortage of decent, safe and sanitary housing in the community, that such undeveloped vacant land will be developed for predominantly residential uses, and that the provision of dwelling accommodations on such undeveloped vacant land is necessary to accomplish the relocation, in decent, safe and sanitary housing in the community of families to be displaced from slum or blighted areas which are to be redeveloped. In the undertaking of redevelopment projects on a regional or unified metropolitan basis, involving the acquisition and development of undeveloped vacant land in 1 community as an adjunct to the redevelopment of slum or blighted areas in another community, each determination or finding required in this section shall be made by the governing body of the community with respect to which the determination or finding relates.

(48 Del. Laws, c. 345, § 9; 31 Del. C. 1953, § 4529.)

§ 4530. Issuance of bonds.

(a) An authority may issue bonds from time to time at its discretion for any of its corporate purposes including the payment of principal and interest upon any advances for surveys and plans for redevelopment projects. An authority may also issue refunding bonds for the

purpose of paying or retiring or in exchange for bonds previously issued by it. An authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable:

(1) Exclusively from the income, proceeds and revenues of the redevelopment project financed with the proceeds of such bonds; or

(2) Exclusively from the income, proceeds and revenues of any of its redevelopment projects whether or not they are financed in whole or in part with the proceeds of such bonds.

Any such bonds may be additionally secured by a pledge of any loan, grant or contributions, or parts thereof, from the federal government or other source, or a mortgage on any redevelopment project or projects of the authority.

(b) Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of the authority (and such bonds and obligations shall so state on their face) shall not be a debt of the municipality, the county or the State, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of such authority acquired for the purposes of this chapter. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from all taxes.

(c) Bonds of an authority shall be authorized by its resolution and may be issued in 1 or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, not exceeding 6% per annum, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

(d) The bonds shall be sold at not less than par at public sale held after notice published once at least 10 days prior to such sale in a legal newspaper having a general circulation in the area of operation and in such other medium of publication as the authority may determine. Such bonds may be sold to the federal government at private sale at not less than par, and, in the event less than all of the bonds authorized in connection with any project or projects are sold to the federal government, the balance of such bonds may be sold at private sale at not less than par at an interest cost to the authority of not to exceed the interest cost to the authority of the portion of the bonds sold to the federal government.

(e) In case any of the commissioners or officers of the authority whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

(f) In any suit, action or proceedings involving the validity or enforceability of any bond of an authority or the security therefor, any such bond reciting in substance that it has been issued by the authority to aid in financing a redevelopment project, as defined in § 4501 of this title, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with this chapter.

(48 Del. Laws, c. 345, § 10; 31 Del. C. 1953, § 4530.)

§ 4531. Powers in connection with issuance of bonds.

(a) In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, an authority, in addition to its other powers, may:

(1) Pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence;

(2) Mortgage all or any part of its real or personal property, then owned or thereafter acquired;

(3) Covenant against pledging all or any part of its rents, fees and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or any thereafter come into existence or against permitting or suffering any lien on such revenues or property, covenant with respect to limitations on its right to sell, lease or otherwise dispose of any redevelopment project or any part thereof, and covenant as to what other, or additional debts or obligations may be incurred by it;

(4) Covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof, provide for the replacement of lost, destroyed or mutilated bonds, covenant against extending the time for the payment of its bonds or interest thereon, and covenant for the redemption of the bonds and provide the terms and conditions thereof;

(5) Covenant (subject to the limitations contained in this chapter) as to the amount of revenues to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof, create or authorize the creation of special funds for moneys held for operating costs, debt service, reserves or other purposes and covenant as to the use and disposition of the moneys held in such funds;

(6) Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

(7) Covenant as to the use, maintenance and replacement of any or all of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance moneys, and warrant its title to such property;

(8) Covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenants, condition or obligation, and covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(9) Vest in any obligees of the authority the right to enforce the payment of the bonds or any covenants securing or relating to the bonds, vest in any obligee or obligees holding a specified amount in bonds the right, in the event of a default by the authority, take possession of and use, operate and manage any redevelopment project or any part thereof, title to which is in the authority, or any funds connected therewith, and collect the rents and revenues arising therefrom and dispose of such moneys in accordance with the agreement of the authority with such obligees, provide for the powers and duties of such obligees and limit the liabilities thereof, and provide the terms and conditions upon which such obligees may enforce any covenant or rights securing or relating to the bonds; and

(10) Exercise all or any part or combination of the powers herein granted, make such covenants (other than and in addition to the covenants herein expressly authorized) and do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, at the absolute discretion of the authority, as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein.

(b) An authority may by its resolution, trust indenture, mortgage, lease or other contract confer upon any obligee holding or representing a specified amount in bonds, the right (in addition to all rights that may otherwise be conferred), upon the happening of an event of default as defined in such resolution or instruments, by suit, action or proceeding in any court of competent jurisdiction:

(1) To cause possession of any redevelopment project or any part thereof, title to which is in the authority, to be surrendered to any such obligee;

(2) To obtain the appointment of a receiver of any redevelopment project of such authority or any part thereof, title to which is in the authority and of the rents and profits therefrom. If such receiver be appointed, the receiver may enter and take possession of, carry out, operate and maintain such project or any part thereof and collect and receive all fees, rents, revenues or other charges thereafter arising therefrom and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of such authority as the court shall direct; and

(3) To require such authority and the commissioners, officers, agents and employees thereof to account as if it and they were the trustees of an express trust.

(48 Del. Laws, c. 345, § 11; 31 Del. C. 1953, § 4531; 70 Del. Laws, c. 186, § 1.)

§ 4532. Rights of obligees.

An obligee of an authority may, in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action or proceeding at law or in equity compel such authority and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of such authority with or for the benefit of such obligee and require the carrying out of any or all such covenants and agreements of such authority and the fulfillment of all duties imposed upon such authority by this chapter;

(2) By suit, action or proceeding in equity, enjoin any acts or things which may be unlawful or the violation of any of the rights of such obligee of such authority.

(48 Del. Laws, c. 345, § 12; 31 Del. C. 1953, § 4532.)

§ 4533. Bonds as legal investments.

All public officers, municipal corporations, political subdivisions and public bodies, all banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, curators, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or other obligations issued by an authority pursuant to this chapter or by any public housing or redevelopment authority or commission or agency or any other public body in the United States for redevelopment purposes, when such bonds and other obligations are secured by an agreement between the issuing agency and the federal government in which the issuing agency agrees to borrow from the federal government and the federal government agrees to lend to the issuing agency, prior to the maturity of such bonds or other obligations, moneys in an amount which (together with any other moneys irrevocably committed to the payment of interest on such bonds or other obligations) will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which moneys under the terms of such agreement are required to be used for the purpose of paying the principal of and the interest on such bonds or other obligations at their maturity and such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. However, nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

(48 Del. Laws, c. 345, § 13; 31 Del. C. 1953, § 4533.)

§ 4534. Conveyance to federal government on default.

In any contract for financial assistance with the federal government the authority may obligate itself (which obligation shall be specifically enforceable and shall not constitute a mortgage, notwithstanding any other laws) to convey to the federal government possession of or title to the redevelopment project and land therein to which such contract relates which is owned by the authority, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the authority is subject, such contract may further provide that in case of such conveyance, the federal government may complete, operate, manage, lease, convey or otherwise deal with the redevelopment project in accordance with the terms of such contract; provided, that the contract requires that, as soon as practicable after the federal government is satisfied that all defaults with respect to the redevelopment project have been cured and that the redevelopment project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the authority the redevelopment project as then constituted.

(48 Del. Laws, c. 345, § 14; 31 Del. C. 1953, § 4534.)

§ 4535. Property of authority exempt from taxes, from levy and sale by virtue of an execution.

(a) All property including funds of an authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against an authority be a charge or lien upon its property. The provisions of this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of an authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees, grants or revenues.

(b) The property of an authority is declared to be public property used for essential public and governmental purposes and such property and an authority shall be exempt from all taxes of the municipality, the county, the State or any political subdivision thereof. With respect to any property in a redevelopment project, the tax exemption provided in this section shall terminate when the authority sells, leases or otherwise disposes of such property to a redeveloper for redevelopment.

(48 Del. Laws, c. 345, § 15; 31 Del. C. 1953, § 4535.)

§ 4536. Cooperation by public bodies.

(a) For the purpose of aiding and cooperating in the planning, undertaking or carrying out of a redevelopment project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it determines:

(1) Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to an authority;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished in connection with a redevelopment project;

(3) Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places, which it is otherwise empowered to undertake;

(4) Plan or replan, zone or rezone any part of the public body or make exceptions from building regulations and ordinances if such functions are of the character which the public body is otherwise empowered to perform;

(5) Cause administrative and other services to be furnished to the authority of the character which the public body is otherwise empowered to undertake or furnish for the same or other purposes;

(6) Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;

(7) Do any and all things necessary or convenient to aid and cooperate in the planning or carrying out of a redevelopment plan;

(8) Lend, grant or contribute funds to an authority;

(9) Employ any funds belonging to or within the control of such public body, including funds derived from the sale or furnishing of property, service, or facilities to an authority, in the purchase of the bonds or other obligations of an authority and, as the holder of such bonds or other obligations, exercise the rights connected therewith; and

(10) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary), with an authority respecting action to be taken by such public body pursuant to any of the powers granted by this chapter and if at any time title to, or possession of, any redevelopment project is held by any public body or governmental agency, other than the authority, authorized by law to engage in the undertaking, carrying out or administration of redevelopment projects, including any agency or instrumentality of the United States of America, the provisions of such agreements shall inure to the benefit of and may be enforced by such public body or governmental agency.

(b) Any sale, conveyance, lease or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement or public bidding.

(48 Del. Laws, c. 345, § 16; 31 Del. C. 1953, § 4536.)

§ 4537. Grant of funds by community.

Any community located in whole or in part within the area of operation of an authority may grant funds to an authority for the purpose of aiding such authority in carrying out any of its powers and functions under this chapter. To obtain funds for this purpose, the community

may levy taxes and may issue and sell its bonds. Any bonds to be issued by the community pursuant to the provisions of this section shall be issued in the manner and within the limitations prescribed by the laws of this State for the issuance and authorization of bonds by a community for any public purpose.

(48 Del. Laws, c. 345, § 17; 31 Del. C. 1953, § 4537.)

§ 4538. Cooperation between authorities.

Any 2 or more authorities may join or cooperate with one another in the exercise if any or all of the powers conferred for the purpose of planning, undertaking or financing a redevelopment project or projects located within the area or areas of operation of any 1 or more of such authorities. When a redevelopment project or projects are planned, undertaken or financed on a regional or unified metropolitan basis, the terms "governing body" and "community" as used in this chapter shall mean the governing bodies of the appropriate communities and the appropriate communities cooperating in the planning, undertaking or financing of such project or projects.

(48 Del. Laws, c. 345, § 18; 31 Del. C. 1953, § 4538.)

§ 4539. Annual report.

An authority shall at least once a year file with the governing body of the community a report of its activities for the preceding year and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out this chapter.

(48 Del. Laws, c. 345, § 19; 31 Del. C. 1953, § 4539.)

§ 4540. Title of purchaser.

Any instrument executed by an authority and purporting to convey any right, title or interest in any property under this chapter shall be conclusive evidence of compliance with this chapter insofar as title or other interest of any bona fide purchasers, lessees or transferees of such property is concerned.

(48 Del. Laws, c. 345, § 20; 31 Del. C. 1953, § 4540.)

§ 4541. Preparation of general plan by local governing body.

The governing body of any community which is not otherwise authorized to create a planning commission with power to prepare a general plan for the development of the community may prepare such a general plan prior to the initiation and carrying out of a redevelopment project under this chapter.

(48 Del. Laws, c. 345, § 21; 31 Del. C. 1953, § 4541.)

§ 4542. Powers conferred as additional.

The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law.

(48 Del. Laws, c. 345, § 24; 31 Del. C. 1953, § 4542.)

§ 4543. Inconsistent provisions.

Insofar as this chapter is inconsistent with any other law, this chapter shall be controlling.

(48 Del. Laws, c. 345, § 23; 31 Del. C. 1953, § 4543.)

Part III
Housing and Slum Clearance

Chapter 46
Mobile Home Safety Act [Repealed].

§§ 4600-4612. Short title; definitions; requirement for compliance with Safety Code; requirement for seal; issuance of seal; prohibition against alteration; reciprocity; compliance with other requirements; fees; delegation of authority to Department; repossession of seal; limitation of liability; penalties; jurisdiction [Repealed].

Repealed by 61 Del. Laws, c. 415, § 1, effective July 8, 1978.

Part III
Housing and Slum Clearance
Chapter 47
The Delaware Neighborhood Conservation and Land Banking Act

§ 4701. Short title.

This chapter shall be known and may be cited as the "Delaware Neighborhood Conservation and Land Banking Act."

(80 Del. Laws, c. 155, § 1.)

§ 4702. Legislative findings and purpose.

The General Assembly finds and declares as follows:

(1) Delaware's communities are important to the social and economic vitality of Delaware. Whether urban, suburban, or rural, many Delaware communities are struggling to cope with unoccupied properties or properties incapable of lawful occupation. These vacant and abandoned properties represent lost revenue to local governments and significant expenses associated with demolition, safety hazards, increased calls for emergency services, and deterioration of neighborhoods.

(2) The need exists to strengthen and revitalize Delaware's economy and address the associated harms that result from high numbers of vacant and abandoned properties. Solving these problems requires a coordinated effort to foster the development of such property back into productive use and promote economic growth. Such problems may include multiple taxing jurisdictions lacking common policies; ineffective property inspection; code enforcement and property rehabilitation support; lengthy or inadequate collection proceedings; depressed real estate markets; and lack of coordination and resources to support economic revitalization.

(3) There is an overriding public need to confront the problems caused by vacant, abandoned, and delinquent properties through the creation of new tools to be available to communities throughout Delaware enabling them to turn vacant spaces into vibrant places.

(4) Land banks are one of the tools currently utilized by other communities to facilitate the return of vacant, abandoned and delinquent properties to productive use. This chapter enables the creation of land banks in order to return dilapidated and blighted properties to productive use in Delaware.

(80 Del. Laws, c. 155, § 1.)

§ 4703. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(1) "Board of directors" or "board" means the board of directors of the land bank.

(2) "Foreclosing governmental unit" means any political subdivision of the State of Delaware, where such political subdivision has the power to cause the sale of real property located within its respective jurisdiction for the collection of liens inuring to that political subdivision.

(3) "Land bank" means a land bank established under this chapter and in accordance with the provisions of this chapter.

(4) "Large jurisdictional land bank" means a land bank established under this chapter and in accordance with the provisions of this chapter that serves one of the following:

a. An entire county.

b. A foreclosing governmental unit, or a combination of foreclosing governmental units that have formed a single land bank by intergovernmental agreement pursuant to § 4705(b) of this title, that in total covers an area with a population in excess of 30,000 persons.

(5) "Liens" means any lien set forth in § 2901(a)(1) of Title 25.

(6) "Vacancy rate" means the percentage of residential structures that have been uninhabited for 6 months or more within a given jurisdiction.

(80 Del. Laws, c. 155, § 1.)

§ 4704. Applicability of Delaware law.

(a) This chapter shall apply only to any land bank created pursuant to this chapter.

(b) Chapters 94 and 95 of Title 29 shall not apply to any land bank created pursuant to this chapter.

(c) If any provision of this chapter conflicts with any other provisions of Delaware law, the provisions of this chapter shall prevail.

(80 Del. Laws, c. 155, § 1.)

§ 4705. Creation and existence.

(a) A foreclosing governmental unit may create a land bank by the adoption of a local law, ordinance, or resolution, as appropriate to such foreclosing governmental unit. The foreclosing governmental unit, prior to the adoption of a local law, ordinance, or resolution

creating a land bank, must make a finding that residential structures within its jurisdiction have a vacancy rate at or above 3%. Each county in this State shall have the ability to create a land bank without making such a finding. The local law, ordinance, or resolution creating the land bank shall specify all of the following:

(1) The name of the land bank.

(2) The number of members of the board of directors, which shall consist of an odd number of members, and shall be not less than 7 members. For large jurisdictional land banks, the board of directors shall consist of an odd number of members and shall not be less than 11 members nor more than 15 members.

(3) The names of the initial individuals to serve as members of the board of directors, and the length of terms for which they are to serve.

(4) The qualifications, manner of selection or appointment, and terms of office of members of the board of directors.

(b) Two or more foreclosing governmental units may enter into an intergovernmental cooperation agreement which creates a single land bank to act on behalf of such foreclosing governmental units, which agreement shall be authorized by each of the respective foreclosing governmental units in accordance with subsection (a) of this section. Such intergovernmental agreement shall include provisions for the dissolution of such land bank. In the event that a land bank is created pursuant to an agreement in accordance with this subsection, such agreement shall also specify the matters identified in subsection (a) of this section.

(c) In the event a county creates a land bank, such land bank shall have the power to acquire real property only in those portions of such county located outside of the geographical boundaries of any other land bank created by any other foreclosing governmental unit located partially or entirely within such county.

(80 Del. Laws, c. 155, § 1.)

§ 4706. Board of directors.

(a) The initial size of the board of directors shall be determined in accordance with § 4705(a)(2) of this title. Unless restricted by the agreement specified in § 4705(b) of this title, and subject to the limits set forth in this section, the size of the board of directors may be adjusted in accordance with the adopted bylaws of the land bank and by adoption of a local law, ordinance, or resolution, as appropriate, of the applicable foreclosing governmental unit.

(b) Notwithstanding any law to the contrary, any public officer shall be eligible to serve as a board member and the acceptance of the appointment to the board shall neither terminate nor impair such public office. For purposes of this section, "public officer" shall mean a person who is elected to a state, county, or municipal office. Any state, county, or municipal employee shall also be eligible to serve as a board member. No more than half of the members of the board of a land bank shall be public officials or municipal employees.

(c) All board members of a land bank must either live in or work in a jurisdiction within the area covered by the land bank. The board shall include at least 1 voting member who maintains a membership with a recognized civic organization within the jurisdiction of the foreclosing governmental unit.

(d) Large jurisdictional land banks shall reserve 1 board seat for a member to be appointed by the Governor, 1 board seat for a member to be appointed by the President Pro Tempore of the Senate, and 1 board seat for a member to be appointed by the Speaker of the House of Representatives.

(e) The members of the board of directors shall select annually from among themselves a chair, a vice chair, a treasurer, and such other officers as the board may determine, and shall establish their duties as set forth in the bylaws of the land bank.

(f) The bylaws of the land bank shall establish rules and requirements relative to the attendance and participation of board members in board meetings, whether regular or special. Such bylaws may prescribe a procedure whereby, should any member fail to comply with such rules and regulations, such member may be disqualified and removed from office by no less than a majority vote of the remaining members of the board, and that member's position shall be vacant as of the first day of the next calendar month. Any person removed under the provisions of this subsection shall be ineligible for reappointment to the board, unless such reappointment is confirmed by the board.

(g) A vacancy on the board shall be filled by the adoption of a local law, ordinance, or resolution, as appropriate, of the applicable foreclosing governmental unit and as provided in the bylaws of the land bank.

(h) Board members shall serve without compensation. Board members shall have the power to organize and reorganize the executive, administrative, clerical, and other departments of the land bank and to fix the duties, powers, and compensation of all employees, agents, and consultants of the land bank in the manner provided in the bylaws. The board may reimburse any board member for expenses actually incurred in the performance of that board member's duties on behalf of the land bank.

(i) The board shall meet in regular session according to a schedule adopted by the board and may also meet in special session as convened by any officer of the board or upon written notice signed by a majority of the members of the board. The presence of a majority of the board's total membership, not including vacancies, shall constitute a quorum.

(j) All actions of the board shall be approved by the affirmative vote of a majority of the board members present and voting at the applicable meeting. However, no action of the board shall be authorized on any of the following matters unless approved by a majority of the total board membership:

(1) Adoption of bylaws and other rules and regulations for conduct of the land bank's business.

(2) Hiring or firing of any employee or contractor of the land bank. This function may, by majority vote, be delegated by the board to a specified officer or committee of the land bank, under such terms and conditions, and to the extent, that the board may specify.

(3) The incurring of debt.

(4) Adoption or amendment of the annual budget.

(5) Sale, lease, encumbrance, or alienation of real property, improvements, or personal property with a value of more than $50,000.

(k) Vote by proxy shall not be permitted. Any board member may request a recorded vote on any resolution or action of the land bank. Board members may participate in board meetings by telephone or video conference to the extent permitted by the bylaws of the land bank.

(80 Del. Laws, c. 155, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1.)

§ 4707. Staff.

A land bank may employ a secretary, an executive director, its own counsel and legal staff, technical experts, and such other agents and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation and benefits of such persons. A land bank may also enter into contracts and agreements with foreclosing governmental units or nonprofit entities designated by the foreclosing governmental unit for staffing services to be provided to the land bank by those foreclosing governmental units, designated nonprofit entities or departments thereof, or for a land bank to provide such staffing services to such foreclosing governmental units, designated nonprofit entities, or departments thereof.

(80 Del. Laws, c. 155, § 1.)

§ 4708. Powers.

A land bank shall possess all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to those herein otherwise granted:

(1) To adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business.

(2) To sue and be sued in its own name and plead and be interpleaded in all civil actions, including actions to clear title to property of the land bank.

(3) To adopt a seal and to alter the same at pleasure.

(4) To borrow from private lenders, from municipalities, from a county, from the State, or from federal government funds, as may be necessary, for the operation and work of the land bank.

(5) To borrow and issue bonds according to the provisions of this chapter.

(6) To procure insurance or guarantees from municipalities, counties, the State, or the federal government of the payments of any debts or parts thereof incurred by the land bank and to pay premiums in connection therewith.

(7) To enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers, including intergovernmental agreements provided for in § 4705(b) of this title for the joint exercise of powers under this chapter.

(8) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the land bank.

(9) To procure insurance against losses in connection with the real property, assets, or activities of the land bank.

(10) To invest money of the land bank, at the discretion of the board of directors, in instruments, obligations, securities, or property determined proper by the board of directors, and name and use depositories for its money.

(11) To enter into contracts for the acquisition, management, collection of rent, leasing, or sale of real property of the land bank.

(12) To design, develop, construct, demolish, reconstruct, rehabilitate, renovate, relocate, and otherwise improve real property or rights or interests in real property.

(13) To fix, charge, and collect rents, fees, and charges for the use of real property of the land bank and for services provided by the land bank.

(14) To grant or acquire a license, easement, lease, or option with respect to real property of the land bank.

(15) To enter into partnership, joint ventures, and other collaborative relationships with foreclosing governmental units and other public and private entities for the ownership, management, development, and disposition of real property.

(16) To solicit and accept donations to support the objectives and purposes of the land bank.

(17) To do all other things necessary or convenient to achieve the objectives and purposes of the land bank or other laws that relate to the purposes and responsibility of the land bank.

(80 Del. Laws, c. 155, § 1.)

§ 4709. Acquisition of property.

(a) The land bank may acquire real property or interests in real property by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise on terms and conditions and in a manner the land bank considers proper.

(b) The land bank shall not own or hold real property located outside the jurisdictional boundaries of the foreclosing governmental unit or units that created the land bank; provided, however, that a land bank may be granted authority pursuant to an intergovernmental

cooperation agreement with another foreclosing governmental unit to manage and maintain real property located within the jurisdiction of such other foreclosing governmental unit.

(c) Notwithstanding any other provision of law to the contrary, any foreclosing governmental unit may convey to a land bank real property and interests in real property on such terms and conditions, form and substance of consideration, and procedures, all as determined by the transferring foreclosing governmental unit in its discretion.

(d) The land bank shall maintain and make available for public review and inspection a complete inventory of all property owned by the land bank. Such inventory shall include: the location of the parcel; the purchase price, if any, for each parcel; the identity of the transferor to the land bank; and any conditions or restrictions applicable to the property.

(e) The land bank shall hold in its own name all real property acquired by the land bank irrespective of the identity of the transferor of such property.

(80 Del. Laws, c. 155, § 1.)

§ 4710. Disposition of property.

(a) The land bank shall determine and set forth in policies and procedures adopted by the board of directors the general terms and conditions for consideration to be received by the land bank for the transfer of real property and interests in real property, which consideration may take the form of monetary payments and secured financial obligations, covenants and conditions related to the present and future use of the property, contractual commitments of the transferee, and such other forms of consideration as determined by the board of directors to be in the best interest of the land bank.

(b) The land bank may convey, exchange, sell, transfer, lease, grant, release, demise, pledge, mortgage, and hypothecate any and all interests in, upon, or to real property of the land bank.

(c) A foreclosing governmental unit may, in its local law, resolution, or ordinance creating a land bank, or in the applicable intergovernmental cooperation agreement in the case of multiple foreclosing governmental units creating a single land bank under § 4705(b) of this title, establish a hierarchical ranking of priorities for the use of real property owned by a land bank. Any hierarchical ranking of priorities for the use of such real property that is established may include any of the following:

(1) Use for purely public spaces and places.

(2) Use for affordable housing.

(3) Use for retail, commercial, and industrial activities.

(4) Use as wildlife conservation areas.

(5) Such other uses in such hierarchical order as determined by the applicable foreclosing governmental unit.

(d) The priorities established under subsection (c) of this section may be for the entire jurisdiction of the foreclosing governmental unit or may be set according to the needs of different neighborhoods, municipalities, or other locations within the jurisdiction, or according to the nature of the real property.

(e) A land bank shall consider all duly adopted land use plans and shall coordinate the disposition of land bank real property with such land use plans.

(f) A foreclosing governmental unit may, in its local law, resolution, or ordinance creating a land bank, or in the applicable intergovernmental cooperation agreement in the case of multiple foreclosing governmental units creating a single land bank under § 4705(b) of this title, require that any particular form of disposition of real property, or any disposition of real property located within specified jurisdictions, be subject to specified voting and approval requirements of the board of directors. Except and unless restricted or constrained in this manner, the board of directors may delegate to officers and employees the authority to enter into and execute agreements, instruments of conveyance, and all other related documents pertaining to the disposition of real property by the land bank.

(g) All property disposition records of the land bank shall be made available for public inspection as required by Chapter 100 of Title 29.

(80 Del. Laws, c. 155, § 1.)

§ 4711. Maintenance of property.

(a) The land bank shall maintain all of its real property in accordance with the laws and regulations of the jurisdiction in which the real property is situated.

(b) Notwithstanding subsection (a) of this section, the foreclosing governmental unit may elect to reduce or waive monetary fines for violations of any housing codes or ordinances if the land bank is diligently pursuing a correction or remedy for such violation.

(c) Where real property held by the land bank is found to be in violation of a housing code or ordinance, the enforcing jurisdiction shall timely notify the land bank and, subject to subsection (b) of this section, proceed in accordance with the applicable county or municipal property code provisions, or any other applicable law.

(d) Any fire or other casualty to real property held by the land bank shall be immediately remediated and adequately secured to prevent against further loss or damage or, in the event of total loss to the property, the lost property shall be demolished.

(80 Del. Laws, c. 155, § 1.)

§ 4712. Delinquent property enforcement.

(a) *All powers of foreclosing governmental units preserved.* — A foreclosing governmental unit may bring to public sale any real property within its jurisdiction that has liens inuring to the foreclosing governmental unit in accordance with applicable laws.

(b) *Sale of liens and assessments to land banks permitted.* — A foreclosing governmental unit may enter into a contract to sell some or all of its liens to a land bank, subject to all of the following conditions:

(1) The consideration to be paid may be more or less than the face amount of the liens.

(2) Property owners that are subject to a lien that is proposed for sale shall be given at least 30 days advance notice of the proposed sale by the foreclosing governmental unit. Failure to provide such notice or the failure of the addressee to receive the same shall not in any way affect the validity of any sale of a lien or the underlying validity of the lien.

(3) The foreclosing governmental unit shall set the terms and conditions of the sale of its liens.

(4) A land bank must notify the foreclosing governmental unit that sold the lien to the land bank at least 30 days prior to commencing any judicial action to acquire property that is subject to such lien. The foreclosing governmental unit may, at its sole option and discretion, elect to repurchase the lien from the land bank by delivering a notice of such election to the land bank within 30 days of receiving the land bank's notice. The repurchase price shall be the amount of the lien plus any accrued interest and collection fees incurred by the land bank. If the foreclosing governmental unit shall fail to elect to repurchase the lien, the land bank shall have the right to commence a judicial action to acquire property that is subject to such lien.

(5) The sale of a lien pursuant to this section shall not operate to shorten the otherwise applicable redemption period or change the otherwise applicable interest rate for such lien.

(6) A land bank which has purchased any lien may execute or foreclose on such lien in the same manner as the foreclosing governmental unit in whose favor the lien originally arose. At any time following the commencement of an action to execute or foreclose on a lien by a land bank, the amount required to redeem such lien shall include those reasonable and necessary collection costs, attorneys' fees, legal costs, allowances, and disbursements that would have been collectible by the foreclosing governmental unit in whose favor the lien originally arose.

(c) *Credit bids by land banks permitted.* — If any property is submitted for sheriff's sale due to an outstanding lien, a land bank may bid on such property at the sheriff's sale with the same credit that would be afforded to the foreclosing governmental unit that initiated the sale of such property. If the land bank is the successful bidder for such property, the property shall be deemed sold to the land bank and the bid of the land bank shall be paid as to its form, substance, and timing according to such agreement as is mutually acceptable to the foreclosing governmental unit and the land bank.

(80 Del. Laws, c. 155, § 1.)

§ 4713. Expedited quiet title proceedings.

(a) As provided under § 6502 of Title 10, the land bank shall:

(1) Be authorized to file an action to quiet title as to any real property in which the land bank has standing to file such an action.

(2) Prior to the filing of an action to quiet title, the land bank shall conduct an examination of title to determine the identity of any and all persons and entities possessing a claim or interest in or to the real property. Service of the complaint to quiet title shall be provided to all such interested parties by all of the following methods:

a. Registered or certified mail to such identity and address as reasonably ascertainable by an inspection of public records.

b. In the case of occupied real property by registered or certified mail, addressed to "Occupant."

c. By posting a copy of the notice on the real property.

d. By publication in a newspaper of general circulation in the geographic location in which the property is located.

e. Such other methods as the Court may order.

(b) As part of the complaint to quiet title, the land bank shall file an affidavit identifying all parties potentially having an interest in the real property, and the form of notice provided.

(c) If the land bank moves for expedited proceedings the Court shall schedule a hearing on the complaint within 90 days following filing of the complaint, and as to all matters upon which an answer was not filed by an interested party, the Court shall issue its final judgment within 120 days of the filing of the complaint.

(d) Notwithstanding Court of Chancery Rule 19, a land bank shall be authorized to join in a single complaint to quiet title to 1 or more parcels of real property.

(80 Del. Laws, c. 155, § 1.)

§ 4714. Taxing and financing of land bank operations.

(a) A land bank shall have no shareholders and may not be structured as a for-profit entity. A land bank may receive and retain payments for services rendered, for rents and leasehold payments received, for consideration for disposition of real and personal property, for proceeds of insurance coverage for losses incurred, for income from investments, and for any other asset and activity lawfully permitted to a land bank under this chapter. A reasonable operating reserve may be established to facilitate operations. However, all revenues received

by a land bank in excess of expenses must be utilized to address and remediate blight, for neighborhood conservation, or to improve housing within the foreclosing governmental unit.

(b) The real property held by a land bank, and its income, are exempt from all taxation by the State and by any of its political subdivisions. Dispositions of property into or out of a land bank are exempt from realty transfer taxes.

(c) In creating a land bank, a foreclosing governmental unit may elect to dedicate up to 50% of the real property taxes that would inure to the foreclosing governmental unit following the disposition of real property by the land bank, excluding any amounts allocated to school districts, for remittance to the land bank. Such allocation of property tax revenues shall commence with the first taxable year following the date of disposition of the property by land bank and shall continue for a period of 5 years.

(d) Notwithstanding any law to the contrary, a foreclosing governmental unit creating a land bank may levy or impose such additional taxes, fees, assessments, fines, or penalties as are needed to support the operations of the land bank. Any tax, fee, assessment, fine, or penalty imposed by a foreclosing governmental unit pursuant to this subsection must be reauthorized by the foreclosing governmental unit every 5 years and appropriately adjusted so that the revenues from such tax, fee, assessment, fine, or penalty do not exceed the projected operating costs and expenses of the land bank. Any failure to reauthorize such tax, fee, assessment, fine, or penalty shall be deemed an election by the foreclosing governmental unit to cease imposing or levying such tax, fee, assessment, fine, or penalty at the end of the applicable 5-year period.

(e) The Delaware Auditor of Accounts shall have the authority to audit any land bank created pursuant to this chapter.

(80 Del. Laws, c. 155, § 1.)

§ 4715. Public records and public meetings.

(a) The board shall cause minutes and a record to be kept of all its proceedings. Except as otherwise provided in this section, the land bank shall be subject to the provisions of Chapter 100 of Title 29.

(b) A land bank shall schedule and hold a public hearing prior to financing or issuance of bonds.

(c) In addition to any other report required by this chapter, the land bank, through its chair, shall annually deliver a report to the foreclosing governmental unit. Such report shall be presented in the manner required by the governing body or board of the foreclosing governmental unit. The report shall describe in detail the projects undertaken by the land bank during the past year; the financial statements of the land bank during the past year, including a balance sheet and an income statement; and the administrative activities of the land bank during the past year.

(d) A land bank shall be required to maintain a publicly-available website, which shall set forth the inventory required in § 4709(d) of this title.

(80 Del. Laws, c. 155, § 1; 81 Del. Laws, c. 79, § 48.)

§ 4716. Dissolution of land bank.

(a) A land bank may be dissolved within 60 calendar days after the adoption of an affirmative resolution approved by $^{2}/_{3}$ of the membership of the board of directors authorizing such dissolution. Sixty calendar days' advance written notice of consideration of a resolution of dissolution shall be given to the foreclosing governmental unit that created the land bank, shall be published in a local newspaper of general circulation, and shall be sent by certified mail to the trustee of any outstanding bonds of the land bank.

(b) The foreclosing governmental unit or units that created the land bank may dissolve the land bank by repeal of the local law, ordinance, resolution, or intergovernmental cooperation agreement that created the land bank under § 4705(a) or (b) of this title. Dissolution shall be effective no sooner than 60 calendar days after such repeal. Prior to dissolution, the land bank shall publish notice of the dissolution in a local newspaper of general circulation, and shall provide notice by certified mail to the trustee of any outstanding bonds of the land bank. In the event that 2 or more foreclosing governmental units created a land bank under § 4705(b) of this title, the withdrawal of 1 or more foreclosing governmental units shall not result in the dissolution of the land bank unless the intergovernmental cooperation agreement entered into under § 4705(b) of this title so provides and there is no foreclosing governmental unit that desires to continue the existence of the land bank.

(c) Upon dissolution of the land bank, all real property, personal property, and other assets of the land bank shall become assets of the foreclosing governmental unit that created the land bank.

(80 Del. Laws, c. 155, § 1.)

§ 4717. Conflicts of interest.

(a) No member of the board or employee of a land bank shall acquire any interest, direct or indirect, in real property of the land bank, in any real property to be acquired by the land bank, or in any real property to be acquired from the land bank. No member of the board or employee of a land bank shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a land bank.

(b) Board members of any land bank shall provide, prior to appointment and annually after appointment, a report identifying all real property interests owned, directly or indirectly, by such board member or such board member's immediate family, within the lank bank jurisdiction. The report shall be submitted to the foreclosing governmental unit and shall be made available to the public upon request.

(c) The board may adopt supplemental rules and regulations addressing potential conflicts of interest and ethical guidelines for members of the board and land bank employees.

(80 Del. Laws, c. 155, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1.)

§ 4718. Construction, intent, and scope of chapter.

This chapter shall be construed liberally to effectuate the legislative intent and purposes and all powers granted by this chapter shall be broadly interpreted to effectuate such intent and purposes. Except as otherwise expressly set forth in this chapter, in the exercise of its powers and duties under this chapter and its powers relating to property held by the land bank, the land bank shall not be subject to restrictions imposed by the charter, ordinances, or resolutions of a foreclosing governmental unit with respect to contracts, procurement, or property disposition.

(80 Del. Laws, c. 155, § 1.)

§ 4719. Duration and termination.

Any land bank created pursuant to this chapter shall have permanent and perpetual duration until terminated and dissolved in accordance with § 4716 of this title and subchapter X, Chapter 1 of Title 8.

(80 Del. Laws, c. 155, § 1.)

Part IV
Services and Facilities for Youth Adjudicated Delinquent or Criminally Prosecuted
Chapter 51
Services for Justice-Involved Youth

§ 5101. Definitions.

As used in this chapter:

(1) “Commitment” refers to the vesting of legal custody of juveniles in the custody of the Department of Services for Children, Youth and Their Families under the provisions of §§ 5106-5108 of this title.

(2) “Court” means any court of competent jurisdiction.

(3) “Department” means the Department of Services for Children, Youth and Their Families.

(4) “Detention” refers to the holding of a juvenile by the Department in the separate Detention Department provided for in § 5110 of this title.

(5) “Juvenile” means a minor.

(6) “Legal custody” denotes those rights and responsibilities associated with the day to day care of the juveniles. It includes the right to the care, custody and control of the juvenile. It includes the duty to provide food, clothing, shelter, education, ordinary medical care and to train and discipline. “Ordinary medical care” shall mean medical examination, medical treatment including surgical procedures and mental health treatment other than inpatient psychiatric hospitalization.

(31 Del. C. 1953, § 5101; 51 Del. Laws, c. 274, § 2; 57 Del. Laws, c. 591, § 49; 64 Del. Laws, c. 108, § 20; 70 Del. Laws, c. 381, § 3.)

§ 5102. Functions of the Department of Services for Children, Youth and Their Families.

There shall be 1 state agency known as the Department of Services for Children, Youth and Their Families one of whose functions shall be the administration of all state-owned training facilities for the detention, care and treatment, and after-care supervision of juvenile delinquents. These include: Ferris School for Boys, Kruse School, Woods Haven School for Girls and the Detention Home for Juveniles (Bridge House). In addition, the Department shall foster the expansion of community services directed toward the overall prevention of juvenile delinquency.

(31 Del. C. 1953, § 5102; 51 Del. Laws, c. 274, § 2; 52 Del. Laws, c. 80, § 1; 64 Del. Laws, c. 108, § 20.)

§ 5103. Payment of accounts.

All of the accounts on the Department shall be paid by warrant drawn upon the State Treasurer in accordance with § 6515(b) of Title 29.

(31 Del. C. 1953, § 5107; 51 Del. Laws, c. 274, § 2; 54 Del. Laws, c. 148.)

§ 5104. Annual report to the Governor and to the General Assembly.

The Department shall make an annual report to the Governor and to the General Assembly of its activities and operations and shall include its receipts and expenditures and such recommendations as it may deem appropriate in detail as to fully inform the Governor and the General Assembly or such other legally authorized agency of this State.

(31 Del. C. 1953, § 5108; 51 Del. Laws, c. 274, § 2.)

§ 5105. Misnomer of Department in donation.

Any misnomer of the Department shall not defeat or annul any gift, grant, devise or bequest to the Department if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey thereby to the Department the estate or interest therein expressed or described.

(31 Del. C. 1953, § 5109; 51 Del. Laws, c. 274, § 2.)

§ 5106. Powers and duties of the Department.

(a) The Department shall:

(1) Have sole and complete control of the training schools and any other state facilities for readjustment of delinquent children;

(2) Appoint advisory committees having such membership as it deems appropriate or desirable;

(3) Provide suitable food, clothing, medicine and all things necessary for the comfort and improvement of delinquent children in the Department’s legal custody;

(4) Make rules and regulations for the government of the training schools not inconsistent with the laws of this State which it deems necessary and proper for the public welfare and best interest of the juveniles entrusted to the Department including the release of juveniles to after-care supervision;

(5) When deemed necessary, to provide after-care supervision for delinquent children released from the training schools;

(6) Provide suitable buildings, with all the necessary land and appurtenances for the use and occupation of the Department;

(7) Establish such rules and regulations relative to the religious and moral education, training, employment, discipline, management, government, instruction, safekeeping and the disposition of the juveniles;

(8) Exercise all powers not inconsistent with this chapter as are necessary to discharge their responsibility of legal custody of a juvenile. Powers inconsistent with this chapter shall include without limitation the power to sue and be sued or to implead or be impleaded in all courts of law and equity; and

(9) Place a juvenile committed to its custody pursuant to § 1009 of Title 10, in a facility providing the maximum available security.

(b) Notwithstanding prior enactments accepting the Ferris School for Boys as a state-operated facility, nothing contained therein or in any other law was intended by the General Assembly to constitute a waiver of sovereign immunity for the Ferris School for Boys.

(31 Del. C. 1953, § 5120; 51 Del. Laws, c. 274, § 2; 52 Del. Laws, c. 80, § 4; 60 Del. Laws, c. 657, § 3; 69 Del. Laws, c. 133, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 381, § 2.)

§ 5107. Commitments to the Department.

The Family Court of the State may commit to the custody of the Department any juvenile who is subject to the jurisdiction of such Court and who is delinquent, as that term is defined in § 901 of Title 10; provided, however, that where the adjudication is pursuant to § 1009(e) [repealed] of Title 10, the juvenile shall be committed for the designated statutory period. The Department shall accept the custody of any juvenile so committed to it.

(31 Del. C. 1953, § 5121; 51 Del. Laws, c. 274, § 2; 52 Del. Laws, c. 80, § 5; 60 Del. Laws, c. 657, § 4; 81 Del. Laws, c. 253, § 1.)

§ 5108. Power to discharge or release.

(a) Except as to a delinquent child committed for a mandatory period pursuant to § 1009(e) [repealed] of Title 10, the Department may at its discretion discharge finally any juvenile committed to its custody if the Department shall determine:

(1) Such discharge is in the best interests of the juvenile; and

(2) That the juvenile does not pose a probable threat to property or person; provided, that a certificate of discharge, setting forth grounds establishing compliance with these conditions of release, shall be provided 10 calendar days prior to the date of release to the Judge of Family Court who originally signed the commitment order, or, in such judge's absence, to the Chief Judge of said Court.

(b) No person shall be retained in the legal custody of the Department beyond that person's 18th birthday; provided, however, that any delinquent child who is 17 years of age or older but less than 18 years of age who has been committed to the custody of the Department may remain in said custody for 1 full year; provided further, that any delinquent child who is committed to the custody of the Department for a mandatory period pursuant to § 1009(e) [repealed] of Title 10 shall be transferred into or retained in the custody of a facility established pursuant to § 6526 of Title 11 for youthful offenders upon reaching the age of 18 where the youthful offender shall remain until the completion of the mandatory period of custody; provided further, that any child who is charged with an act of delinquency prior to reaching 18 years but becomes 18 years of age prior to disposition on the charge may be committed to the custody of the Department until the child's nineteenth birthday.

(c) No child committed to the custody of the Department under § 1009(e) [repealed] of Title 10 shall be released on pass or on extended leave for any purpose except in accordance with the procedure set forth in subsection (a) of this section. Upon receipt of notification that the Department intends to extend such privileges to a child so committed, the Court may deny, or may impose such reasonable terms and conditions as it deems necessary, upon said temporary release.

(31 Del. C. 1953, § 5122; 51 Del. Laws, c. 274, § 2; 52 Del. Laws, c. 80, § 6; 60 Del. Laws, c. 142, § 1; 60 Del. Laws, c. 657, § 5; 61 Del. Laws, c. 377, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 253, § 1.)

§ 5109. Treatment of juvenile inmates with mental conditions or mental disabilities; transfer.

(a) The Secretary of the Department of Services for Children, Youth and Their Families may transfer to other appropriate state institutions for care and treatment juveniles committed to the custody of the Division of Youth Rehabilitation Services whom the Secretary has determined to have psychotic disorders or mental conditions. Transfer may also be made to such facilities in other jurisdictions, or to municipal or private facilities, upon the consent of responsible administrators of such facilities.

(b) When, in the judgment of the administrator of the institution to which a juvenile in custody has been transferred, the juvenile has recovered from the condition which occasioned the transfer, the juvenile shall be returned to the Division of Youth Rehabilitation Services.

(c) The transfer shall become effective as soon as the Secretary of the Department of Services for Children, Youth and Their Families requests it. The parents or guardians of the juvenile, if they can be reached by a reasonable effort, shall be notified of the transfer within 30 days. They may demand in writing a hearing before the Secretary of Services for Children, Youth and Their Families to be held within 2 weeks. The decision of the Secretary may be appealed within 30 days to the court which committed the juvenile to the Division of Youth Rehabilitation Services. The decision of the court on appeal shall be final.

(d) When the juvenile is returned to the Division of Youth Rehabilitation Services, the parents or guardians of the juvenile, if they can be reached by a reasonable effort, shall be notified of the transfer within 30 days by the Secretary of Services for Children, Youth and

Their Families. They may demand in writing a hearing before the Secretary of Services for Children, Youth and Their Families to be held within 2 weeks. The decision of the Secretary may be appealed within 30 days to the court which first committed the juvenile to the Division of Youth Rehabilitation Services. The decision of the court on appeal shall be final.

(31 Del. C. 1953, § 5123; 58 Del. Laws, c. 362; 64 Del. Laws, c. 108, §§ 20, 21; 78 Del. Laws, c. 179, §§ 381, 382.)

§ 5110. Separate operation.

(a) The Department shall operate a separate department for the proper transportation, care and detention of any juvenile detained by authority of law.

(b) In the operation of the Detention Department the Department shall have all of the powers listed in § 5106 of this title.

(31 Del. C. 1953, § 5130; 51 Del. Laws, c. 274, § 2.)

§ 5111. Aiding or harboring escapee from a facility of the Department; penalty.

Whoever knowingly:

(1) Advises, promotes or aids in the escape or running away of any juvenile from the custody or detention of the Department; or

(2) Harbors or conceals, or aids in harboring or concealing any juvenile who has escaped from a facility of the Department, after such juvenile has been regularly committed thereto or detained thereat,

shall be fined not less than $10 nor more than $1,000.

(31 Del. C. 1953, § 5140; 51 Del. Laws, c. 274, § 2.)

§ 5112. Ferris School for Boys.

The Ferris School for Boys, in New Castle County, a facility of the Division of Youth Rehabilitation Services of Delaware, shall be officially known as the Ferris School for Boys.

(62 Del. Laws, c. 49, § 1; 64 Del. Laws, c. 108, § 21; 70 Del. Laws, c. 186, § 1.)

§ 5113. Re-entry programs.

(a) There is hereby established a fund for the provision of juvenile re-entry services (“Juvenile Re-Entry Services Fund”). This fund shall be overseen and administered by the Department, and shall be used exclusively for the provision of re-entry services to minors who have been adjudicated delinquent or convicted of a crime and detained in a secure facility as a result of that adjudication.

(b) As used in this section, “re-entry services” means services provided to a juvenile after release from a secure facility that have the specific purpose of reducing the risk that the juvenile will commit a future criminal offense or act of delinquency. This includes continuing services for up to 1 year after release, even if the juvenile turns 18 during confinement or after release.

(c) Funds appropriated to the Juvenile Re-Entry Services Fund shall be awarded by the Department to public or private third parties on a competitive basis for the provision of re-entry services. Up to 5% of appropriated funds may be retained by the Department for administration of funds and monitoring of services provided under this section.

(d) Funds from the Juvenile Re-Entry Services Fund may not be awarded in a manner that supplants funding from any other public source.

(e) The Department shall report to the Governor and General Assembly by December 1 of each year all expenditures made from the Juvenile Re-Entry Services Fund, the results of all monitoring of grants made from the Juvenile Re-Entry Services Fund, and its funding priorities for grants to be made in the following calendar year.

(83 Del. Laws, c. 261, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1.)

Part IV
Services and Facilities for Youth Adjudicated Delinquent or Criminally Prosecuted

Chapter 52
Interstate Compact on Juveniles

Subchapter I
Findings; Execution

§ 5201. Legislative findings and policy.

(a) The General Assembly finds and declares:

(1) That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare and the health, morals and welfare of others; and

(2) That the cooperation of this State with other states is necessary to provide for the welfare and protection of juveniles and of the people of this State.

(b) It shall, therefore, be the policy of this State in adopting the Interstate Compact on Juveniles to cooperate fully with other states:

(1) In returning juveniles to such other states whenever their return is sought; and

(2) In accepting the return of juveniles whenever a juvenile residing in this State is found or apprehended in another state and in taking all measures to initiate proceedings for the return of such juveniles.

(31 Del. C. 1953, § 5201; 54 Del. Laws, c. 64.)

§ 5202. Execution of compact.

The Governor is hereby authorized and directed to execute a compact on behalf of this State with any other state or states legally joining therein in the form substantially as follows.

(31 Del. C. 1953, § 5202; 54 Del. Laws, c. 64.)

Subchapter II
The Interstate Compact for Juveniles

§ 5203. The Interstate Compact for Juveniles.

The Interstate Compact for Juveniles is enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

ARTICLE I. PURPOSE.

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. § 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this Compact, through means of joint and cooperative action among the compacting states to: (A) ensure that the adjudicated juveniles and status offenders subject to this Compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; (B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected; (C) return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return; (D) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (E) provide for the effective tracking and supervision of juveniles; (F) equitably allocate the costs, benefits and obligations of the compacting states; (G) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders; (H) insure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; (I) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this Compact; (J) establish a system of uniform data collection on information pertaining to juveniles subject to this Compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of Compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators; (K) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct non-compliance; (L) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and (M) coordinate the implementation

and operation of the Compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this Compact. The provisions of this Compact shall be reasonably and liberally construed to accomplish the purposes and policies of the Compact.

ARTICLE II. DEFINITIONS.

As used in this Compact, unless the context clearly requires a different construction:

A. “By-laws” means: those by-laws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.

B. “Compact Administrator” means: the individual in each compacting state appointed pursuant to the terms of this Compact, responsible for the administration and management of the state’s supervision and transfer of juveniles subject to the terms of this Compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this Compact.

C. “Compacting State” means: any state which has enacted the enabling legislation for this Compact.

D. “Commissioner” means: the voting representative of each compacting state appointed pursuant to Article III of this Compact.

E. “Court” means: any court having jurisdiction over delinquent, neglected, or dependent children.

F. “Deputy Compact Administrator” means: the individual, if any, in each compacting state appointed to act on behalf of a Compact Administrator pursuant to the terms of this Compact responsible for the administration and management of the state’s supervision and transfer of juveniles subject to the terms of this Compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this Compact.

G. “Interstate Commission” means: the Interstate Commission for Juveniles created by Article III of this Compact.

H. “Juvenile” means: any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

(1) Accused Delinquent — a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) Adjudicated Delinquent — a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) Accused Status Offender — a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) Adjudicated Status Offender — a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(5) Non-Offender — a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

I. “Non-Compacting state” means: any state which has not enacted the enabling legislation for this Compact.

J. “Probation or Parole” means: any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

K. “Rule” means: a written statement by the Interstate Commission promulgated pursuant to Article VI of this Compact that is of general applicability, implements, interprets or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

L. “State” means: a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

ARTICLE III. INTERSTATE COMMISSION FOR JUVENILES.

A. The compacting states hereby create the “Interstate Commission for Juveniles.” The Commission shall be a body corporate and joint agency of the compacting states. The Commission shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this Compact.

B. The Interstate Commission shall consist of Commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder. The Commissioner shall be the Compact Administrator, Deputy Compact Administrator or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

C. In addition to the Commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Such non-commissioner members must include a member of the National Organizations of Governors, Legislators, State Chief Justices, Attorneys General, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All non-commissioner members of the Interstate Commission shall be ex-officio (non-voting) members. The Interstate Commission may provide in its by-laws for such additional ex-officio (non-voting) members, including members of other national organizations, in such numbers as shall be determined by the Commission.

D. Each compacting state represented at any meeting of the Commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by-laws of the Interstate Commission.

E. The Commission shall meet at least once each calendar year. The Chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

F. The Interstate Commission shall establish an Executive Committee, which shall include Commission officers, members, and others as determined by the by-laws. The Executive Committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the Compact. The executive committee shall oversee the day-to-day activities of the administration of the Compact managed by an Executive Director and Interstate Commission staff; administers enforcement and compliance with the provisions of the Compact, its by-laws and rules, and performs such other duties as directed by the Interstate Commission or set forth in the by-laws.

G. Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a Commissioner, in consultation with the State Council, shall appoint another authorized representative, in the absence of the Commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The by-laws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

H. The Interstate Commission's by-laws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

I. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in the Compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;

2. Disclose matters specifically exempted from disclosure by statute;

3. Disclose trade secrets or commercial or financial information which is privileged or confidential;

4. Involve accusing any person of a crime, or formally censuring any person;

5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

6. Disclose investigative records compiled for law enforcement purposes;

7. Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;

8. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

9. Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

J. For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

K. The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV. POWERS AND DUTIES OF THE INTERSTATE COMMISSION.

The Commission shall have the following powers and duties:

1. To provide for dispute resolution among compacting states.

2. To promulgate rules to effect the purposes and obligations as enumerated in this Compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this Compact.

3. To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this Compact and any by-laws adopted and rules promulgated by the Interstate Commission.

4. To enforce compliance with the Compact provisions, the rules promulgated by the Interstate Commission, and the by-laws, using all necessary and proper means, including but not limited to the use of judicial process.

5. To establish and maintain offices which shall be located within one or more of the compacting states.

6. To purchase and maintain insurance and bonds.

7. To borrow, accept, hire or contract for services of personnel.

8. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an Executive Committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

9. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.

10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

13. To establish a budget and make expenditures and levy dues as provided in Article VIII of this Compact.

14. To sue and be sued.

15. To adopt a seal and by-laws governing the management and operation of the Interstate Commission.

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this Compact.

17. To report annually to the legislatures, governors, judiciary, and State councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

18. To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

19. To establish uniform standards of the reporting, collecting and exchanging of data.

20. The Interstate Commission shall maintain its corporate books and records in accordance with the by-laws.

ARTICLE V. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION.

Section A. By-laws.

1. The Interstate Commission shall, by a majority of the members present and voting, within twelve months after the first Interstate Commission meeting, adopt by-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the Compact, including, but not limited to:

a. Establishing the fiscal year of the Interstate Commission;

b. Establishing an Executive Committee and such other committees as may be necessary;

c. Provide for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;

d. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

e. Establishing the titles and responsibilities of the officers of the Interstate Commission;

f. Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the Compact after the payment and/or reserving of all of its debts and obligations.

g. Providing "start-up" rules for initial administration of the Compact; and

h. Establishing standards and procedures for compliance and technical assistance in carrying out the Compact.

Section B. Officers and Staff.

1. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the by-laws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

2. The Interstate Commission shall, through its Executive Committee, appoint or retain an Executive Director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The Executive Director shall serve as secretary to the Interstate Commission, but shall not be a member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

Section C. Qualified Immunity, Defense and Indemnification.

1. The Commission's Executive Director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of any such person.

2. The liability of any Commissioner, or the employee or agent of a Commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of any such person.

3. The Interstate Commission shall defend the Executive Director or the employees or representatives of the Interstate Commission and, subject to the approval of the Attorney General of the state represented by any Commissioner of a compacting state, shall defend such Commissioner or the Commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or wilful and wanton misconduct on the part of such person.

4. The Interstate Commission shall indemnify and hold the Commissioner of a compacting state, or the Commissioner's representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or wilful and wanton misconduct on the part of such persons.

ARTICLE VI. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION.

A. The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the Compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the by-laws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted by the U.S. Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Commission.

C. When promulgating a rule, the Interstate Commission shall, at a minimum:

1. publish the proposed rule's entire text stating the reason(s) for that proposed rule;

2. allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available;

3. provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and

4. promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

D. Allow, not later than sixty days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule. If the Court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the Court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

E. If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the Compact, cause that such rule shall have no further force and effect in any compacting state.

F. The existing rules governing the operation of the Interstate Compact on Juveniles superceded by this Act shall be null and void twelve (12) months after the first meeting of the Interstate Commission created hereunder.

G. Upon determination by the Interstate Commission that a state-of-emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety (90) days after the effective date of the emergency rule.

ARTICLE VII. OVERSIGHT, ENFORCEMENT AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION.

Section A. Oversight.

1. The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this Compact in the compacting states and shall monitor such activities being administered in non-compacting states which may significantly affect compacting states.

2. The Courts and executive agencies in each compacting state shall enforce this Compact and shall take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the State government as evidence of the authorized statute and administrative rules. All Courts shall take judicial notice of the Compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution.

1. The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the Compact as well as issues and activities pertaining to compliance with the provisions of the Compact and its bylaws and rules.

2. The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the Compact and which may arise among compacting states and between compacting and non-compacting states. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact using any or all means set forth in Article XI of this Compact.

ARTICLE VIII. FINANCE.

A. The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

C. The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its by-laws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE IX. THE STATE COUNCIL.

Each member state shall create a State Council for Interstate Juvenile Supervision. While each state may determine the membership of its own State Council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the Compact Administrator, Deputy Compact Administrator or designee. Each compacting state retains the right to determine the qualifications of the Compact Administrator or Deputy Administrator. Each State Council will advise and may exercise oversight and advocacy concerning that state's participation in Interstate Commission activities and other duties as may be determined by that state, including but not limited to, development of policy concerning operations and procedures of the Compact within that state.

ARTICLE X. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT.

A. Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands as defined in Article II of this Compact is eligible to become a compacting state.

B. The Compact shall become effective and binding upon legislative enactment of the Compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004 or upon enactment into law by the 35th jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the Compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the Interstate Commission on a non-voting basis prior to adoption of the Compact by all states and territories of the United States.

C. The Interstate Commission may propose amendments to the Compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI. WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT.

Section A. Withdrawal.

1. Once effective, the Compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the Compact by specifically repealing the statute which enacted the Compact into law.

2. The effective date of withdrawal is the effective date of the repeal.

3. The withdrawing state shall immediately notify the Chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this Compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the Compact or upon such later date as determined by the Interstate Commission.

Section B. Technical Assistance, Fines, Suspension, Termination and Default.

1. If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this Compact, or the by-laws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

a. Remedial training and technical assistance as directed by the Interstate Commission;

b. Alternative Dispute Resolution;

c. Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and

d. Suspension or termination of membership in the Compact, which shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or the Chief Judicial Officer of the state, the majority and minority leaders of the defaulting state's legislature, and the State Council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this Compact, the by-laws, or duly promulgated rules and any other grounds designated in commission by-laws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Commission, the defaulting state shall be terminated from the Compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of termination.

2. Within sixty days of the effective date of termination of a defaulting state, the Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer, the Majority and Minority Leaders of the defaulting state's legislature, and the State Council of such termination.

3. The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

4. The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

5. Reinstatement following termination of any compacting state requires both a reenactment of the Compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

Section C. Judicial Enforcement.

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the Compact, its duly promulgated rules and by-laws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys fees.

Section D. Dissolution of Compact.

1. The Compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the Compact to one compacting state.

2. Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the by-laws.

ARTICLE XII. SEVERABILITY AND CONSTRUCTION.

A. The provisions of this Compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.

B. The provisions of this Compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII. BINDING EFFECT OF COMPACT AND OTHER LAWS.

Section A. Other Laws.

1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this Compact.

2. All compacting states' laws other than state Constitutions and other interstate Compacts conflicting with this Compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact.

1. All lawful actions of the Interstate Commission, including all rules and by-laws promulgated by the Interstate Commission, are binding upon the compacting states.

2. All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

3. Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective.

(31 Del. C. 1953, § 5203; 54 Del. Laws, c. 64; 58 Del. Laws, c. 30, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 123, § 1.)

Subchapter III

Effectuation

§ 5221. Juvenile compact administrator.

Pursuant to the Interstate Compact on Juveniles, the Governor is hereby authorized and empowered to designate the Secretary of the Department of Services for Children, Youth and Their Families to be the Compact administrator or to authorize the Secretary to designate an employee of the Department to be the Compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the Compact. The Compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this State and its subdivisions in facilitating the proper administration of the Compact or of any supplementary agreement or agreements entered into by this State hereunder.

(31 Del. C. 1953, § 5221; 54 Del. Laws, c. 64; 57 Del. Laws, c. 591, § 51; 58 Del. Laws, c. 30, § 2; 64 Del. Laws, c. 108, § 20.)

§ 5222. Supplementary agreements.

The Compact administrator is authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the Compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this State or require or contemplate the provisions of any service by this State, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

(31 Del. C. 1953, § 5222; 54 Del. Laws, c. 107.)

§ 5223. Financial arrangements.

The Compact administrator, subject to the approval of the State Treasurer, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this State by the Compact or by any supplementary agreement entered into thereunder.

(31 Del. C. 1953, § 5223; 54 Del. Laws, c. 64.)

§ 5224. Responsibilities of state departments, agencies and officers.

The courts, departments, agencies and officers of this State and its subdivisions shall enforce the Compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

(31 Del. C. 1953, § 5224; 54 Del. Laws, c. 64.)

§ 5225. Additional procedures not precluded.

In addition to any procedure provided in Articles IV and VI of the Compact for the return of any runaway juvenile, the particular states, the juvenile or the juvenile's parents, the courts, or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this State and the other respective party states for the return of any such runaway juvenile.

(31 Del. C. 1953, § 5225; 54 Del. Laws, c. 64; 70 Del. Laws, c. 186, § 1.)

§ 5226. Receipt of federal funds.

The designated Juvenile Compact administrator is authorized to cooperate with the federal government and to receive any federal funds which may be allocated for the purpose of improving the State's services to those juveniles affected by this Compact.

(31 Del. C. 1953, § 5226; 54 Del. Laws, c. 64.)

§ 5227. Definition.

The term “delinquent juvenile” as used in the Compact shall include any wayward child as defined in § 901 of Title 10.

(31 Del. C. 1953, § 5227; 54 Del. Laws, c. 64.)

§ 5228. Effective date.

The Compact shall become effective immediately upon approval of the General Assembly and the Governor and thereafter upon being executed on behalf of this State with any other state or states legally joining therein.

(31 Del. C. 1953, § 5228; 54 Del. Laws, c. 64.)

§ 5229. State Council for Interstate Juvenile Supervision.

(a) The State Council for Interstate Juvenile Supervision is hereby established and shall consist of 8 members as follows:

(1) The Cabinet Secretary of the Department of Services for Children, Youth and Their Families, or the Cabinet Secretary’s designee.

(2) The Director of Division of Youth Rehabilitative Services, or the Director’s designee.

(3) Two members of the Delaware Senate appointed by the President Pro Tempore of the Senate to serve at the pleasure of the President Pro Tempore, 1 from each major political party.

(4) Two members of the Delaware House of Representatives appointed by the Speaker of the House to serve at the pleasure of the Speaker of the House, 1 from each major political party.

(5) A member of the state Family Court judiciary appointed by the Chief Judge of the Delaware Family Court to serve at the pleasure of the Chief Judge.

(6) The Juvenile Compact Administrator appointed by the Secretary of the Department of Services for Children, Youth and Their Families as outlined in § 5221 of this title.

(7) Two members appointed by the Governor who shall serve at the pleasure of the Governor. At least 1 of these appointments must be a representative of a victims’ assistance or advocacy organization.

(b) The State Council shall exercise oversight and advocacy concerning the State’s participation in Interstate Commission activities and other duties including, but not limited to, the development of policy concerning operations and procedures of the compact within the State.

(c) By majority vote of the members, the State Council for Interstate Juvenile Supervision shall select a chairperson.

(d) The State Council shall meet at least twice each year.

(77 Del. Laws, c. 381, § 1.)

Part IV
Services and Facilities for Youth Adjudicated Delinquent or Criminally Prosecuted
Chapter 53
Woods Haven School for Girls

§ 5301. Definitions.

As used in this chapter:

(1) "Board" means the Board of Managers of the Woods Haven School for Girls.

(2) "School" means the Woods Haven School for Girls.

(31 Del. C. 1953, § 5301; 70 Del. Laws, c. 186, § 1.)

§ 5302. Incorporation; powers and duties.

(a) The Woods Haven School for Girls is continued as a corporation and a body politic and corporate by law, and by that name shall have perpetual succession.

(b) The School may:

(1) Have, use or change a common seal;

(2) Receive, hold or convey any estate, real or personal, that may be committed to it;

(3) Act as guardian or custodian of any girl under the age of 18 years who shall be committed to its custody, charge or guardianship, according to law, for the physical, mental and moral training of such girl, and, during such time as any girl is in the custody, charge or guardianship of the School, the guardianship, custody or control of parents, guardians or any other person whatsoever shall be thereby superseded;

(4) Make such bylaws, rules and regulations and appoint such officers, agents and committees as it deems necessary and proper to carry out the purposes of the School; and

(5) Notwithstanding prior enactments accepting the Woods Haven School for Girls as a state-operated facility, nothing contained therein or in any other law was intended by the General Assembly to constitute a waiver of sovereign immunity for the Woods Haven School for Girls.

(19 Del. Laws, c. 637, § 1; 22 Del. Laws, c. 363, § 1; 27 Del. Laws, c. 126, § 1; 27 Del. Laws, c. 127; Code 1915, § 2203; Code 1935, § 2514; 44 Del. Laws, c. 140, §§ 1, 2; 31 Del. C. 1953, § 5302; 69 Del. Laws, c. 133, §§ 3, 4; 70 Del. Laws, c. 186, § 1.)

§ 5303. Exercise of powers and duties.

The authority and duties conferred or imposed by this chapter upon the School may be exercised and discharged by the School or by such of its officers, committees or agents provided for in this chapter or provided for in any bylaws, rules or regulations adopted by it, as shall be severally charged therewith.

(19 Del. Laws, c. 637; 22 Del. Laws, c. 363, § 5; Code 1915, § 2207; Code 1935, § 2518; 31 Del. C. 1953, § 5303.)

§ 5304. Board of Managers; composition and appointment.

(a) The School shall be managed by a Board of Managers which shall consist, in addition to those elected in accordance with the School's charter, of 3 persons to be appointed by the Governor, 1 from each county, to serve for terms of 3 years each. The Governor shall annually appoint a suitable person to be a member of the Board to succeed the manager whose term has expired. Such person shall be a resident of the same county as the manager to be succeeded. Vacancies occurring for any reason other than expiration of term shall be filled only for the unexpired term.

(b) The Governor, the State Treasurer, the Auditor of Accounts and the Judges of the Family Court shall be ex officio members of the Board of Managers of the School.

(19 Del. Laws, c. 637; 27 Del. Laws, c. 126, § 4; Code 1915, § 2208; Code 1935, § 2519; 44 Del. Laws, c. 140, § 1; 45 Del. Laws, c. 241, § 4.)

§ 5305. Audit of accounts.

The accounts of the School shall be audited by such accountant or agency of the State as is authorized to audit the accounts of any board, commission or department of the State. The treasurer of the School shall submit for inspection by the auditing agency all the books of account, vouchers and papers as will be necessary for the audits.

(19 Del. Laws, c. 637; 27 Del. Laws, c. 126, § 3; Code 1915, § 2209; Code 1935, § 2520; 44 Del. Laws, c. 140, § 1; 31 Del. C. 1953, § 5305.)

§ 5306. Preparation and submission of a budget.

Before any appropriation is made to the School from the State, the Board shall prepare a budget showing its needs and requirements and submit the same to the person or board charged with the preparation of the Budget Appropriation Bill and shall make a request of the General Assembly for such amount of money as in its judgment is necessary for the operation of the School during the next biennium.

(32 Del. Laws, c. 26, § 16; 37 Del. Laws, c. 81, § 2; Code 1935, § 2521, 31 Del. C. 1953, § 5306.)

§ 5307. Instruction of inmates.

The School shall cause the girls under its charge to be instructed in the branches of useful knowledge adapted to their age and capacity and in household employment, needlework and such other forms of industry as may be suited to their sex, age, strength and disposition and as may be best adapted to secure their improvement and future welfare. The School shall have regard to the character of those to whom the girls are entrusted, either in private homes or elsewhere, that they may secure to them the benefits of good example, wholesome instruction, improvement in virtue and knowledge and the opportunity to become intelligent, moral and useful members of society.

(19 Del. Laws, c. 637; 22 Del. Laws, c. 363, § 5; Code 1915, § 2207; Code 1935, § 2518; 31 Del. C. 1953, § 5307; 70 Del. Laws, c. 186, § 1.)

§ 5308. Payments by Levy Court and County Councils.

The Levy Court and the County Councils of the 3 counties of this State shall respectively pay monthly to the School for the maintenance and instruction of each girl committed to its custody from the respective counties, the moneys as provided in § 347 of Title 9.

In the same manner and to the same amount as the County Council of New Castle County pays the School for the maintenance and instruction of girls committed to its custody, the Levy Court of Kent County and the County Council of Sussex County shall appropriate and pay moneys for the maintenance and instruction of girls committed to its custody from those counties respectively.

(20 Del. Laws, c. 39; 23 Del. Laws, c. 42; 24 Del. Laws, c. 136; Code 1915, § 2211; 29 Del. Laws, c. 171, § 1; Code 1935, § 2522; 46 Del. Laws, c. 253, § 1; 31 Del. C. 1953, § 5308; 70 Del. Laws, c. 186, § 1.)

§ 5309. Exemption from taxation.

The estate, real and personal, of the School, and for the purposes of its incorporation, shall be free from state, county and city taxes.

(20 Del. Laws, c. 449; 21 Del. Laws, c. 239, § 2; Code 1915, § 2212; Code 1935, § 2523; 44 Del. Laws, c. 140, § 1; 31 Del. C. 1953, § 5309.)

§ 5310. Commitments to School.

The Board, in assenting thereto, may receive into its charge, custody or guardianship, any girl not over 18 nor under 11 years of age when committed thereto in any 1 of the following modes:

(1) The Family Court and the Superior Court may each commit to the custody of the Board any girl who is subject to the jurisdiction of such court and who is a delinquent child, as that term is defined in § 901 of Title 10.

(2) Whenever it appears to the Family Court that the best interests of a girl who is living in circumstances of manifest danger of falling into habits of vice or immorality will be served by temporary care and further study of her case, pending a final disposition thereof, the court may commit such girl to the custody of the Board for a temporary period not exceeding 3 months. At the end of the temporary period of commitment, the Court shall make final disposition of such case.

(19 Del. Laws, c. 637, §§ 3-5; 22 Del. Laws, c. 363, § 2; 24 Del. Laws, c. 121, § 3; 26 Del. Laws, c. 262, § 10; 27 Del. Laws, c. 126, § 1; Code 1915, § 2204; 40 Del. Laws, c. 183, §§ 1, 2; Code 1935, § 2515; 48 Del. Laws, c. 302; 31 Del. C. 1953, § 5310; 70 Del. Laws, c. 186, § 1.)

§ 5311. Aiding or harboring escapees; penalty.

Whoever knowingly:

(1) Advises, promotes or aids in the escape or running away of any girl from the guardianship or custody of the managers of the Woods Haven School for Girls; or

(2) Harbors or conceals, or aids in harboring or concealing, any girl who has escaped from the guardianship or custody of the managers after such girl has been regularly committed thereto,

shall be fined not less than $10 nor more than $100.

(20 Del. Laws, c. 191; Code 1915, § 2213; Code 1935, § 2524; 44 Del. Laws, c. 140, § 1; 31 Del. C. 1953, § 5311; 70 Del. Laws, c. 186, § 1.)

§ 5312. Confinement of delinquents.

(a) If any girl in the charge, custody or guardianship of the School shall be guilty of an attempt to set fire to any building, or to any combustible matter for that purpose, or of openly resisting the lawful authority of any officer or agent of the School, or of attempting to incite others to do so or shall by gross or habitual misconduct exert a dangerous and pernicious influence over the girls so in charge, custody or guardianship of the School, the School, when such case arises, may through its proper officers submit a written statement of the facts to the Superior Court in and for New Castle County and apply for an order authorizing a temporary confinement of such delinquent in the New Castle County Workhouse.

(b) The Court shall forthwith inquire into the facts, and if it appears that the allegations in the statement are substantially true, and that the ends desired to be accomplished by the School will be best promoted thereby the Court shall make an order authorizing the

confinement of such delinquent in the Workhouse for a time to be limited and expressed in the order, and the Board of Trustees of the Workhouse shall receive such delinquent and detain her during the time expressed in such order.

(c) At the expiration of the time limited, or sooner if the Court shall so order upon a further application, the Board of Trustees of the Workhouse shall, with the assent of the School, return such delinquent to the charge, custody or guardianship of the School.

(19 Del. Laws, c. 637; 22 Del. Laws, c. 363, § 4; Code 1915, § 2206; Code 1935, § 2517; 31 Del. C. 1953, § 5312; 70 Del. Laws, c. 186, § 1.)

Part IV
Services and Facilities for Youth Adjudicated Delinquent or Criminally Prosecuted

Chapter 54
Interstate Adoption Assistance Compacts

§ 5401. Legislative findings; purposes of chapter.

(a) The General Assembly finds that:

(1) Finding adoptive families for children, for whom state assistance is desirable pursuant to § 503 of this title, and assuring the protection of the interests of the children affected during the entire assistance period, require special measures when the adoptive parents move to other states or are residents of another state.

(2) Provision of medical and other necessary services for children, with state assistance, encounters special difficulties when the provision of services takes place in other states.

(b) The purposes of this chapter are to:

(1) Authorize the Department of Services for Children, Youth and Their Families to enter into interstate agreements with agencies of other states for the protection of children on behalf of whom adoption assistance is being provided by the Department of Services for Children, Youth and Their Families; and to

(2) Provide procedures for interstate children's adoption assistance payments, include medical payments.

(65 Del. Laws, c. 105, § 1.)

§ 5402. Compacts — Authorized; definitions.

(a) The Department of Services for Children, Youth and Their Families is authorized to develop, participate in the development of, negotiate and enter into 1 or more interstate compacts on behalf of this State with other states to implement 1 or more of the purposes set forth in this chapter. When so entered into, and for so long as it shall remain in force, such a compact shall have the force and effect of law.

(b) For the purposes of this chapter, the term "state" shall mean a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States.

(c) For the purposes of this chapter, the term "adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

(d) For the purposes of this chapter, the term "residence state" means the state of which the child is a resident by virtue of the residence of the adoptive parents.

(65 Del. Laws, c. 105, § 1.)

§ 5403. Compacts — Required contents.

A compact entered into pursuant to the authority conferred by this chapter shall have the following content:

(1) A provision making it available for joinder by all states;

(2) A provision or provisions for withdrawal from the compact upon written notice to the parties, but with a period of 1 year between the date of the notice and the effective date of the withdrawal;

(3) A requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who on the effective date of the withdrawal are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode;

(4) A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state child welfare agency of the state which undertakes to provide the adoption assistance, and further, that any such agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents, and the state agency providing the adoption assistance;

(5) Such other provisions as may be appropriate to implement the proper administration of the compact.

(65 Del. Laws, c. 105, § 1.)

§ 5404. Compacts — Optional contents.

A compact entered into pursuant to the authority conferred by this chapter may contain provisions in addition to those required pursuant to § 5403 of this title, as follows:

(1) Provisions establishing procedures and entitlements to medical, developmental, child care or other social services for the child in accordance with applicable laws, even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs thereof; and

(2) Such other provisions as may be appropriate or incidental to the proper administration of the compact.

(65 Del. Laws, c. 105, § 1.)

§ 5405. Medical assistance.

(a) A child with special needs resident in this State who is the subject of an adoption assistance agreement with another state shall be entitled to receive a medical assistance identification from this State upon the filing in the Medical Assistance Office of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the Medical Assistance Office, the adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.

(b) The State Medical Assistance Office shall consider the holder of a medical assistance identification pursuant to this section as any other holder of a medical assistance identification under the laws of this State and shall process and make payment on claims on account of such holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

(c) The Medical Assistance Office or other appropriate state agency shall provide coverage and benefits for a child who is in another state and who is covered by an adoption assistance agreement made by the State Adoption Assistance Agency for the coverage or benefits, if any, not provided by the residence state. To this end, the adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and shall be reimbursed therefor. However, there shall be no reimbursement for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The Department of Services for Children, Youth and Their Families shall make regulations implementing this subsection. The additional coverages and benefit amounts provided pursuant to this subsection shall be for services to the cost of which there is no federal contribution, or which, if federally aided, are not provided by the residence state. Among other things, such regulations shall include procedures to be followed in obtaining prior approvals for services in those instances where required for the assistance.

(d) The submission of any claim for payment or reimbursement for services or benefits pursuant to this section or the making of any statement in connection therewith, which claim or statement the maker knows or should know to be false, misleading or fraudulent shall be punishable as perjury and shall also be subject to a fine of not to exceed $10,000 or imprisonment for not to exceed 2 years, or both such fine and imprisonment.

(e) This section shall apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this State under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this State. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this State shall be eligible to receive it in accordance with the laws and procedures applicable thereto.

(65 Del. Laws, c. 105, § 1.)

§ 5406. Federal participation.

Consistent with federal law, the Department of Health and Social Services and Department of Services for Children, Youth and Their Families in connection with the administration of this chapter and any compact pursuant hereto shall include in any state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) [42 U.S.C. § 620 et seq.], Titles IV (e) and XIX of the Social Security Act [42 U.S.C. § 670 et seq. and 42 U.S.C. § 1396 et seq.], and any other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost. The aforementioned department(s) shall apply for and administer all relevant federal aid in accordance with law.

(65 Del. Laws, c. 105, § 1.)